

ORIGINAL

Decision 83 03 051 MAR 16 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates, and practices of Shafer  
Trucking; and Clarke Contracting  
Corp., a California corporation.

OII 82-09-03  
(Filed September 22, 1982)

John S. Shafer, Jr., for himself, respondent.  
James R. Foote, for Associated Independent  
Owner-Operators, Inc.; Harry Phelan, for  
California Asphalt Pavement Association;  
and James D. Martens, for California Dump  
Truck Owners Association; interested  
parties.

Patricia A. Bennett, Attorney at Law, and Will  
Anderline, for the Commission staff.

### O P I N I O N

This proceeding is an investigation on the Commission's own motion into the operations, rates, charges, and practices of respondent John S. Shafer, Jr. (Shafer), dba Shafer Trucking, to determine whether Shafer, in the operation of his transportation business, violated Public Utilities (PU) Code Sections<sup>1/</sup> 3664, 3668, and 3737 by failing to charge and collect the applicable minimum rates and charges set forth in Minimum Rate Tariff (MRT) 7-A; specifically whether Shafer failed to determine the chargeable time in the application of hourly rates as required by items 10 and 360 of MRT 7-A, whether Shafer violated Section 3737 by

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<sup>1/</sup> All sections cited refer to the PU Code.

*Process*  
*TD-13*  
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failing to properly complete and execute shipping documents applicable to shipments as required by Item 170 of MRT 7-A, whether Shafer violated Section 3737 by failing to pay subhaulers the applicable minimum rates and charges as set forth in Item 210 of MRT 7-A, and whether respondent Clarke Contracting Corp. (Clarke), a California corporation, doing business as Clarke Construction, paid Shafer less than the applicable rates and charges.

A public hearing was held before Administrative Law Judge William A. Turkish in Los Angeles on November 16, 1982, and the matter was submitted upon the filing of the transcript on November 25, 1982.

Shafer was engaged in the business of transporting property over the public highways of this State for compensation, having been issued permits to operate as a dump truck carrier, a heavy specialized carrier, and a highway contract carrier, and a certificate to operate as a highway common carrier. Clarke has received services over the public highways of this State for compensation from Shafer and therefore is a shipper of property. Clarke was not present at the hearing.

Shafer previously operated an office and terminal at 5136 Rivergrade Road, Baldwin Park. His address is 1111 Gladstone, Azusa. Shafer operated 32 sets of bottom dump trailers and 1 semi-end dump trailer. Shafer employed two salesmen, four mechanics, and four office personnel. Tractor owners who pull the bottom dump trailers were engaged by Shafer as subhaulers. Shafer's quarterly report filed with the Commission discloses gross revenues of \$4,866,983 for the four quarters ending June 1981. Commission records show the following tariffs were

served upon Shafer under subscription: MRT 7-A, Transitional Tariffs (TT) 2 and 5, MRT 17-A, Directory (DIR) 1, MRT 20, DIR 2, Exception Ratings Tariff (ERT) 1, and Distance Table (DT) 8. The above carrier profile was stipulated to by Shafer.

In May 1981 the Commission staff commenced an investigation of billings rendered under an hourly agreement between Shafer and Clarke for transportation service. The particular job involved consisted of the movement of dirt by Shafer from Third and Fairfax, Los Angeles, to a freeway construction site at 113th Street and Main, Los Angeles. Subhaulers hired by Shafer were used to transport the dirt.

On May 22, 1981 two Commission Transportation Division Compliance Section representatives (representatives) went to the jobsite and talked to as many subhaulers as they could within the period of time they were there. The subhaulers were given a copy of Item 170 of MRT 7-A, and were advised to fill out their freight bills completely. The representatives noticed Shafer's foreman logging each subhauler's departure time on a loading work sheet. The foreman was asked for copies of the loading work sheets and the representatives were told they would receive them. On May 27 a representative visited Shafer's place of business where he asked for a copy of the hourly agreement with Clarke. The representative also asked Shafer if he had the loading work sheets for May 22 logged by Shafer's foreman at the jobsite. Shafer refused to turn over the loading work sheets at that time.

The representative left and returned again on July 22 at which time he had a discussion with Shafer about the Clarke job at Third and Fairfax. During the conversation Shafer admitted that he did "knock time off" from the subhauler's freight bills. Shafer stated that he reviewed the loading work sheets' hauling times of the most efficient subhaulers and that he used that as a basis for the maximum he would pay other subhaulers. Shafer explained that some of the drivers could not meet the maximum time limits set to deliver the dirt and return to the point of origin, and the most efficient carrier time was then used as the standard to pay less efficient subhaulers. Shafer stated he had to do this in order to meet the competition. The representative obtained some freight bills and returned again on July 29 when he was supplied with additional freight bills, payment records to the subhaulers, and the subhauler agreements. Six hundred freight bills were reviewed as well as the invoices to Clarke and the payment records to the subhaulers. In examining the 600 freight bills the representative found a number of freight bill failures and selected 172 of the most flagrant for analysis.

