

Decision 90 08 010 AUG 8 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, and practices of BRAKE
MEIER TRUCKLOAD, INC., a California
corporation, and Marubeni America
Corporation, a foreign corporation,
incorporated in New York, as
Shipper Respondent,

Respondents.

I.89-09-005
(Filed September 7, 1989)

Milton Plack, Attorney at Law, for Brake
Meier Truckload, Inc.; David J. Marchant,
Attorney at Law, for Marubeni America
Corporation; and Glenn Tatsuo Shimizu and
Herbert O. Gipson, dba Rexxer Company, pro
per, respectively, for Shipper Employees,
respondents.

Lawrence O. Garcia, Attorney at Law, and
William G. Waldorf, for the Transportation
Division.

O P I N I O N

Brake Meier Truckload, Inc. (Brake Meier) transports property over the highway for compensation and operates pursuant to a highway common carrier certificate and a highway contract carrier permit, a heavy specialized permit, and an agricultural carrier permit. Brake Meier operates out of an office in Paramount, California. The shipper respondent, Marubeni America Corporation, (Marubeni) operates out of an office in New York City and obtained transportation services from Brake Meier.

Glenn Tatsuo Shimizu (Shimizu), a resident of Culver City, California, is an employee of Marubeni and acts as the traffic manager in its Los Angeles office. Herbert O. Gipson, dba

Rexxer Company, (Gipson) is a resident of Upland, California and is an employee of Marubeni, acting as sales manager for its Metals Division.

A staff investigation revealed that Brake Meier may have violated Sections 458 and 494 of the PU Code by furnishing transportation at less than the applicable rates and charges; that Marubeni may have violated Sections 458 and 459 of the PU Code by obtaining transportation at less than the applicable rates and charges; and that Marubeni may have violated Sections 458 and 459 of the PU Code, through their representatives Shimizu and Gipson, by obtaining transportation of property at less than the applicable rates by receiving allowances and rebates with the connivance of Brake Meier.

Accordingly, the Commission issued, on September 7, 1989, its Order Instituting Investigation (OII) to determine:

1. Whether Brake Meier violated PU Code Sections 458 and 494 by paying any commission or refund, or remitting any portion of its applicable rates and charges.
2. Whether Marubeni violated PU Code Sections 458 and 459 by paying less than the applicable rates and charges for transportation services furnished by Brake Meier.
3. Whether Marubeni, through its representatives, Shimizu and Gipson, violated PU Code Sections 458 and 459 by obtaining transportation of property at less than the applicable rates by receiving allowances and rebates with the connivance of Brake Meier.
4. Whether a fine in the amount of any undercharges should be imposed upon Brake Meier under PU Code Section 2100.

5. Whether Brake Meier should be ordered to collect from Marubeni the amounts paid, refunded or remitted by Brake Meier to Marubeni and/or Shimizu and Gipson.
6. Whether Brake Meier should be ordered to collect from Shimizu and/or Gipson, respectively, any and all amounts paid to either by Brake Meier as commissions or rebates.
7. Whether any or all of Brake Meier's operating authority should be cancelled, revoked, or suspended, or in the alternative, a fine should be imposed under PU Code Section 1070.
8. Whether Brake Meier should be ordered to cease and desist from any unlawful operations or practices.
9. Whether any other order should be entered in the lawful exercise of the Commission's jurisdiction.

This investigation encompasses transportation commissions paid by Brake Meier to Shipper Employees Shimizu and Gipson of Marubeni as evidenced by invoices and checks and car lease payments shown on Attachment A and invoices and checks shown on Attachment B to the OII.

Procedural Background

Copies of the OII were duly served upon the respondents and they appeared by counsel or representative at a prehearing conference on December 7, 1989 to discuss settlement of the case with the staff. Settlement discussions were held and agreements reached between the respondents and the staff that resolved all outstanding issues. These agreements are embodied in a document entitled "Stipulation for Settlement" which is signed by counsel for Marubeni and Brake Meier, Shimizu and Gipson personally, and staff counsel and is dated May 16, 1990. This Stipulation for Settlement is annexed as Appendix A to this opinion and is

incorporated herein as though set forth verbatim. Although none of the parties have moved to apply Article 13.5 of the Rules of Practice and Procedure to this case, all of the parties have tendered Appendix A to Administrative Law Judge Ann Watson.

In Appendix A, the parties declare that they have entered into the stipulation "on the basis that the Commission's adoption of this stipulation not be construed as an admission or concession by any party regarding facts or law in dispute in this proceeding. Furthermore, it is the intent and understanding of the parties that Commission adoption of this stipulation will not be construed as a precedent or policy statement of any kind for or against the parties in either current or future proceedings."

Findings of Fact

1. The stipulation in this proceeding is reasonable, consistent with law, and in the public interest.
2. The stipulation is recommended by the staff.
3. The stipulation is uncontested.

Conclusions of Law

1. The stipulation should be adopted.
2. The adoption of this stipulation should not be construed as a precedent or policy statement for or against any of the parties in any current or future proceeding.
3. Since this matter is resolved by stipulation, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Brake Meier Truckload, Inc. (Brake Meier) shall pay a fine of \$4,000 to the Commission in four consecutive monthly installments of \$1,000 each, the first installment due 30 days after the date of this order.

2. Marubeni America Corporation (Marubeni) shall pay a fine of \$2,000 to the Commission within 30 days after the date of this order.

3. Glenn Tatsuo Shimizu (Shimizu) shall pay a fine of \$4,425 to the Commission, in three consecutive monthly installments of \$1,508.34 each, the first installment due 30 days after the date of this order.

