

ORIGINAL

Decision SZ OS 042 'AUG 4 - 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BLACKBURN TRUCK LINES, INC.,)
)
 Complainant,)
)
 and)
)
 SCHALDACH CONTAINER CORP. and)
 CONTAINER EXPRESS,)
)
 Complainants-In-Intervention,)
)
 v.)
)
 MILLS TRANSPORTATION,)
)
 Defendant.)

Case 11021
(Filed August 31, 1981;
amended October 29, 1981)

Patricia M. Schnegg and Warren A. Grossman,
 Attorneys at Law, for Blackburn Truck
 Lines, Inc., Schaldach Container
 Corporation, and Container Express,
 complainants.
Jeri L. Mills, James K. Mills, and Jerry
Whiteman, for Mills Transportation,
 defendant.
Jess J. Butcher, for California
 Manufacturers Association, intervenor.
Harry E. Cush, for the Commission staff.

O P I N I O N

Complainants Blackburn Truck Lines, Inc., Schaldach
Container Corporation, and Container Express allege that the rates
charged by defendant Mills Transportation, a dba of James K. Mills of

Livermore, in the transportation of packaging containers under its common carrier Rate Reduction 490 (RR 490) are unreasonable and noncompensatory and request that the reduced rates be canceled. Defendant denies complainants' allegations. A hearing was held in San Francisco on January 19, 1982 before Administrative Law Judge Pilling.

Background

RR 490, effective September 4, 1981, authorizes defendant to charge a reduced truckload rate of \$475 on shipments of packaging containers between points in Metropolitan Los Angeles Area as described in Item 270.3 in Transition Tariff 2 (TT 2), on the one hand, and, on the other hand, points in Metropolitan San Francisco Bay Area as described in Item 270.3 in TT 2, points in Contra Costa County not included in Metropolitan Zones 108 and 109, and points in Solano County. The reduced rate is \$20 per shipment below the TT 2 rate applicable to San Francisco Bay Area points and \$34 below the TT 2 rates applicable to the other points.

On January 11, 1982 complainants took the deposition of Jeri Mills, defendant's manager. The transcript of the deposition was physically incorporated into the record of the case. As part of the deposition proceeding, a number of defendant's internal operating records were produced at the request of complainants. Copies of some of these records were subsequently entered into evidence as Exhibits 1, 2, and 3 and consisted of the following:

Exhibit 1. Payroll records of defendant's driver Richard Tatro (Tatro) for the period September 1, 1981 through January 8, 1982.

Exhibit 2. Tatro's Driver's Daily Log forms for the period September 17, 1981 through December 31, 1981.

Exhibit 3. Defendant's freight invoices and shipping documents covering all but a few of the moves made under or in connection with the reduced rate operation for the period September 4, 1981 through December 31, 1981.

Information extracted from Exhibits 1-3, testimony, and/or pleadings were used by complainants to prepare Exhibits 4, 5, and 6, which consisted of the following:

Exhibit 4. Summary of Revenues and Expenses and underlying calculations for a round trip under the reduced rates.

Exhibit 5. Development of equipment use factors for tractor unit #304.

Exhibit 6. Calculation of terminal deadhead miles and recap of round trip moves by origin and destination of tractor #304 between September 1, 1981 and December 31, 1981.

Principal Issues

Complainants' Summary of Revenue and Expenses (Summary) of defendant's reduced rate operation as set forth in Exhibit 4 is attached to this decision as Appendix A. Also included in Appendix A for comparison purposes is defendant's Restatement of Complainants' Exhibit 4 (Restatement) which defendant submitted with its brief. The differences between the cost figures in the Summary and the cost figures in the Restatement reflect only the parties' disagreement concerning the following items:

1. The average number of terminal deadhead miles involved in a round-trip operation.
2. The applicable prevailing labor cost.
3. The number of annual miles used to calculate the equipment use factor.

Terminal Deadhead Miles

Complainants and defendant agree the average laden round trip mileage in the reduced rate operation is 818 miles, but disagree on the amount of terminal deadhead miles involved. Complainants contend 65 terminal deadhead miles are involved in the round trip, whereas defendant, at least originally, claims only 19 miles are involved, with all of the 19 miles being run in northern California.¹

On deposition defendant's witness testified the operation, as originally conceived, contemplated that a truck would make a southbound delivery of the reduced-rated commodity at the Safeway warehouse in Norwalk in southern California and then go around the block and pick up a northbound shipment of the reduced-rated commodity at the warehouse of the Container Corporation of America. Thus, defendant anticipated that no terminal deadhead miles would be incurred in southern California. Defendant's witness also testified that defendant originally planned to use seven units of equipment to handle the reduced-rated traffic but that traffic initially had been so light that only one tractor--tractor #304--and one driver--Tatro--were used in the operation during the last four months of 1981.