Exhibit 2 contains the 172 freight bills having missing information. Exhibit 2 also contains loading work sheets for six different days. A comparison of various freight bills against the loading work sheets shows a disparity between the two. The freight bills show an ending time much earlier than the subhauler could have possibly carried the last load of the day to the delivery site and return, when compared to the final departure time on the loading work sheet. Although Clarke was billed for the number of hours as shown on the

freight bills, these hours were actually less than what the freight bills should have shown. This is a result of "knocking time off" the freight bills. As a result, the subhaulers were underpaid and Clarke was undercharged.

A comparison of the writing on several freight bills with that of the loading work sheets indicates they were written by Shafer's foreman. Shafer acknowledged this upon cross-examination.

A staff associate transportation rate expert, assigned to analyze Shafer's rate statements submitted by the field representative, testified that he examined those documents to calculate the estimated undercharges by Shafer. The findings are contained in Exhibit 3. Exhibit 3 shows the estimated undercharges from a sample of 10 freight bills representing 10 drivers for a six-day period. The total amount of undercharges was found to be \$3,154.42. Since Shafer employed hundreds of subhaulers for this job over a six-month period, the total undercharges are believed to be considerable.

Shafer's testimony was essentially as follows:

1. The contract for the job in issue required a permit from the California Department of Transportation (Caltrans) for the disposal of the transported dirt to a freeway right-of-way. Caltrans required that a significant percentage of minorities be involved in the job and that laborers should be hired from residents living in the freeway corridor. Shafer prepared a report for Caltrans which showed that his minority hiring percentage ran as high as 88%. Because of the Caltrans requirement Shafer felt he

did not have the freedom of firing personnel. If a person was a poor performer, particularly if he were a minority, or residing within the freeway corridor area, Shafer felt he had to keep him on. In addition, Shafer wanted to help minority persons by giving them employment.

2. The loading work sheets do not take into account what was actually going on on the highway between the job excavation and the disposal site. Numerous subhaulers had continual breakdowns and difficulties with their equipment. The overlying carrier or prime carrier (Shafer) cannot keep track of everything that is happening out there with the subhaulers. Holding the prime carrier and not the subhaulers fully responsible for complete and accurate documentation is wrong.
3. On May 27 and 28, 1981 Shafer changed to a distance mileage rate when a disposal area in Baldwin Hills was used.
4. The primary reason for Shafer's foreman using the loading work sheets at the jobsite was to check the loading time by Clarke, who was responsible for the actual loading.
5. Every freight bill submitted was prepared by an underlying carrier. None were prepared by Shafer.

Upon cross-examination Shafer admitted that his foreman completed some of the freight bills although he told his foreman not to fill in the starting and ending times on the freight bills. The witness further admitted that everything entered on the freight bill below the subhauler's identification on the top portion of the freight bill was completed by his foreman. He acknowledged that the subhauler is required to submit the fully completed freight bill.

Staff recommended that Shafer be ordered to examine all available records pertaining to the transportation performed for Clarke on the Third and Fairfax job, to determine all undercharges that have occurred, to complete such examination of records within 90 days after the effective date of the order, and to file a report with the Commission setting forth all undercharges found under the examination. Staff also recommended that Shafer promptly take action, including timely legal action under Section 3671, as may be necessary, to collect the undercharges set forth in the staff's rate Exhibit 3, together with the undercharges resulting from Shafer's examination of the transportation performed for Clarke. Shafer should determine the difference between what was previously paid to the subhaulers and 95% of the applicable minimum charges. Staff also recommended that a fine of \$5,000 be paid by Shafer prior to the issuance of any new operating authority in which Shafer owns a legal or beneficial interest exceeding 5%.

The Commission takes official notice of the petition for Chapter 7 liquidation, Case No. LA 82-19379-JB, filed November 9, 1982 by John Samuel Shafer, Jr. in the United States Bankruptcy Court for the Central District of California.

Findings of Fact

1. Shafer operated, among other authorities, with a dump truck carrier permit (File T-86408) issued May 27, 1970.

2. Shafer was served with MRT 7-A, TT 2, TT 5, MRT 17-A, DIR 1, MRT 20, DIR 2, ERT 1, and DT 8.

3. During the period of this investigation Shafer engaged subhaulers to perform the actual hauling of earth in connection with a contract with Clarke.

4. Shafer failed to charge, bill, and collect rates from Clarke based on the number of hours worked by Shafer's subhaulers.

