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Decision 91-12-004 December 4, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of Ali C. Fernandez, Morris Fernandez and Carlos Fernandez, a partnership doing business as ALI C. FERNANDEZ & BROS.; Terry James Johnson, an individual, Johnson's Trucking, Inc., a corporation doing business as J & D TRUCKING, W. M. Lyles Co., a California corporation, carrier respondents, and a shipper.

ORIGINAL

I.89-09-002

(Filed September 7, 1989)

Ali C. Fernandez, for Ali C. Fernandez & Bros.; Michael J. Stecher, Attorney at Law, for W. M. Lyles Co.; Jimmie D. Johnson, for Johnson Trucking, Inc.; and Terry James Johnson, for himself. Lawrence O. Garcia, Attorney at Law, for Compliance and Enforcement Branch of the Transportation Division.

OPINION

Ali C. Fernandez, Morri Fernandez, and Carlos Fernandez, a partnership doing business as Ali C. Fernandez & Bros., transport property over the highways for compensation, pursuant to a dump truck carrier permit issued on January 4, 1973.

Terry James Johnson, an individual doing business as Terry James Johnson Trucking, transports property over the public highways for compensation, pursuant to a dump truck carrier permit issued May 6, 1977, and other operating permits.

Johnson's Trucking, Inc., a California corporation doing business as J & D Trucking, transports property over the public highways for compensation, pursuant to a dump truck permit issued February 1, 1980, and other operating authorities.

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W. M. Lyles Co., a California corporation, has received transportation services from the above carriers.

A Transportation Division investigation shows that in performing transportation services for Lyles the carriers may have violated certain provisions of the Public Utilities Code pertaining to the application of minimum rates. The order instituting investigation alleges that these violations may have occurred.

A prehearing conference was held on January 5, 1990. The parties agreed in principle on all issues in the case except the exact amount of undercharges due. The case was taken off calendar, subject to further study by the Transportation Division of the respondents' position on undercharges. Further negotiations between the Transportation Division and respondents by letter and telephone resulted in a stipulated settlement of the case. A copy of the settlement agreement is appended hereto.

Findings of Fact

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

Conclusions of Law

1. The stipulation should be adopted.
2. Since this case is resolved by stipulation, the following order should be effective immediately.

ORDER

IT IS ORDERED that:

1. Ali C. Fernandez, Morris Fernandez, and Carlos Fernandez, a partnership doing business as Ali C. Fernandez & Bros., shall pay a fine of \$1,500, pursuant to Public Utilities (PU) Code § 3774, which fine shall be due twenty days after the effective date of

this order, provided that the amount may be paid over a twelve-month period, in equal installments, beginning on the same effective date.

2. Terry James Johnson shall pay a fine of \$1,000, pursuant to PU Code § 3774, which fine shall be due twenty days after the effective date of this order, provided that the amount may be paid over a twelve-month period, in equal installments, beginning on the same effective date.

3. Johnson's Trucking, Inc., doing business as J & D Trucking, shall pay a fine of \$3,000, pursuant to PU Code § 3774, which fine shall be due twenty days after the effective date of this order, provided that the amount may be paid over a twelve-month period, in equal installments, beginning on the same effective date.

4. Ali C. Fernandez & Bros. shall pay a fine of \$18,848.85, pursuant to PU Code § 3800, which fine shall be due twenty days after the effective date of this order, provided that the amount may be paid over a twenty-four month period, in equal installments, beginning on the same effective date.

5. Ali C. Fernandez & Bros. shall collect from W. M. Lyles Co. the sum of \$18,848.85 in undercharges, pursuant to PU Code § 3800, provided that the amount may be paid and collected over a twenty-four month period, in equal installments, beginning on the same effective date.

6. Ali C. Fernandez & Bros. shall take all reasonable steps, including legal action if necessary, to collect from W. M. Lyles Co. the amount of \$18,848.85 in undercharges for the transportation of property.

7. The respondents shall henceforth not be subject to any further actions or investigations for undercharges, sanctions, or fines arising from transportation performed by Ali C. Fernandez & Bros. for W. M. Lyles Co., to and including the execution date of the Stipulation for Settlement, and respondents shall be relieved

of liability for the payment of any amounts other than those specifically agreed to be paid in the stipulation.

