

Decision S2 02 093 June 15, 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 the)
SUSANA TRANSPORT SYSTEMS, INC.,)
and the DAL-TILE CORPORATION, a)
Texas corporation.)

OII 97
(Filed October 20, 1981)

Miles L. Kavaller, Attorney at Law, for
Susana Transport Systems, Inc.,
respondent.
James E. Scarff, Attorney at Law, and
Paul Wuerstle, for the Commission
staff.

O P I N I O N

This is an investigation into the trucking operations of Susana Transport Systems, Inc. (Susana) to determine whether it violated Public Utilities (PU) Code §§ 3664 and 3737 while transporting clay tile and related products for Dal-Tile Corporation (Dal-Tile), formerly called the Dallas Ceramic Company, during the months of May, June, and July, 1979. It is alleged that Susana failed to charge the applicable rates set forth in Minimum Rate Tariff (MRT) 2.

A hearing was held before Administrative Law Judge Fraser in Los Angeles on February 8, 1982. Susana was authorized to file two missing freight bills as a late-filed exhibit, but they were not found.

During the period under investigation Susana operated out of a terminal in Whittier under a radial highway common carrier permit which was later converted to a highway common carrier certificate and a highway contract carrier permit. Commission

records show that all applicable tariffs and supplements were served on the carrier and this was confirmed by a representative of the carrier on September 26, 1979. Susana operates one tractor. There were no employees on January 16, 1980. The business is conducted by Dean and Anna Allison, a married couple, with the latter as office manager and dispatcher. Total gross revenue earned in California during 1980 was \$310,786.09, and \$382,805.75 from all operations.

Staff's Evidence

An investigator for the Transportation Division (staff) testified that he visited Susana's terminal and office several times during August and September 1979. He reviewed 144 freight bills, which was all the transportation performed in California during May, June, and July, 1979. Approximately 70% of this transportation was clay tile and related materials for Dallas Ceramic Company, from its Torrance address to numerous points in California. Some of these shipments involved split deliveries or split pickups.

Mrs. Allison stated on September 26, 1979 that she prepared the master bills of lading for the split shipments after they were delivered and signed receipts were returned by the subhaulers. She admitted that Miller Traffic Service (Miller) had advised that a master bill of lading was required before split deliveries could be transported. This information was supplemented on October 22, 1979, when a Dallas Ceramic Company employee stated that his company prepares individual bills for each shipment, but not master bills of lading. ✓

Records on 41 shipments were reviewed and photostated. Freight bills were missing on two of the shipments (Parts 40 and 41, Exhibit 3) and Mrs. Allison confirmed that nothing was charged or collected on these bills (Bills of Lading 5166 and 184787). She advised that freight bills show the billing date and bills of lading the date of pickup. Delivery dates are also noted on the bills of lading. The shipments were power-loaded by the consignor and power-unloaded by the consignee. She further advised that clay tile was

the only item transported although some freight bills list "custom products", "Upco products", or "mastic". The staff witness stated that the records on the 41 shipments were withdrawn for further examination because it appeared that master bills had not been prepared on or before the date of shipment.

The staff rate expert reviewed the documents provided by the staff investigator and prepared her rate statement, which was placed in evidence as Exhibit 6. She identified Susana's violation as a failure to receive the required written information from the consignor prior to the performance of the transportation. The master bills were issued by Susana after the goods were delivered. Each individual split-pickup and split-delivery then had to be rated as a separate shipment which resulted in substantial undercharges. There were no other rate violations except the apparent failure to charge for the transportation performed under counts 40 and 41 of Exhibit 6. Susana has violated Item 162 (on split-pickup) and Item 172 (on split-delivery) of MRT 2. Undercharges totaled \$13,069.17.

Susana's Evidence

Susana has prospered and now employs 15 persons who operate 12 tractors and 15 trailers. Seventy percent of its California business is hauling for Dal-Tile, which started in 1978. Susana's president testified that he was advised by a Dal-Tile representative that the carrier was responsible for preparation of the master bills of lading and it was his understanding that the bills were typed when the shipment was loaded. All rates were obtained and authenticated by Miller after the loads were delivered. Miller was hired to ensure that the operation was lawful and the proper rates were charged and collected. He stated that he has been a trucker since about 1959, but has little formal education and no expertise on the rating of transportation. Deficiencies in rating have been corrected and Dal-Tile is now providing the master bills on its own forms. ✓

Susana's secretary testified that the master bills were prepared when the load was picked up and dated after delivery when the rate to be charged was authenticated by Miller. The carrier had all information needed to properly disperse the loads and the date was considered unimportant, as long as it was filled in after delivery. The staff agreed that the rates would have been proper if the documentation requirements of Items 162 and 172 of MRT 2 had been complied with.