Complainants' Exhibit 6, which contains information extracted from Tatro's Driver's Daily Log and payroll records and

¹ Defendant appears not to disagree with complainants' figure of 65 miles as defendant included that figure in some of the calculations shown on its Restatement set forth in Appendix A (818 miles plus 65 miles equals 883 round-trip miles). But it is unclear whether defendant accepts outright the figure of 65 miles or accepts it merely for the sake of argument since defendant reverted to its use of the figure 19 in computing its equipment use factor in the details underlying its Restatement. Because of this doubt we will have to resolve the issue.

defendant's shipping documents, shows by origin and destination the shipments moved by Tatro driving tractor #304 in connection with the reduced rate operation during the last four months of 1981.² The exhibit lists 21 round-trip hauls. Only four of the southbound hauls terminated at Norwalk and only one of those four had a northbound return haul originating at Norwalk. Most of the round trip movements on the exhibit show that the southbound hauls terminated at points different from the origin points of the complementary northbound return hauls and necessitated deadheading the equipment to pick up the return hauls. This southern California terminal deadhead mileage, as shown on the exhibit, averaged 21 miles per round trip.

Exhibit 6 also shows that all southbound laden trips originated at Hayward but that no northbound trips terminated at Hayward. The exhibit shows the terminal deadhead miles between each northbound destination point and Hayward through Newark, Newark being the domicile of defendant's equipment. The northern California terminal deadhead miles averaged 44 miles per round trip. Total terminal deadhead mileage: 65 miles (21 plus 44).

In addition, Exhibit 6 shows that defendant made one southbound deadhead move of approximately 413 miles to pick up a northbound shipment and four northbound deadhead moves of 413 miles each after dropping off a southbound shipment. However, complainants did not include the resultant deadhead expense in their Appendix A expense and revenue calculations.

Defendant points out that RR 490 became effective only on September 4, 1981, and that it is unfair to consider its operation during this initial four-month period as being typical. Defendant stated that this pending complaint put a damper on its solicitation of business under the reduced rates and that once the complaint is

² Though some of the northbound return hauls shown on Exhibit 6 were not between a point pair covered by the reduced rate, the invoices evidencing those hauls in Exhibit 3 show the shippers were charged a flat rate of \$475 for each haul.

finalized in favor of defendant it expects its business to increase. With an increase in business it expects its terminal deadhead mileage to decrease substantially. Defendant also argues that the packaging container business is seasonal but did not indicate when those seasons occur.

Discussion - Terminal Deadhead Miles

Complainants' contention that the average terminal deadhead miles are 65 is supported by evidence obtained from defendant's records and testimony.

Defendant's contention that only 19 deadhead miles are involved is based on its initial expectations which, as shown by the record, did not materialize. Defendant presented no evidence rebutting complainants' contention of 65 deadhead miles. Nor did it present any argument in its brief against complainants' contention. However, it did argue at the hearing that its operations during the last four months of 1981 should not be considered typical since the movement of the involved commodities is seasonal. However, it presented no study on the seasonality of the movements of the traffic to support its argument despite the fact that it would lead us to believe it was experienced in the handling of the traffic (see defendant's statement quoted in next section of this opinion). It also argued at the hearing that the four months' operation was not typical of future operations because it was just starting to operate under the reduced rates. Future operations must be left to conjecture. Future operations may be as anticipated or be worse than anticipated. At least the negative growth in the number of round-trip hauls from October 1981 through the end of the year gives no cause for optimism that the number of hauls in the future will come anywhere near its anticipated 124 hauls per year. We find that the average number of deadhead miles involved in the round trip operation is 65.

The Applicable Prevailing Wage Cost

Complainants contend the prevailing mileage wage cost should be used in costing driving line work (as that work is defined in Appendix A to Decision (D.) 93767). Defendant contends that the hourly wage cost should be used and that its position is supported by D.93767 effective November 23, 1981. That decision determined the prevailing wages for use in the justification and evaluation of carrier-filed rates. Page 6 of Appendix A to D.93767 sets forth a table for use in developing line work labor costs (a) by the hour and (b) by the mile. In support of its contention it quotes from page 4 of Appendix A to D.93767:

"If necessary, carriers may adopt their own format for labor cost development as long as the prevailing wage elements are utilized and all other labor costs are reflected."

