

ORIGINALDecision No. 83 06 102 JUN 29 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 LVJ Leasing,)
Inc., a California corporation,)
and Calnex Engineering, Inc., a)
California corporation.)

OII 82-03-01
(Filed March 2, 1982)

Quigley and Livingston, by William J. Livingston, Attorney at Law, for LVJ Leasing, Inc., and Gerald Eugene Gibbs, for Calnex Engineering, Inc., respondents.

James D. Martens, for California Dump Truck Owners Association, interested party.

Jeffrey B. Thomas, Attorney at Law, and Paul Wuerstle, for the Commission staff.

OPINION

This is an investigation into the trucking operations of LVJ Leasing, Inc. (LVJ), a California corporation, to determine whether LVJ, in transporting property for Calnex Engineering, Inc. (Calnex), charged and collected less than the prescribed minimum rates set forth in Minimum Rate Tariff 7-A (MRT 7-A), thereby violating Public Utilities (PU) Code §§ 3664 and 3737. It is specifically alleged that Items 10 and 360 of MRT 7-A require that, when an hourly rate is to be applied, charges shall be based on the actual hours of service and that LVJ either charged a flat rate per load, or deliberately charged for less than the actual hours. LVJ is also charged with failing to pay subhaulers the amounts due under Item 210 of MRT 7-A.

A hearing was held before Administrative Law Judge (ALJ) Fraser in Los Angeles on August 31, 1982. LVJ, Calnex, and the

Commission staff provided testimony and documentary evidence. The matter was submitted on the date of hearing.

Staff Evidence

During the period under investigation LVJ operated out of a terminal in La Puente, California, under authority of a statewide dump truck carrier permit issued on May 25, 1970. On August 12, 1980, the office manager stated that the carrier had received copies of MRTs 7-A and 17-A. He stated that LVJ has four office employees and one mechanic. It has 18 sets of bottom-dump trailers and no power equipment. Total gross operating revenue for 1980 was \$4,438,753 (Exhibit 5).

An investigator from the Commission's Transportation Division testified that he initiated an investigation of LVJ on August 12, 1980 after the Commission received an anonymous complaint from a subhauler. He stated that during his initial visit he studied LVJ's records on hauling for Callex, which extended through June, July, and August of 1980. It was apparent that many freight bills did not have all information required by the tariff provisions or had entries which were inconsistent with other entries on the same document. Others were blank in spaces where information should have been provided. A total of 104 freight bills were reviewed and 43 were withdrawn and copied to be introduced as Exhibit 1.

The first entry in Exhibit 1 is a copy of the contract between LVJ and Callex dated February 1, 1980 which certifies that the hourly rates prescribed by MRT 7-A will be charged for the transportation. The tariff requires that the agreement to use hourly rates be stated in writing and preserved with the other transportation records.

The investigator's testimony included an analysis of several representative freight bills. For example, Freight Bill 882

(Part 1, Exhibit 1) has three blank entries (start unloading, end unloading, and total time); it has a starting time of 7.9 (7:54 a.m.) and an end time of 11.8 (11:48 a.m.). LVJ rated this transportation as three hours (the staff had 3.9 hours; Part 1, Exhibit 6). (Hours are divided into 10 six-minute periods for rating.) Freight Bill 73914 is Part 2 in Exhibits 1 and 6. Here LVJ combines five loads under 7.5 hours, with four entries on the freight bill scratched out and written over. Two entries are impossible to decipher as a result of writing over the original figures. The staff expert rated this freight bill as 8.8 hours (Part 2, Exhibit 6). The witness stated that at times it appeared LVJ multiplied 1.5 hours by the number of loads to reach the total chargeable hours. Thus, charges are based on 1.5, 3.00, 4.5, 6.00, and 7.5 hours; although many of the freight bills do not include the number of loads. Subhaulers were paid on the same basis. The commodity hauled was dirt, used on construction projects.

The investigator introduced Exhibit 3 which is a map showing where the dirt was picked up in Century City and dumped in Long Beach, at Santa Fe and Warnock (405 Freeway), about 35 miles away, by the shortest route. The witness testified that in the course of his duties he had traveled this route numerous times. He stated that during many hours of the morning and afternoon the 405 freeway is heavily congested, in part due to its proximity to the Los Angeles airport. The amount of time necessary to traverse the route would vary throughout the day. The investigator stated that some of the transportation at issue took place during peak traffic hours. On cross-examination he advised that all LVJ personnel cooperated in his investigation and that he did not find any violations other than previously noted herein. It was agreed that LVJ has been in business since 1970.

The witness introduced Exhibits 2 and 4. The former is a copy of a citation (No. F-1932, served January 27, 1981) which assessed a fine of \$1,000 against LVJ for failure to provide necessary information on freight bills and failure to assess charges based upon the actual number of hours of service. LVJ denied the charges and the present investigation was instituted. Exhibit 4 contains a copy of a citation against LVJ issued in 1977 for failure to timely pay subhaulers, which resulted in the payment of a \$500 fine. Exhibit 2 includes a letter from LVJ dated March 4, 1981 which argues that truck drivers have custody of the freight bills while the transportation is performed and until the documents are returned to LVJ for filing and payment. The drivers are not concerned with errors, nor with making neat and accurate entries.

A staff rate expert testified that he assembled the data presented by the staff investigator, computed the correct number of chargeable hours, and applied an hourly rate on the transportation under the agreement between the shipper and the carrier. He introduced Exhibit 6 and testified that undercharges on the 43 counts total \$1,600.64. He stated that if there was no agreement on hourly rates, distance tonnage rates would be applicable. It was noted that information boxes on the freight bills were sometimes left blank. Lack of these entries is serious and a separate tariff violation, since transportation cannot be rated without complete information. The expert introduced Exhibit 7 containing all applicable items from MRT 7-A. Included are Items 126 and 210 which require that payments to subhaulers be based on the applicable minimum rates.

Staff counsel recommended that LVJ be required to collect undercharges from Callex and to pay subhaulers the additional sums due them, and to pay a punitive fine of \$3,000.

Respondent's Evidence

The owner of Calex testified as follows:

Calex contracted with Watt Industries to act as the grading contractor on the Century Hill project in Century City. LVJ was engaged by Calex to transport excavated material from the project to various locations. Most of the dirt removed was transported to an industrial site in the Long Beach/Carson area being developed by Clegg Engineering. Calex also had a contract with Morley Construction Company to supply backfill dirt for the LaPark project located across the street from Century Hill. Trucks leaving Century Hill would occasionally be directed by Calex to deliver a load to LaPark, a distance of less than 1,000 feet, instead of the Long Beach site 35 miles away. Calex asserts that drivers sometimes completed their freight bills prior to being dispatched in anticipation of going to Long Beach. When a load was sent to LaPark, the driver might have failed to adjust the already completed freight bill to reflect the much shorter travel time. Therefore, Calex could very likely have been overcharged rather than undercharged.

The President of LVJ testified as follows:

LVJ has no power units and its service is performed by subhaulers who drive their own tractors. The drivers are responsible for freight bills and the information on them which determines how they will be paid. Freight bills signed by both the driver and the contractor are assumed to be accurate. If a freight bill's content is challenged, payment to the subhauler may be delayed beyond the normal twenty days, and the drivers are unduly aggravated thereby. Truckers have a tendency to overstate driving time when paid on an hourly basis. Drivers earn less money on short hauls. LVJ has never had a complaint from a subhauler in 12 years of operation. The witness testified on cross-examination that LVJ had its employees visit job sites, but no one was there everyday. He stated he had no idea why the freight bills had time increments of 1.5 hours on most loads.

Discussion

The record in this case most emphatically illustrates the need for stringent documentation requirements. The staff of the Commission, prompted by the complaint of a subhauler, undertook an investigation and audit of the respondent's records. Those records prima facie establish violations of not only the documentation requirements of the applicable tariff, but of rate violations by the prime carrier, LVJ, with the consequent underpayments to the subhaulers who were utilized to perform the transportation.

The principal issue in this case is whether the documentation issued and the rates and charges assessed by LVJ reflect the actual hours of service or whether they reflect charges based on an agreed upon time cycle of 1.5 hours per load. The governing tariff (MRT 7-A) is quite clear. Charges are to be based on actual hours of service, meaning from the time the carrier reported to work to the time he completed hourly service, that ending time to be calculated in the following manner:

"Time completed hourly service means the time the unit of equipment returns to the last point of loading, or the return time agreed on by the carrier and debtor representatives and shown on the shipping document. In no event shall this return time allowance be less than the last loaded running time."

The freight bills covering the transportation in question are deficient in showing actual times of service. LVJ and the subhauler share culpability for this. Forty of the forty-three freight bills involved reflect a mathematical consistency in that the time of service is a multiple of 1.5 hours. This sustains the staff's position that charges were assessed on a per load basis.

The owner of Calnex and the President of LVJ testified that notwithstanding the information shown on the shipping documents, some of the shipments in question may have been delivered to a destination other than that shown on the shipping documents.

Despite the fact that the Order Instituting Investigation was signed in March 1982, approximately five months before the hearing, and it identified the traffic in question by freight bill number and set forth the charges of documentation failure with specificity, neither the respondent carrier, LVJ, nor the respondent shipper, Calnex, submitted any evidence other than their speculative statements that some of the shipments may have moved to a point of destination other than that shown on documents by LVJ. We are not persuaded that any of the shipments in evidence did in fact move to a point of destination across the street from the point of origin.

This Commission has consistently held that documentation is the cornerstone of effective rate regulation and we have no intention of ignoring the rampant rate violations allegedly taking place in the dump truck industry. It is obvious that if the Commission were to accept oral reformation of shipping documents, it would render the tariff requirements concerning the execution of shipping documents meaningless and make any determination of the actual rates and charges to be assessed and appropriate payments to subhaulers impossible.

We have previously stated that the principal or overlying carrier who is engaged by the shipper to perform the transportation is responsible for errors in documentation regardless of whether the documentation is prepared by said carrier or by the underlying carrier (subhauler). If anyone other than the overlying carrier

engaged by the shipper prepares the documentation, the overlying carrier may adopt it as its own and thereby assume the responsibility for any errors or omissions therein or in the alternative it must prepare its own documentation. By engaging a subhauler, an overlying carrier is not relieved of the obligation imposed on it by law to assess rates no lower than the applicable minimum rates established by the Commission for the transportation covered by the contract of carriage. D. 71658, Case 8412 (66 Cal P.U.C. 546).

The shipper, prime carrier and subhauler all share responsibility for adhering to tariff rates and rules. Sanctions against shippers can result from their willful and knowing violations of the provisions of the PU Code. Prime carriers and subhaulers are subject to suspension, revocation or fines for violations of the PU Code or Commission rules and regulations. Prime carriers and subhaulers who persist are placed on notice that failure to comply with the documentation requirements of applicable tariffs will result in suspension, revocation, or imposition of a substantial fine, which we will do here. Shippers should also take note that this Commission will prosecute to the utmost willful and knowing violations of the PU Code.

Findings of Fact

1. LVJ is a transportation broker hiring subhaulers with tractors to tow its bottom-dump trailers.
2. LVJ operates under authority of a statewide dump truck carrier permit, issued on May 25, 1970.
3. LVJ was served copies of MRTs 7-A and 17-A.
4. LVJ hired subhaulers to transport dirt in dump truck equipment for Calex during the months of June, July, and August 1980.
5. A written agreement executed by the parties provided that hourly rates were to be charged and collected for the transportation.
6. LVJ is responsible for the content of all freight bills as the prime carrier.

7. The freight bills in issue here had incorrect and incomplete entries.

8. LVJ failed to assess rates based upon the actual hours of service.

9. Undercharges of at least \$1,600.64 result from the application of hourly rates to the actual hours of service calculated by the staff, which were based upon information available on the shipping documents.

10. Payments to subhaulers were less than the minimums required by MRT 7-A.

Conclusions of Law

1. LVJ violated § 3737 of the PU Code by issuing freight bills with incomplete and incorrect entries on transportation performed for Calnex during June, July, and August of 1980.

2. LVJ violated § 3664 of the PU Code by charging and collecting rates less than the rates contained in MRT 7-A.

3. LVJ should be ordered to collect undercharges of \$1,600.64 from Calnex.

4. LVJ should be ordered to review its subhaul payment records covering the 43 freight bills described in Exhibit 6, and using the hours of service calculated by the staff, to pay its subhaulers the additional amounts found to be due them.

5. LVJ should pay a fine under PU Code § 3774 in the amount of \$2,000 payable on or before the 40th day after the effective date of this order.

6. LVJ should be directed to cease and desist from violating the rates and rules of the Commission.

The Commission expects that LVJ Leasing, Inc. will take all reasonable actions to collect the undercharges and to pay its subhaulers the amounts found due them. The Commission staff will make an investigation into such measures. If it believes that LVJ Leasing, Inc. or its attorney has not acted in good faith, the

Commission will reopen this proceeding to determine whether to impose sanctions.

O R D E R

IT IS ORDERED that LVJ Leasing, Inc. shall:

1. Pay a fine of \$2,000 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 any payment is delinquent.
3. Take such action as may be necessary to collect the undercharges set forth in Finding 9, including timely legal action under PU Code § 3671.
4. Conduct the record review described in Conclusion of Law 4 and pay its subhaulers the amounts found to be due them.
5. Notify the Commission in writing upon collection and payment.
6. Promptly take all reasonable steps to collect the undercharges and pay its subhaulers.
7. File with the Commission on the first Monday of each month a report of any undercharges or payments remaining uncollected or unpaid 60 days after the effective date of this order, specifying the action taken to collect or pay them and the result of such action, until they have been collected in full and total payments have been made, or until further order of the Commission.
8. Cease and desist from violating the rates and rules of the Commission.

The Executive Director shall have this order personally served upon respondent LVJ Leasing, Inc. and served by mail upon respondent Callex Engineering, Inc.

The order shall become effective for each respondent on the date they are served.

Dated JUN 29 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO

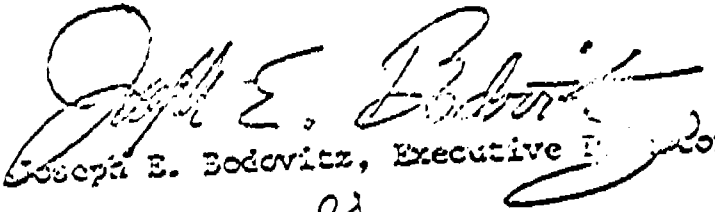
PRISCILLA C. CREW

DONALD VIAL

WILLIAM T. SAGLEY

Commissioners

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


Joseph E. Bodovitz, Executive Director