

FEB 5 1992

Decision 92-02-019 February 5, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Brian Bertolini,

Complainant,

vs.

Lawson Rock & Oil,

Defendant.

**ORIGINAL**

Case 91-03-020  
(Filed March 8, 1991)

O P I N I O N

While it does not appear in his pleadings, complainant Brian Bertolini is a dump truck carrier (T-155,422), who competes with defendant Lawson Rock & Oil (T-139,977).

Defendant applied for a Simplified Rate Deviation (DT-90-133-S) to charge less than Minimum Rate Tariff (MRT) 7-A rates for transportation of construction materials for Industrial Asphalt from Marysville to Roseville, under the provisions of Decision 89-04-086, as modified by Decision 89-09-104. There were no protests, and staff did not reject the application. Therefore, this deviation became effective on January 26, 1991.

The original complaint alleged that defendant filed for the deviation prior to the time that Supplements 33, 35, 36, and 37 came into effect. Complainant apparently contends that these increases in the MRT rates should be added to the deviated rate authorized. He also contends that the one-way mileage was understated. The complaint requests that an investigation be instituted concerning possible use of unlawful rates.

The answer contends that the supplement increases are immaterial and that the legal rate for this haul is the one originally authorized. It alleges that the mileage stated in the deviation application (51.5 miles) is correct. Defendant contends

however, that the actual mileage is irrelevant since the deviation was from hourly rates.

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 include a calculation of the deviated rate and charges which complainant contends should have been applied.

The amendment, dated September 12, 1991, alleges that complainant had originally bid for this traffic (apparently at the full tariff rate) but that Industrial Asphalt awarded the traffic to defendant, because of a lower quote.

The amendment also alleges that defendant should have sought a deviation from a minimum rate of \$56.60/hr., rather than \$55.10 as stated in the deviation application. (The amendment concedes that mileage is irrelevant to an application for deviation from hourly rates.)

Finally, the amendment alleges that the shipper leases land from defendant.

Complainant still persists in seeking an Order Instituting Investigation, rather than undertaking the burden of proving the facts it has alleged. However, the amendment is arguably in compliance with the ruling since it now seeks suspension of the deviation.

We take official notice that the effective hourly minimum rate when the application for deviation was filed was \$55.10. Defendant is therefore authorized to charge 90% of that amount. The complaint, as amended, does not allege that defendant charges less.

Finding of Fact

The effective hourly minimum rate when the application for deviation was filed was \$55.10.

Conclusions of Law

1. Carriers who hold simplified deviation authority are not required to increase the deviated rate when minimum rates increase.
2. The deviation application was based on the minimum rate in effect when filed. Subsequent increases in minimum rates do not require an increase in the deviated rate.
3. The alleged lease is irrelevant in determining whether, or at what level, a simplified deviation should have been granted.
4. The complaint is without merit and should be dismissed.

O R D E R

IT IS ORDERED that the complaint is dismissed.

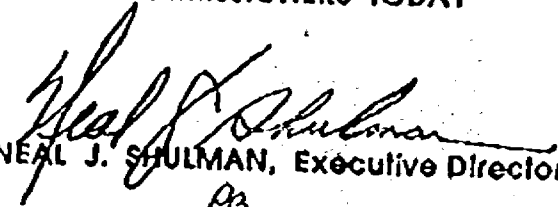
This order becomes effective 30 days from today.

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

  
- 3 - NEAL J. SHULMAN, Executive Director  
PB