

FEB 5 1992

Decision 92-02-018 February 5, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Brian Bertolini,

Complainant,

vs.

Lindeman Bros., Inc.,

Defendant.

ORIGINAL

Case 91-03-021  
(Filed September 12, 1991)

O P I N I O N

Complainant Brian Bertolini is a dump truck carrier (T-155,422) who competes with defendant.

Defendant Lindeman Brothers, Inc. (T-51,996) applied for a Simplified Rate Deviation (DT 91-012S) from the provisions of Minimum Rate Tariff (MRT) 7-A for transportation of construction materials for Teichert Construction. This deviation became effective on March 1, 1991, under the provisions of Decision (D.) 89-04-086, as modified by D.89-09-104.

The original complaint alleges that the one-way mileage for the move is more than the amount stated in the defendant's Deviation Application, i.e. "less than 25.0 miles one way". The complaint asserts that unlawful rates may have been charged and requests that an investigation be instituted.

Defendant answered denying that the distance was incorrect or that improper rates were charged.

By ruling, the complaint was referred to the Transportation Division for informal resolution. The informal process was unsuccessful. A second ruling noted that the complaint did not seek relief and consequently failed to state a cause of action. Complainant was given an opportunity to amend his

complaint. The Ruling required that any amendment calculate what complainant believes the correct amount of the deviated rates and charges should have been.

The amendment, dated September 12, 1991, now alleges that the point of destination is too large encompassing more than an area "within 300 feet of the point at which physical delivery of said shipment is initiated." (Section 1, Item 10, MRT 7-A). Complainant apparently now contends that because of asserted defect, the complaint "should be denied...."

The request for an investigation is withdrawn because one of the defendant's principals has denied under penalty of perjury that any undercharges have occurred.

We reject, on the merits, the argument that a simplified deviation request should state a point of destination within the narrow limits appropriate for rating a single shipment. Deviations are expected to cover a number of shipments, perhaps all of the shipments necessary for a single construction job. Requiring the carrier to state in advance the precise point of delivery within 300 feet for each movement is unrealistic. In practice, such a requirement would make it virtually impossible for any carrier (Complainant included) to justify any simplified deviation for projects which cover an extended area.

Because this complaint is defective as a matter of law, no findings are necessary.

#### Conclusions of Law

1. A simplified deviation application need not specify a single destination as that term is defined in Section 1, Item 10 of the tariff.

2. Since the complainant, as amended, is based on a legal error, it should be dismissed.

O R D E R

IT IS ORDERED that the complaint in Case 91-03-021 is dismissed.

This order becomes effective 30 days from today.

Dated February 5, 1992, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
NORMAN D. SHUMWAY  
Commissioners

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

  
NEAL J. SHULMAN, Executive Director

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