Defendant submitted two exhibits in which it summarizes traffic costs causing a shadow to be thrown upon the use of the hourly computation for driving labor. For example, defendant uses 19.4 hours of driving labor for 883 miles in the Restatement of Complainant's Exhibit 4 and uses 19.4 hours of driving labor for 837 miles in defendant's Response to Petition for Suspension and Investigation. The Transportation Division staff's (staff) analysis made in a situation of this nature is to first ascertain that statutory (55 miles per hour) requirements are not exceeded. However, whenever a doubt still exists as to the reasonableness of the time expended, the staff imputes the driving labor cost using the mileage factor for the driving labor rate.

At the hearing and in its brief defendant questions the application in this proceeding of the prevailing wage guidelines set out in D.93767, since that decision did not become effective until November 23, 1981 when the operation was well under way and why the wage guidelines in effect before that date should not apply.

Discussion - Prevailing Wage Costs

The mileage between any two points is definite and certain, open to little argument, and can be easily and accurately ascertained without reference to carrier records, whereas driving time is subject to fluctuation, could contain many "fudge" factors, and can be ascertained only from a detailed and lengthy examination of a carrier's records to determine the driving time between a myriad of points.

Defendant's use of 19.4 hours to compute line driving costs for 837 and 883 miles, respectively, is not appropriate. Therefore, to resolve any possible discrepancy in this matter, for the purpose of computing line driving costs the mileage rate factor established in D.93767 will be used.

In a complaint proceeding a carrier's reduced rates should be evaluated using the carrier's most currently available costs at the time of the hearing. The use of outdated costs in evaluating a reduced rate does not give a true picture of an operation's current profitability or unprofitability. In this case defendant's currently available labor costs at the time of the hearing were the prevailing wage rates set out in D.93767. Furthermore, a complaint proceeding involving the issue of the reasonableness of a rate looks also to the foreseeable future, though operating experience to which current costs are applied may be based on a span of time in the immediate past, as in this case.

Equipment Use Factor

Complainants contend the annual equipment use factor is 63,000 miles whereas defendant contends that it is 103,788 miles.

In support of their contention, complainants introduced Exhibit 5, which they allege shows on a monthly basis the various trips made by tractor #304 and the mileages operated by that tractor in all operations during the last four months of 1981. The total miles shown on Exhibit 3 were annualized (multiplied by three) and rounded upward to the nearest 100 miles. This resulted in an annual equipment use factor for tractor #304 of 63,000 miles.

Complainants' witness testified that he was led to believe from the testimony of defendant's witness that tractor #304 was the only tractor engaged in the reduced rate operation and that Tatro was the only driver, with minor exceptions, who drove that tractor wherever it went. Since Tatro's payroll records for the period September 1, 1981 through January 8, 1982 (Exhibit 1) show his pay on a point-to-point basis, complainants' witness in preparing Exhibit 5 calculated the point-to-point mileages from Tatro's payroll records and summarized the trips and mileages on Exhibit 5.

While the record reveals that defendant's witness did testify that tractor #304 was the only tractor used in the reduced rate operation and that Tatro was the only driver who drove in the reduced rate operation (with minor exceptions), the record does not reveal any statement on the part of defendant's witness that tractor #304 when used in operations other than in connection with the reduced rate operations was always, or even usually, driven by Tatro. However, Exhibit 2 which contains copies of Tatro's daily driver's logs for each and every day beginning with September 17, 1981 through December 31, 1981, shows that tractor #304 was assigned to Tatro on each of those days except on five days on which another tractor was assigned to him.

Defendant's equipment use factor of 103,788 miles is based on its initial anticipation, still presently held, that a unit of equipment would make 124 round trips per year in the reduced rate operation (124 x 837 equals 103,788).

Defendant contends on brief that complainants' Exhibit 5 "estimates annualized mileage based on incomplete and imperfect knowledge which is neither representative of the total time frame selected nor a complete annual period."

Discussion - Equipment Use Factor

One of the variables used in determining the fixed cost per mile is the annual number of miles a unit (or units) operates in a year. The fixed cost per mile is determined by dividing the unit's annual miles operated into the sum of its annual depreciation, insurance, license, and tax costs. The fewer miles operated by the unit, the higher the fixed cost per mile, other things being equal, and the more miles operated by the unit the lower the fixed cost. Running costs are similarly affected.

It is evident from each of Tatro's daily driver's logs that complainants' assumption is correct, i.e., Tatro was the only driver, with minor exceptions, of tractor #304 during the last four months of 1981, and that Tatro's payroll records for that period reflect practically all the trips tractor #304 made during that period. We therefore accept complainants' figure of 63,000 miles as the equipment use factor to be used in calculating the vehicle fixed cost and the vehicle running cost.

Defendant criticizes Exhibit 5 on various bases, yet defendant did not attempt to introduce any operating evidence to rebut the import of Exhibit 5. Instead, defendant chose to stand on its anticipation of making 124 round trips per unit per year while not giving any basis for its anticipation. We feel that the operating statistics of tractor #304 presented by complainants were substantially complete and are entitled to far greater credence than defendant's mere unsubstantiated anticipation. However, we stress that this conclusion is mandated only by this evidentiary record. Other circumstances in other cases may lead us to accept a carrier's anticipation of a volume of business in calculating its equipment use factor. The chief factor will be the degree to which the carrier's anticipation is substantiated by evidence related to actual business conditions.

Discussion - Competing Carrier(s)

To equalize competitive opportunity, reduced rates may be filed to meet competing highway carrier rates that are approved under the Commission's rate reduction program. In the present instance, three carriers namely, S & S Transportation, Inc. (T-121,558), Nickels Contract Trucking, Inc. (T-133,660), and Bell Transport Company (T-88,461), have filed to meet the rates in RR 490. The Commission will take official notice of these filings and give these carriers the opportunity to justify their ability to continue transporting shipments at the RR 490 rate level. If any such carrier justifies its "me too" rates on the basis of its own cost factors, then defendant may refile his RR 490 rates on a "me too" basis.

Findings of Fact

1. Complainants allege that the rates charged by defendant under its common carrier RR 490 are unreasonable and noncompensatory and request that the reduced rates be canceled.
2. Defendant denies complainants' allegations and contends the operation is profitable.
3. In support of their allegations, complainants introduced into evidence their Summary, which is reproduced in Appendix A, and shows defendant's reduced rate operation operates at an average loss of \$87.42 per round trip.
4. The Summary is based on defendant's costs of operation and operating statistics as represented by defendant, except on the following items:
 - a. The average number of terminal deadhead miles involved in the round-trip operation.
 - b. The applicable prevailing labor cost.
 - c. The amount of annual miles used in developing the equipment use factor.
5. The average terminal deadhead miles involved in defendant's reduced rate round-trip operation is 65 miles.

6. In this instance the prevailing labor cost used for driving line work, as that phrase is defined in Appendix A of D.93767, is the mileage amount.

7. The applicable prevailing labor cost to be used in evaluating rates which are subject to a complaint and hearing are those which are in effect at the time of the hearing on the complaint.

8. The applicable prevailing labor cost at the time of hearing on this complaint for driving line work was \$0.3768 per mile.

9. 63,000 annual miles is the appropriate mileage to use in determining the equipment use factor in the reduced rate operation.

10. Complainants' Summary correctly reflects the revenue and expenses of the round-trip operation.

11. Defendant's reduced rate operation is noncompensatory to the extent set out in complainants' Summary.

12. Defendant's Restatement does not reflect the true cost of its round-trip operation to the extent it failed to use in its calculations (a) 883 total round-trip miles, (b) the mileage rate of \$0.3768 for driving line work, and (c) 63,000 miles as the basis of its equipment use factor.

13. Defendant's reduced rates are and for the future will be unreasonable and noncompensatory to the extent that they are below the otherwise applicable TT 2 rates.

14. The Commission's records show that competitive rates were filed by S & S Transportation, Inc. (T-121,558), Nickels Contract Trucking, Inc. (T-133,660), and Bell Transport Company (T-88,461) to meet defendant's reduced rates in issue in this complaint.

15. In keeping with our finding in paragraph 13 above, the competitive rate filings by the carriers named in paragraph 14 also are and for the future will be unreasonable and noncompensatory to the extent that they are below the otherwise applicable TT 2 rates, unless justified individually by any such carrier.

16. The competitive rate filings of the carriers named in Finding 14 should be canceled concurrently with the cancellation of defendant's rates in issue, except that the cancellation of the competitive rate filings will be held in abeyance pending review, if the carriers named in Finding 14 file within 15 days after the date of this decision (regardless of whether this decision is stayed by a timely petition for rehearing) operational and cost data justifying the reasonableness of the rates under the provisions of General Order 147 (Rule 9.A.1.(b)).

Conclusions of Law

1. The relief requested in the complaint should be granted.
2. The authority to charge and publish reduced rates which were the subject of RR 490 should be rescinded.
3. Defendant should be ordered to cancel the subject reduced rates from its tariff.
4. Defendant should be ordered not to republish rates in its tariff on the subject commodities between the involved points which are below the applicable TT 2 rates, except upon proper authorization by the Commission.
5. The competitive rate filings of S & S Transportation, Inc. (T-121,558), Nickels Contract Trucking, Inc. (T-133,660), and Bell Transport Company (T-88,461) should be ordered to be canceled at the same time RR 490 is ordered to be canceled.

