

ORIGINAL

Decision 82 03 036 MAR 2 - 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
own motion into the operations, )  
rates and practices of Charles )  
Bertolino Trucking & Produce, )  
Inc., a California corporation, )  
and Lucky Stores, Inc., a Cali- )  
fornia corporation. )

OII 101  
(Filed December 15, 1981)

O P I N I O N

This is an investigation into the trucking operations, rates, charges, and practices of Charles Bertolino Trucking & Produce, Inc. (Bertolino) to determine whether it violated Public Utilities (PU) Code Section 494 by failing to charge and collect the applicable rates and charges set forth in Item 150 of adopted Minimum Rate Tariff (MRT) 8-A for certain specified deliveries by it, represented by 71 separate freight bills, to Lucky Stores, Inc. (Lucky) between May 19, 1980 and August 22, 1980, inclusive, and to determine whether Lucky received those deliveries for less than the charges prescribed in MRT 8-A.

Prior to the date set for hearing in this matter, the parties submitted a "Stipulation of Facts, Issues and Recommended Fines" (Stipulation), agreed to and signed by staff and both respondents. Upon review, we find the terms of the Stipulation reasonable. It has been designated "Exhibit 1". Further

documentary evidence in support of the Stipulation was submitted designated as Exhibit 2, Exhibit 3, and Exhibit 4. The Stipulation addresses all substantive issues we raised in Order Instituting Investigation (OII) 101.

PUC Code Section 1070 permits us to revoke, alter, or amend the certificate to operate or other operative right of the holder for good cause. In the alternative we may impose a penalty of up to \$5,000. Commission records indicate Bertolino had a prior PUC regulatory violation for improper application of tariffs amounting to \$69. This condition was resolved upon being brought to Bertolino's attention by a letter from us in August 1979. The present violation is of a more serious nature. It involves another small amount of improper tariff application which could be attributed to inattention and about \$6,000 in undercharges attributable to failure to charge Lucky for the persons Bertolino hired to unload goods at one particular Lucky location on several occasions. This blatantly disregards the tariff requirement.

Lucky, which has previously been involved in similar cases before this Commission, is well aware of its duty to pay a charge for unloading by helpers, lumpers, or swampers. Lucky certainly knew there were no unloading charges for these deliveries. We presume it supervises its unloading docks and is aware of what transpires on them. Clearly, if a large customer ignores or encourages such tariff violations on the part of a trucking firm which may be very dependent on the income derived from that one customer, the burden of responsibility rests on the shoulders of the customer as well as the trucking firm. We believe that to be the case here, and we deeply deplore Lucky's inaction in this matter.

As a consequence of this, and because Bertolino has not previously engaged in such undercharging, we believe the punitive fine of \$1,250 proposed in the Stipulation is reasonable. We wish it to be clear, however, that our comments here in no way indicate our condonation of the actions of Bertolino. Bertolino, after all, has the primary responsibility for conducting its business in accord with the tariffs. Failure to do so, no matter what the reason, will not be ignored or treated lightly by this Commission.

Findings of Fact

Official notice is taken of Bertolino's violation history. Further, the following matters were stipulated to by staff and the parties, and we find them to be facts.

1. The Commission's staff conducted an investigation into the operations, rates, and practices of respondents Bertolino and Lucky.

2. The investigation showed that in performing transportation services for Lucky, Bertolino charged, demanded, collected, and received compensation less than the applicable rates set forth in Item 150 of adopted MRT 8-A by the amounts set forth in the document entitled "Summary of Certain Shipping Data Contained in the Records of Charles Bertolino Trucking and Produce, Inc. for Transportation Performed for Lucky Stores, Inc." which is designated as Exhibit 2. Specifically, no charges were made for the services of helpers, lumpers, or swampers employed by Bertolino to perform or assist in unloading at the Lucky facility at 6565 Knott Avenue, Buena Park. In addition, there were some small undercharges resulting from mis-application of MRT 8-A.

3. The document designated Exhibit 3 entitled "Carrier Data" is true and correct. It sets forth Bertolino's operating authority, tariff service, number of employees, number and type of equipment, and gross operating revenue for all of 1980 and the first two quarters of 1981.

4. The documents comprising Exhibit 4 are true and correct copies of Bertolino's freight bills and related data for each of the 71 instances set forth in OII 101.

5. Bertolino undercharged Lucky in the total amount of \$6,981.22 during the instances in issue.

6. While Lucky has agreed to pay the undercharges in the amount of \$6,981.22 directly to the Commission in satisfaction of a fine in that amount should it be imposed upon Bertolino by the Commission, payment should be made to carrier.

7. The materials contained in the documents designated Exhibits 1, 2, 3, and 4 provide a record upon which a decision and order in OII 101 may be rendered.

Conclusions of Law

1. The proffered documents designated Exhibits 1, 2, 3, and 4 should be made a part of the record and the matter considered submitted on January 2, 1982, the date the Stipulation was signed.

2. Bertolino has violated PU Code Section 494 by failing to charge and collect from Lucky the applicable rates and charges set forth in Item 150 of adopted MRT 8-A.

3. Lucky has paid Bertolino \$6,981.22 less than the applicable rates and charges.

4. A fine in the amount of the undercharges (\$6,981.22) should be imposed upon Bertolino under PU Code Section 2100.

5. Bertolino should be ordered to collect from Lucky \$6,981.22, which is the difference between the charges actually collected and the applicable rates and charges.

6. The punitive fine of \$1,250, to be paid in two installments, proposed in the Stipulation, is reasonable and should be imposed upon Bertolino under PU Code Section 1070.

7. Bertolino should promptly take all reasonable action to collect the undercharges. If necessary, it should file timely complaints in court as provided by PU Code Section 737.

8. Bertolino should be ordered to cease and desist from any unlawful operations or practices.

O R D E R

IT IS ORDERED that:

1. The documents identified as Exhibits 1, 2, 3, and 4 and submitted by staff and Charles Bertolino Trucking & Produce, Inc. (Bertolino) and Lucky Stores, Inc. (Lucky) are made a part of the record of this proceeding. The date of the "Stipulation of Facts, Issues and Recommended Fines", January 9, 1982, is the date of submission of the matter.

2. Bertolino shall collect the undercharges of \$6,981.22 from Lucky and pay the Commission a fine in the same amount under PU Code Section 2100. The fine shall be paid within 30 days after the effective date of this order. Direct payment of the amount by Lucky within this time period shall satisfy this requirement. However, failure of Lucky to pay shall not relieve Bertolino of its duty to do so.

3. Bertolino shall pay the maximum annual interest allowed by the law on the fine beginning when the payment is delinquent.

4. Bertolino shall pay the Commission a punitive fine of \$1,250 under PU Code Section 1070. The fine shall be paid in two equal installments. The first payment shall be due at the Commission within 30 days after the effective date of this order. The second payment shall be due at the Commission 30 days after the due date of the first payment.

5. Bertolino shall promptly take all reasonable steps necessary to collect the undercharges, including timely legal action under PU Code Section 737.

6. Bertolino shall cease and desist from any and all operations or practices which violate any provision of the PU Code.

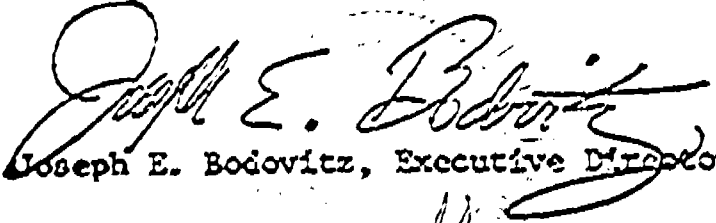
The Executive Director shall have this order personally served upon respondent Charles Bertolino Trucking & Produce, Inc. and served by mail upon respondent Lucky Stores, Inc.

This order becomes effective for each respondent 30 days after the order is served.

Dated MAR 2 1982, at San Francisco, California.

JOHN E. BRISON  
President  
RICHARD D. CRAVELLE  
LEONARD M. CRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. CREW  
Commissioners

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

  
Joseph E. Bodovitz, Executive Director