Discussion

The Commission requires that all tariff rules be observed. If exceptions are allowed the rules would be nullified by permissive interpretation. Offenders could avoid censure or penalty by stating that a date was inadvertently omitted or that documents were mislaid. The necessary written instructions were not issued by the consignor prior to or at the time of the initial pickup, as required by Items 162 and 172 of MRT 2. Accordingly, each component part must be rated as a separate shipment pursuant to the provisions of said items. We therefore agree with all of the staff ratings shown in the rate exhibit.

Susana's witnesses testified that the consignor has paid for the transportation represented by Parts 40 and 41 of staff Exhibit 6. Documentary proof was not provided, even with a late-filed exhibit. We therefore find that bills were not presented by the carrier on these two counts and payment has not been received.

Staff counsel has recommended a fine of \$1,500 under PU Code § 3774. This is reasonable in view of the violations. ✓

Findings of Fact

1. During the period under investigation, Susana engaged in the business of transporting property for compensation upon the public highways as a radial highway common carrier.

2. Susana was served with all applicable minimum rate tariffs and the distance tables, together with all their supplements and additions.

3. During the months of May, June, and July, 1979 while engaged in the business of transporting property for compensation for Dal-Tile, Susana charged less than the lawfully prescribed minimum rates on the 41 counts described in Exhibits 3 and 6, resulting in undercharges totaling \$13,069.17.

4. Susana cooperated with the staff during the investigation and hearing.

Conclusions of Law

1. Susana violated PU Code §§ 3664 and 3737.
2. Susana should pay a fine under PU Code § 3800 of \$13,069.17 and, in addition, should pay a fine under § 3774 of \$1,500 on or before the 40th day after the effective date of this order.
3. Susana should be ordered to collect from Dal-Tile the difference between the charges collected and the proper charges in the aggregate sum of \$13,069.17 under PU Code § 3800.
4. Susana should be directed to cease and desist from violating the rates and rules of the Commission.
5. No other penalties or sanctions are warranted.

Susana should promptly take all reasonable actions to collect the undercharges. If necessary, it should file timely complaints according to PU Code § 3671. The staff will investigate Susana's compliance. If it believes that Susana or its attorney has not acted in good faith, the Commission will reopen this proceeding to determine whether to impose further sanctions.

O R D E R

IT IS ORDERED that Susana Transport Systems, Inc. shall:

1. Pay a fine of \$1,500 to this Commission under PU Code § 3774 on or before the 40th day after the effective date of this order.
2. Pay 7% annual interest on the fine, beginning when the payment is delinquent.
3. Pay a fine to this Commission under PU Code § 3800 of \$13,069.17 on or before the 40th day after the effective date of this order.

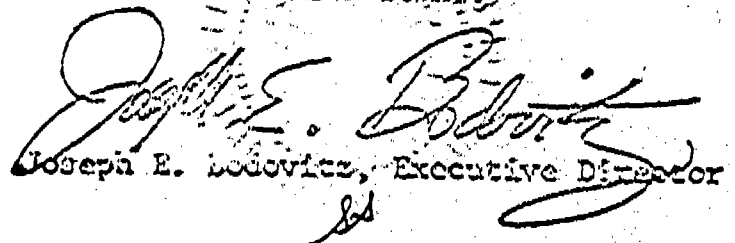
The Executive Director shall have this order personally served upon respondent Susana Transport Systems, Inc. and served by mail upon Dal-Tile Corporation.

The order shall become effective for each respondent 30 days after order is served.

Dated June 15, 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
Commissioners

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


Joseph E. Lodovick, Executive Director

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Susana engaged in the business of transporting property for compensation upon the public highways as a regular, ongoing common carrier.

Susana was served with all applicable minimum rate tariffs and was advised to file, together with all their supplements and amendments.

The Executive Director shall have this order personally served upon respondent Susana Transport Systems, Inc. and served by mail upon ~~all other respondents~~ *Dal-Tile Corporation*

The order shall become effective for each respondent 30 days after order is served.

Dated JUN 15 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners