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Decision 92-05-068 May 20, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
 own motion into the operations,
 rates, and practices of Jerry E.
 Hansen, an individual doing business
 as Jerry Hansen Trucking, Transpan
 Corp., a California corporation and
 PABCO Roofing Products, a division
 of Pacific Coast Building Products,
 Inc., a California corporation as
 Shipper Respondent.

ORIGINAL

I.91-02-005
(Filed February 6, 1991)

Jerry E. Hansen, for himself; Jerry E. Hansen
 and Lee J. Taylor, for Transpan Corporation;
 respondents.
Lawrence Q. Garcia, Attorney at Law, for
 Compliance and Enforcement Branch of the
 Transportation Division.

O P I N I O N

Jerry E. Hansen, an individual doing business as Jerry Hansen Trucking (Hansen) is engaged in the business of transporting property over the public highways of this state for compensation. Hansen operates pursuant to a highway common carrier certificate and a highway contract carrier permit which were both issued on January 31, 1980, a dump truck carrier permit issued May 2, 1973, and an agricultural carrier permit issued April 21, 1978 (T-103,615).

Transpan Corporation (Transpan), a California corporation, is engaged in the business of transporting property over the public highways of this state for compensation. Transpan operates pursuant to a highway common carrier certificate issued October 22, 1987, a dump truck carrier permit issued December 4, 1987, a highway contract carrier permit issued April 7, 1988, a heavy specialized carrier permit issued May 16, 1988, and an agricultural carrier permit issued May 16, 1988 (T-157,354).

Pacific Coast Building Products, Inc. (Pacific) has received transportation services from the named carriers.

A Transportation Division investigation shows that in performing transportation services for Pacific the carriers may have violated certain provisions of the Public Utilities Code pertaining to minimum rates and issuance of freight bills. The order instituting investigation alleges that specified violations may have occurred.

A duly noticed public hearing was held in San Francisco before Administrative Law Judge Orville I. Wright on January 17, 1992 and the matter was submitted on February 4, 1992.

Stipulation for Settlement

Pacific and Transportation Division (staff) entered into a Stipulation for Settlement on November 26, 1991, attached as Appendix A, which provides that Pacific will pay \$2,250 directly to the Commission in settlement of all issues respecting the shipper, subject to Commission approval.

As a consequence of the stipulation, Pacific did not appear at the public hearing in this case.

Transpan Corp.

At the hearing, staff counsel informed the Commission that Transpan had filed a petition in bankruptcy, a fact which precluded Transportation Division from urging that the Commission fine this respondent.

Jerry Hansen

The Order Instituting Investigation (OII) seeks to determine "whether respondent Hansen has violated Section 3737 of the Public Utilities (PU) Code by failing to issue a freight bill for each shipment containing all of the information required by Item 170 of Minimum Rate Tariff 7-A."

Section 3737 provides that the carrier shall maintain and observe any tariff, decision or order applicable to it.

Staff's evidence shows that Hansen failed to assess applicable dump truck tariff rates on 70 shipments between December 9, 1987 and June 9, 1988. The evidence further shows that Hansen failed to retain all shipping documents for transportation subject to Minimum Rate Tariff 7-A with respect to the aforesaid 70 shipments.

Hansen's testimony admits that he failed to maintain records as required by Item 170 of Minimum Rate Tariff 7-A, as the staff showing demonstrated.

In regard to rates, Hansen contends that he did not intentionally err, but attempted to comply with applicable tariffs in all of the 70 instances cited by staff as code violations.

While Hansen testified at some length as to difficulties he experienced in his good faith efforts to determine the appropriate rate to be assessed on the shipments which comprise the subject of this investigation, we do not discuss this testimony as the single paramount issue in this case is whether Hansen violated the code and Item 170 of Minimum Rate Tariff 7-A by failing to maintain required records. Hansen admits the charged violations.

Punitive Fine

Staff counsel introduced his presentation at the hearing by stating that the sole issue remaining in this OII was the type of penalty or fine, if any, to be levied upon Hansen. The OII seeks to determine whether any or all of respondent carriers' operating authority should be cancelled, revoked, or suspended, or, in the alternative, a fine of up to \$20,000 for each offense be imposed pursuant to Sections 3774 and 3805 of the PU Code. It also seeks to determine whether respondent Hansen should be ordered to cease and desist from any an all unlawful operations and practices.

As Hansen admits the changed record violations, we now consider the penalty to be imposed.

Staff recommends a punitive fine in this case of \$4,000 as alternative to a recommendation of certificate or permit

revocation. Staff states that it feels very strongly that documentation failures by the carriers is a serious violation. It notes that the Commission has stated many times that documentation is the cornerstone of effective regulation.

Staff testified that there were two undercharges citations issued in this matter under the Commission's informal procedure which were taken into account by staff. Further, staff alluded to its efforts to "solve this matter in the settlement mode or during a prehearing conference or even prior to a prehearing conference to avoid the time and expense of a hearing."

