

Mailed

MAY 22 1991

Decision 91-05-041 May 22, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Yuba Trucking, Inc.,

Complainant,

vs.

A & R Bertolini Farms,  
and Brian Bertolini,

Defendants.

And Related Matters.

**ORIGINAL**

Case 91-02-045  
(Filed February 4, 1991)

Case 91-02-049  
(Filed February 4, 1991)

Case 91-02-050  
(Filed February 4, 1991)

OPINION

These three complaints are consolidated for decision. All three involve complaints by Yuba Trucking, Inc. (Yuba) against A & R Bertolini Farms and Brian Bertolini (defendants). All allege violation of Item 180 of the Commission's Minimum Rate Tariff (MRT) 7-A because defendants had quoted distance tonnage rates below those contained in Section 2 of MRT 7-A. They request that the Commission institute investigations into the operations of defendants with regard to their quoting illegal rates on the transportation projects in question.

The complaints concede that as of the filing date, no transportation at the quoted rates had taken place, and that no undercharges had occurred.

Defendant Brian Bertolini answered the complaints on March 8, 1991, asserting that the jobs were quoted by Brian Bertolini, and that therefore A & R Bertolini Farms should not be a defendant herein. Defendant Brian Bertolini also makes other

assertions which are not relevant to the determination of these proceedings.

Item 180 of MRT 7-A states, in pertinent part, as follows:

"UNITS OF MEASUREMENT TO BE OBSERVED

"(a) Rates or accessorial charges shall not be quoted or assessed by carriers based upon a unit of measurement different from that in which the minimum rate and charges in this tariff are stated for the type of shipment being rated."

Based upon the plain wording of Item 180 stated above, it is clear that there is no basis for the complaints. The meaning of the item is this: If rates are named in MRT 7-A on a tonnage basis, transportation should not be quoted or assessed on any unit of measurement (e.g., hourly, or per yard) different from the unit applicable to the transportation involved. The item is designed to preserve the integrity and facilitate enforcement of the minimum rates set forth in the tariff. A violation of Item 180, or of any other provision of the tariff, cannot occur based merely upon the quotation of a rate lower than the rate applicable to the transportation involved, provided the rate is quoted on the proper unit of measurement.

The complaints also allege that defendants quoted the shipper rates "that do not conform with MRT 7-A, Items 10, 150, 180 and 300." It is not necessary to discuss these items. Suffice to say that MRT 7-A has not been violated, because no transportation has been performed at rates (allegedly) lower than the minimum rates named in the tariff. If and when transportation is performed at rates lower than those applicable under the tariff, without prior authorization under appropriate deviation procedures, a violation of Public Utilities Code Section 3667 will have occurred.

Rule 10 of the the Commission's Rules of Practice and Procedure specifies that complaints shall state the specific act

complained of. While Yuba has stated what it believes to be acts by defendants in violation of MRT 7-A, such is not the case. Yuba's request that we institute investigations into defendants' operations will not be granted, because there has been no violation of MRT 7-A as Yuba alleges. The complaints should be dismissed because they fail to state a cause of action which may be considered by the Commission.

Findings of Fact

1. Yuba has complained in these proceedings that defendants have violated the provisions of MRT 7-A, in particular Item 180 of the tariff, by quoting rates allegedly lower than the minimum rates named in Section 2 of MRT 7-A.

2. Yuba concedes that no transportation has been performed under the allegedly improper rates.

3. Neither Item 180 nor any other provision of MRT 7-A has been violated.

Conclusion of Law

The complaints should be dismissed.

O R D E R

IT IS ORDERED that the complaints in Cases (C.) 91-02-045, C.91-02-049, and C.91-02-050 are dismissed.

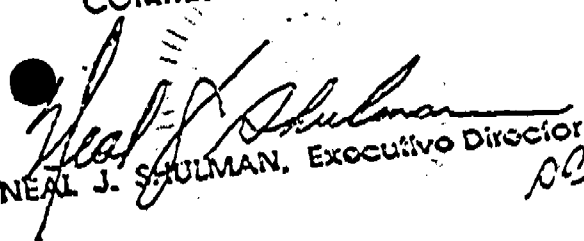
This order is effective today.

Dated May 22, 1991, at San Francisco, California.

PATRICIA M. ECKERT  
President  
G. MITCHELL WILK  
DANIEL Wm. FESSLER  
NORMAN D. SHUMWAY  
Commissioners

Commissioner John B. Ohanian,  
being necessarily absent, did not  
participate.

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

  
NEAL J. SCHULMAN, Executive Director