5. Shafer accepted incomplete freight bills from his subhaulers and entered false starting and/or ending times to reflect a lesser number of hours worked by the subhaulers.

6. Shafer undercharged Clarke by not charging Clarke according to the hours actually worked by many of Shafer's subhaulers. Since the particular job project Shafer was engaged in with Clarke lasted approximately six months and the Commission is without the necessary records, it is unable at this time to ascertain the full amount of undercharges.

7. Shafer accepted incomplete freight bills from his subhaulers, and an employee of Shafer completed the starting and ending times on such freight bills from which the billings were made to Clarke.

8. Shafer underpaid many of his subhaulers by altering the starting and ending times on the freight bills.

9. Shafer failed to pay his subhaulers the authorized minimum rates.

10. On November 9, 1982, Shafer filed a petition for Chapter 7 liquidation in the U.S. Bankruptcy Court.

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Conclusions of Law

1. Shafer violated Sections 3664, 3668, and 3737 and therefore should pay a fine under Section 3774.
2. The recommendations of staff, set forth above in paragraph 2, page 7, are reasonable and should be adopted. After the report which Shafer will be ordered to file with the Commission is received, and if there is reason to believe that all underpayments to subhaulers have not been paid or that Shafer has not been diligent or has not taken all reasonable measures to collect the undercharges or has not acted in good faith, staff should report such fact to the Commission so that the Commission may reopen this proceeding for the purpose of inquiring into the circumstances and for the purpose of determining what further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. John S. Shafer, Jr. (Shafer) shall pay a fine of \$5,000 to this Commission prior to the issuance of any new operating authority in which Shafer owns a legal or beneficial interest exceeding 5%. ✓
2. Shafer shall examine his records for all transportation performed for Clarke Contracting Corp. (Clarke) under an hourly rate agreement which began on May 22, 1981, and file a report with the Commission setting forth all undercharges found under the examination. Shafer shall also report the subhaulers on this job by name and the amount owed to each. ✓
3. Shafer shall, after determining the undercharges to Clarke, proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges, including

the institution of legal proceedings if the undercharges remain uncollected or unpaid 60 days after the effective date of this order, and shall promptly pay all underpayments ordered to be paid by the following Ordering Paragraph 4.

4. Shafer shall pay all underpayments to subhaulers involved in the Clarke job after completion of the examination ordered in Ordering Paragraph 2 above.

5. In the event undercharges ordered to be collected or underpayments ordered to be paid as indicated above, or any part of such undercharges or underpayments, remain uncollected or unpaid 120 days after the effective date of this order, Shafer shall file with the Commission on the first Monday of each month after the end of 120 days, a report of the undercharges remaining to be collected and the underpayments remaining to be paid, specifying the action taken to collect such undercharges and action to pay such underpayments and the results of such action, until such undercharges have been collected in full and such underpayments have been paid in full or until further order of the Commission. ✓

6. Shafer shall cease and desist from violating any rules established by the Commission and from charging and collecting compensation for the transportation of property or for any services in connection with it in a lesser amount than the minimum rates and charges prescribed by this Commission. ✓

7. The staff of the Transportation Division is directed to audit the records of Shafer to determine the appropriateness of the record review made by Shafer for undercharges in accordance with Paragraph 2 of this order.

8. The Executive Director is ordered to cause personal service of this order to be made upon Shafer and to cause service by mail upon Clarke. The effective date of this order shall be 30 days after the completion of such service.

Dated March 16, 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President

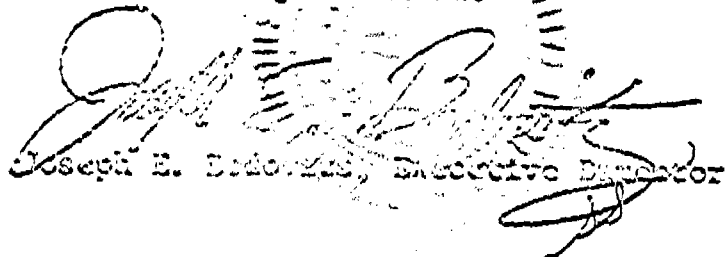
VICTOR CALVO

PRISCILLA C. GREW

DONALD VIAL

Commissioners

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

  
Joseph E. DiDomenico, Executive Director

failing to properly complete and execute shipping documents applicable to shipments as required by Item 170 of MRT 7-A, whether Shafer violated Section 3737 by failing to pay subhaulers the applicable minimum rates and charges as set forth in Item 210 of MRT 7-A, and whether respondent Clarke Contracting Corp. (Clarke), a California corporation, doing business as Clarke Construction, paid Shafer less than the applicable rates and charges.

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Dated MAR 16 1983, at San Francisco, California.

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