

Decision 32 02 102 February 17, 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations, rates)
and practices of Rolling "K" Kartage)
Corporation, a California corporation;)
Battenfield Bros. Trucking; Carl S.)
Montan; and Kabo-Karr Corporation of)
California, a California corporation.)

OII 68
(Filed August 4, 1981)

Carl K. Oshiro, Attorney at Law,
for the Commission staff.

OPINION ON REOPENING FOR FURTHER HEARING

Decision (D.) 92596 dated January 6, 1981 directed Rolling "K" Kartage Corporation (Rolling "K") to pay subhauler Carl S. Montan \$12,013.92 and subhauler Battenfield Bros. Trucking (Battenfield) \$10,005.56, in addition to paying a \$2,500 punitive fine to the Commission.

An order reopening OII 68 was issued by the Commission on August 4, 1981 to determine whether the president of Rolling "K" told the subhaulers on January 29, 1981, that he would pay them as directed in the decision, if they agreed to secretly return 25% of the amount received. A public hearing was held on the order reopening the proceeding on September 29, 1981 in San Francisco, before Administrative Law Judge Edward G. Fraser. The Commission staff was the only party represented at the hearing. Counsel placed a Stipulation of Parties in evidence as late-filed Exhibit 1. It was received on October 9, 1981. The stipulation was executed by staff counsel and counsel for Rolling "K". The substance of the stipulation, other than the recommended punitive fine, is contained in the findings of fact with this decision.

Discussion

We are particularly concerned about the rebate arrangement under which Rolling "K" paid subhaulers Battenfield and Montan. It was a direct violation of our order in D.92596. We are not bound by the stipulation with respect to the penalty to be imposed; that portion of the stipulation is merely the punitive fine the parties recommend. We view Rolling "K"'s conduct to have been a flagrant violation of our order; it illustrates utter contempt for our regulation. Accordingly, we will assess a \$5,000 punitive fine, allowing 30 days for payment. We are at the same time putting Rolling "K" on notice that any further flagrant violations of our rules, regulations, or orders will result in suspension or revocation. We expect our enforcement staff to closely monitor Rolling "K". Such close monitoring is warranted given the past conduct of Rolling "K".

Although respondent subhaulers Battenfield and Montan acquiesced in the plan of returning 25% of the amounts due them under D.92596 to Rolling "K", their subsequent conduct and cooperation with the Commission staff indicates they were pawns and not perpetrators in the scheme and no punitive sanctions are necessary or appropriate.

Findings of Fact

1. D.92596, issued on January 6, 1981, ordered Rolling "K" to pay subhauler Battenfield \$10,005.56, and subhauler Montan \$12,013.92.
2. These amounts represented net underpayments due and owing the subhaulers.
3. On or about January 29, 1981, Rolling "K" paid the above amounts to Battenfield and Montan on the condition that the subhaulers return 25% of the underpayments to Rolling "K".
4. Agreeing to this condition and in compliance therewith, on or about February 2, 1981 Battenfield made payment to Rolling "K" in the amount of \$2,505.56 and, on or about February 3, 1981, Montan made payment to Rolling "K" in the amount of \$3,008.49.

5. If called to testify, Battenfield and Montan would testify to the truth of paragraphs 3 and 4.

6. Copies of the documents attached as Exhibit 1 to the Stipulation are true and correct and are further evidence of the transaction described in paragraphs 3 and 4.

7. On August 4, 1981, the Commission reopened its investigation into the operations, rates, and practices of Rolling "K" to determine whether it had complied fully with the terms of D.92596, and whether further sanctions should be imposed against respondent.

8. In view of the facts of this case, Rolling "K" should be ordered to pay \$2,505.56 to subhauler Battenfield, and \$3,008.49 to subhauler Montan within 10 days of the effective date of a decision in this proceeding.

9. In view of its willful and total failure to comply fully with Ordering Paragraph 2 of D.92596 and considering all of the facts of this case, Rolling "K" should be ordered to pay a punitive fine of \$5,000 under Public Utilities (PU) Code § 3774. Such fine should be paid within 30 days of the effective date of a decision in this proceeding. ✓

Conclusion of Law

D.92596 should be modified in accordance with the stipulation executed by the parties, except that a \$5,000 punitive fine should be imposed. |

ORDER ON FURTHER HEARING

IT IS ORDERED that:

1. Rolling "K" Kartage Corporation (Rolling "K") shall pay a fine of \$5,000 to this Commission under PU Code § 3774, on or before the 30th day after the effective date of this order. |

2. Rolling "K" shall pay its ostensible subhaulers the amounts set forth in Finding 8 within 20 days of the effective date of this order and shall notify the Commission in writing of the payments within 10 days after they are made.

3. In all other respects, D.92596 shall remain in full force and effect.

The Executive Director shall cause personal service of this order to be made on respondents Rolling "K", Battenfield Bros. Trucking, and Carl S. Montan. The effective date as to each respondent shall be the day the order is served on that respondent.

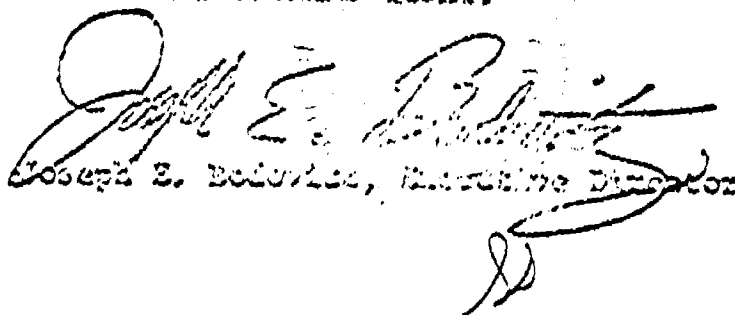
Dated FEB 17 1982, at San Francisco, California.

RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CAJNO
PRISCILLA C. CREW
Commissioners

Commissioner JOHN E. BRYSON

Present but not participating.

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


Joseph E. Bodovick, Executive Director