O R D E R

IT IS ORDERED that:

1. The relief requested in Case 11021 is granted.
2. Authority to charge and publish the reduced rates which were the subject of Rate Reduction 490 (RR 490) is rescinded.
3. James K. Mills, dba Mills Transportation, shall cancel from his tariff within 15 days following the effective date of this order, and on no more than 5 days' notice, its reduced rates which were the subject of RR 490.

4. James K. Mills, dba Mills Transportation, shall not, unless upon proper authorization by the Commission, publish rates in its tariff on the commodities and between the points involved in RR 490 which are below the applicable rates in Transition Tariff 2.

5. S & S Transportation, Inc. (T-121,558), Nickels Contract Trucking, Inc. (T-133,660), and Bell Transport Company (T-88,461) shall cancel from their tariffs within 15 days following the effective date of this order and on no more than 5 days' notice their reduced rates which were established based upon RR 490.

6. S & S Transportation, Inc. (T-121,558), Nickels Contract Trucking, Inc. (T-133,660), and Bell Transport Company (T-88,461) shall not, unless upon proper authorization by the Commission, publish rates in their tariffs on the commodities and between the points involved in RR 490 which are below the applicable rates in Transition Tariff 2.

7. The Executive Director shall cause a copy of this order to be served by mail to S & S Transportation, Inc. (T-121,558), Nickels Contract Trucking, Inc. (T-133,660), and Bell Transport Company (T-88,461).

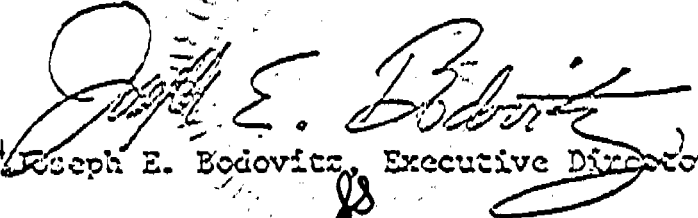
This order becomes effective 30 days from today.

Dated AUG 4 1982 , at San Francisco, California.

JOHN E. BRYSON
President
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
COMMISSIONERS

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.

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


- 14 Joseph E. Bodovitz, Executive Director

APPENDIX A

Complainants'
Summary of Revenues and Expenses

	<u>Complainants'</u> <u>Calculations</u>
I. REVENUE	
A. Fronthaul revenue	\$ 475.00
B. Backhaul revenue	475.00
C. Total revenue	950.00
D. Actual round trip mileage	883 mi.
E. Revenue per mile	1.0758
II. EXPENSES	
A. Labor	
1. Mileage basis 883 mi. x \$.3768	332.7144
2. Loading & unloading 2.5 hrs. x \$15,4922	38.7305
B. Vehicle fixed costs; mileage 883 mi. x \$.1178	104.0174 [1/]
C. Vehicle running cost; mileage 883 mi. x \$.4483	395.8489
D. Indirect expense - 17,1598% of revenue	163.0181
E. Gross revenue expenses	<u>3.0875</u>
Total	<u><u>1,037.4168</u></u>
Operating loss	<u><u>(87.4168)</u></u>
Operating ratio	<u><u>109.2%</u></u>

Defendant's Restatement of Complainants'
Summary of Revenues and Expenses

	<u>Defendant's</u> <u>Calculations</u>
I. REVENUE	
A. Fronthaul revenue	\$ 475.00
B. Backhaul revenue	475.00
C. Total revenue	950.00
D. Actual round trip mileage	883 mi.
E. Revenue per mile	1.0759
II. EXPENSES	
A. Labor	
1. Hourly basis \$15,4919 x 19.4 hours	300.5429
2. Loading & unloading 2.5 hrs. x 15,4919	38.7300
B. Vehicle fixed costs; mileage 883 mi. x \$.0715	63.1345
C. Vehicle running cost; mileage 883 mi. x \$.3940	350.9925
D. Indirect expense - 17,1598% of revenue	163.0181
E. Gross revenue expenses	<u>1,9000 [1/]</u>
Total	<u><u>918,3180</u></u>
Operating profit	<u><u>31,6820</u></u>
Operating ratio	<u><u>96.6%</u></u>

[1/] Complainants included insurance cost in fixed cost and defendant included insurance cost in gross revenue expenses.

(END OF APPENDIX A)