Here staff finds a carrier maintaining inadequate shipping records in violation of the code. Staff recommends, and the Commission issues, an OII to investigate the alleged inadequacy. At hearing, the carrier admits the inadequacy, but objects to Commission staff treatment of him on other tangential matters not directly relevant to the charge before us.

We find staff's recommendation reasonable in the circumstances of this case and will adopt it.

Comments

Pursuant to the Commission's Rules of Practice and Procedure, the proposed decision of the assigned Administrative Law Judge (ALJ) for this proceeding was filed with the Commission and distributed to the parties on March 30, 1992. Comments were filed by staff on April 20, 1992 suggesting a more complete designation of the parties; the suggested designation is incorporated into this decision.

On May 7, 1992, respondent Hansen filed a Motion for Leave to File Late Comments; the comments were mailed to the ALJ on April 22, 1992 and filed as correspondence in this case.

We grant the motion, and we have reviewed respondent's correspondence and comments with respect to the proposed decision. Our review does not persuade us that any change in the proposed decision is appropriate.

Findings of Fact

1. The stipulation for settlement between Pacific and staff is reasonable, consistent with law, and in the public interest.
2. The stipulation is recommended by the Transportation Division and is uncontested.
3. Transpan Corp. is in bankruptcy.
4. Transportation Division recommends no further action against Transpan.
5. Jerry Hansen has violated Section 3737 of the PU Code by failing to issue a freight bill for each shipment containing all of the information required by Item 170 of Minimum Rate Tariff 7-A.
6. Hansen admits the violations of Section 3737.
7. Staff recommends a punitive fine of \$4,000 as alternative to a recommendation of certificate or permit revocation.
8. Staff's recommendation of a \$4,000 fine in this case is reasonable.

Conclusions of Law

1. The stipulation for settlement should be adopted.
2. Jerry Hansen should be fined in the sum of \$4,000 pursuant to Section 3774 of the PU Code.

ORDER

IT IS ORDERED that:

1. Pacific Coast Building Products, Inc. shall pay a fine of \$2,250, pursuant to Public Utilities (PU) Code § 3774, directly to the Commission, provided that the amount may be paid in six consecutive monthly installments in the amount of \$375, the first installment due 30 days after the effective date of this decision.
2. Jerry Hansen shall pay a fine of \$4,000 pursuant to PU Code § 3774, said fine being due and payable 30 days after the effective date of this decision.

3. Respondents shall not be subject to further actions or investigations for undercharges, sanctions, or fines arising from transportation performed by respondents for Pacific Coast Building Products, Inc. to and including the execution date of the Stipulation for Settlement, and Pacific shall be relieved of liability for the payment of any amounts other than those specifically agreed to be paid in the stipulation.

4. Respondents shall cease and desist from future violations of the PU Code and Commission rules and regulations.

5. The Executive Director of the Commission shall cause personal service of this order to be made upon Jerry Hansen and shall cause service by mail to be made upon Pacific Coast Building Products, Inc. and Transpan Corp.

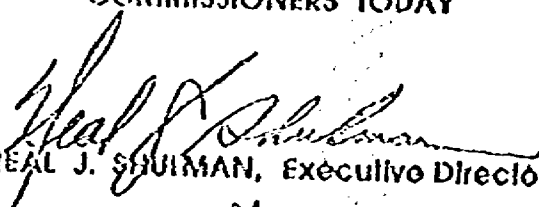
6. This investigation is terminated and the proceeding is closed.

This order becomes effective 30 days from today.
Dated May 20, 1992, at San Francisco, California.

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

Commissioner Patricia M. Eckert,
being necessarily absent, did
not participate.

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


NEAL J. SHUMAN, 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 Jerry E. Hansen, an)
 individual doing business as Jerry)
 Hansen Trucking, Transpan Corp., a)
 California corporation and PABCO)
 Roofing Products, a division of Pacific)
 Coast Building Products, Inc., a)
 California corporation as Shipper)
 Respondent,)

I. 91-02-005

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 it on the basis that the Commission's adoption of said STIPULATION not be construed as an admission or concession by any party regarding the 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.

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NOW, THEREFORE, THE PARTIES DO STIPULATE AS FOLLOWS:

1. Respondent Pacific Coast Building Products, Inc. (PACIFIC) agrees to pay \$ 2,250.00 directly to the Commission to settle issues relating to Section 3800 of the Public Utilities Code in lieu of payment through respondent Hansen. This amount may be paid in six consecutive monthly installments in the amount of \$ 375.00, 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 as it relates to Respondent Pacific.

2. 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 the Respondent Shipper in I. 91-02-005, Pacific Coast Building Materials, Inc., shall henceforth not be subject to any future sanctions or fines arising from transportation performed by Jerry Hansen or Transpan for the shipper respondent to and including the date of this Stipulation, and be relieved of liability for the payment of any amount other than than that specifically agreed to be paid in this stipulation.

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

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

Dated: *Nov 26, 1991*

Michael Stecher

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Materials, Inc.
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