4. Herbert O. Gipson (Gipson) shall pay a fine of \$1,525 to the Commission, in three consecutive monthly installments of \$508.34 each, the first installment due 30 days after the date of this order.

5. Brake Meier remains responsible for pursuing, including legal action if necessary, and collecting the amounts due from Marubeni, Shimizu, and Gipson if any of them do not pay amounts due directly to the Commission at the times specified for payment.

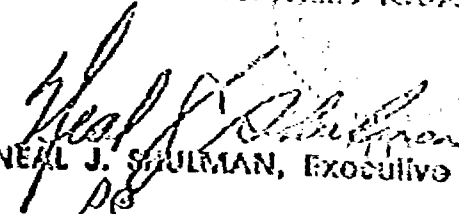
6. This investigation is terminated.

This order is effective today.

Dated AUG 8 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SHULMAN, Executive Director

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
motion into the operations, rates,
and practices of BRAKE MEIER
TRUCKLOAD, INC., a California
corporation, and MARUBENI AMERICA
CORPORATION, a foreign corporation,
incorporated in New York, as
Shipper Respondent.

I.89-09-005

STIPULATION FOR SETTLEMENT

THE PARTIES TO THIS PROCEEDING now pending before the Public Utilities Commission desiring to avoid the expense, inconvenience and uncertainty attendant to litigation of the issues in dispute between them have agreed upon a settlement of the said issues and desire to submit to the Public Utilities Commission this stipulation for approval and adoption as its final disposition of the matters herein.

In addition, since this stipulation represents a compromise by the Parties, the Parties have entered into this stipulation on the basis that the Commission's adoption of this stipulation not be construed as an admission or concession by any party regarding facts or law in dispute in this proceeding. Furthermore, it is the intent and understanding of the Parties that Commission adoption of this stipulation will not be construed as a precedent or policy statement of any kind for or against the Parties in any current or future proceeding.

NOW, THEREFORE, THE PARTIES DO STIPULATE AS FOLLOWS:

1. Respondent Brake Meier Truckload, Inc. (Brake Meier) agrees to pay directly to the Public Utilities Commission ("Commission") the sum of \$4,000 to settle and dispose of issues, allegations, or claims pertaining to Section 1070 of the Public Utilities Code. This sum is to be paid in four consecutive monthly installments of \$1,000 each, the first installment due 30 days after issuance of the Commission's final order approving and adopting the terms of this Stipulation For Settlement as its final disposition of the matters subject to this investigation.

2. Respondent Marubeni America Corporation (Marubeni) agrees to pay \$2,000 directly to the Commission to settle and dispose of all allegations, issues, or claims pertaining to Section 2100 of the Public Utilities Code. This amount is to be paid within 30 days after issuance of the Commission's final order approving and adopting the terms of this Stipulation For Settlement as its final disposition of the matters subject to this investigation.

3. Shipper employee, Glenn Tatsuo Shimizu, agrees to pay \$4525.00 directly to the Commission to settle and dispose of all allegations, issues, or claims pertaining to Section 2100 of the Public Utilities Code. This amount may be paid in three consecutive monthly installments \$1,508.34 the first installment due 30 days after issuance of the Commission's final order approving and adopting the terms of this Stipulation For Settlement as its final disposition of the matters subject to this investigation.

4. Shipper employee, Herbert O. Gipson, agrees to pay \$1,525 directly to the Commission to settle and dispose of all allegations, issues, or claims pertaining to Section 2100 of the Public Utilities Code. This amount may be paid in three consecutive monthly installments of \$508.34 each, the first installment due 30 days after issuance of the Commission's final order approving and adopting the terms of this Stipulation For Settlement as its final disposition of the matters subject to this investigation.

5. If for some unforeseen reason the amounts of \$2,000, \$4,525 and \$1,525 are not paid directly to the Commission Respondent Brake Meier agrees to take all reasonable steps including legal action if necessary to collect these amounts and to pay those amounts to the Public Utilities Commission to settle and dispose of all allegations, issues, or claims pertaining to Section 2100.

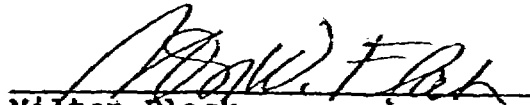
6. The staff of the Public Utilities Commission, specifically the Compliance and Enforcement Branch of the Transportation Division, agrees with the terms of this stipulation and recommends to the Commission that these terms be

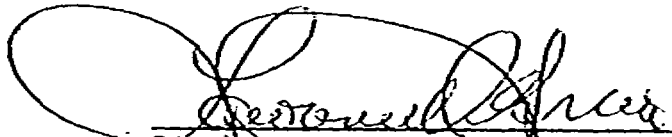
accepted, that this proceeding known as I.89-09-005 be terminated, that all respondents in I.89-09-005 shall henceforth not be subject to any future claims for undercharges, sanctions, or fines arising from payments to shipper representatives or from transportation performed by Brake Meier for the shipper respondent to and including the date of this Stipulation, and be relieved of liability for the payment of any amounts other than those specifically agreed to be paid in this stipulation.

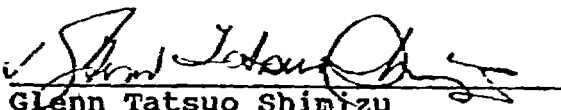
9. The parties enter into this agreement freely and voluntarily.


10. It is understood and agreed that the terms herein are binding when approved by the Commission.

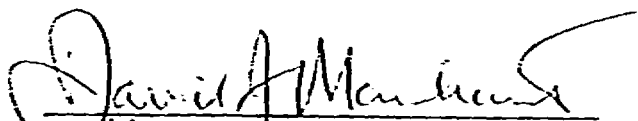
DATED: May 16, 1990


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(END OF APPENDIX A)