8. This investigation is terminated and the proceeding is closed.

This order is effective today.

Dated December 4, 1991, at San Francisco, California.

PATRICIA M. ECKERT

President

JOHN B. OHANIAN

DANIEL Wm. FESSLER

NORMAN D. SHUMWAY

Commissioners

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

[Handwritten Signature]
NEAL J. SHULMAN, Executive Director

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
 motion into the operations, rates and
 practices of Ali C. Fernandez, Morris
 Fernandez and Carlos Fernandez, a
 partnership doing business as ALI C.
 FERNANDEZ & BROS., Terry James
 Johnson, an individual, Johnson's
 Trucking, Inc., a corporation doing
 business as J & D TRUCKING,
 W. M. Lyles Co., a California
 corporation, carrier respondents and
 a shipper.

I.89-09-002

STIPULATION FOR SETTLEMENT

ALI C. FERNANDEZ & BROS., Terry James Johnson, J & D
 TRUCKING, W. M. Lyles Co., and the staff of the Transportation
 Division of the CALIFORNIA PUBLIC UTILITIES COMMISSION, Parties
 to the above referenced proceeding, desiring to avoid a
 protracted, complex, and adversarial proceeding, have agreed upon
 a settlement of said issues and desire to submit this Stipulation
 For Settlement for approval and adoption by the Public Utilities
 Commission 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 of 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 this proceeding.

NOW, THEREFORE, the Parties do stipulate as follows:

1. Ali C. Fernandez, Morris Fernandez and Carlos Fernandez, a partnership doing business as, ALI C. FERNANDEZ & BROS., agree to pay a fine of \$1,500 pursuant to Public Utilities Code Section 3774, due twenty days after the effective date of this order. However said amount may be paid over a twelve month period, in equal payments, commencing on the same effective date.

2. Terry James Johnson, an individual, agrees to pay a fine of \$1,000, pursuant to Public Utilities Code Section 3774, due on the effective date of the Commission's order approving this stipulation. However said amount may be paid over a twelve month period, in equal payments, commencing on the same date.

3. Johnson's Trucking, Inc., a corporation, doing business as J & D TRUCKING, agrees to pay a fine of \$3,000 pursuant to Public Utilities Code Section 3774, due twenty days after the effective date of the Commission's order approving this stipulation. However said amount may be paid over a twelve month period, in equal payments, commencing on the same effective date.

4. ALI C. FERNANDEZ & BROS., agree to pay a fine in the amount of \$18,848.85, pursuant to Public Utilities Code Section 3800, such amount being due twenty days after the effective date of the Commission's order approving this stipulation. However said amount may be paid over a 24 month period, in equal payments, commencing on the same effective date.

5. ALI C. FERNANDEZ & BROS., agree to collect from the shipper, W. M. Lyle Co., a corporation, the sum of \$18,848.85 in undercharges, pursuant to Public Utilities Code Section 3800. However, such amount may be paid and collected as in No. 4 above.

6. That respondent ALI C. FERNANDEZ & BROS. agrees to take all reasonable steps, including legal action, if necessary to collect the amount of \$18,848.85 in undercharges, for the transportation of property from W. M. Lyles Co.

7. 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.89-09-002 be terminated, that all respondents in I.89-09-002 shall henceforth not be subject to any future actions or investigations for undercharges, sanctions or fines arising from transportation performed by ALI C. FERNANDEZ & BROS. for W. M. Lyles Co., to and including the date this agreement is signed, and be relieved of liability for the payment of any amounts other than those specifically agreed to be paid in this stipulation.

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

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

Michael Stecher

Michael J. Stecher, Attorney at Law
Counsel for: W. M. Lyles Co.

Lawrence Q. Garcia

Lawrence Q. Garcia, Attorney at Law
Counsel for Compliance and Enforcement Branch

of the Transportation
Division

Jimmie D. Johnson

Jimmie D. Johnson
for:
Johnson Trucking, Inc.

Ali C. Fernandez

Ali C. Fernandez
for:
ALI C. FERNANDEZ & BROS.

[Faint, mostly illegible text]

Terry James Johnson

Terry James Johnson
for himself

Dated: 10-15-94