

Decision No. 86812

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 TED LEWIS individually and doing business as NORTHERN CEMENT TRANSPORTATION, INC., a California corporation; JAMES L. WRIGHT individually and doing business as WRIGHT TRUCKING; and JAMES G. SCHUNEMAN individually, doing business as SCHUNEMAN TRUCKING; AMERICAN CEMENT CORPORATION, a Delaware corporation; DE MAR BARON POOL PLASTERING CORPORATION, a California corporation; and TRI-CITY CONCRETE INC., a California corporation.

Case No. 10126  
 (Filed June 22, 1976)

Robert C. Marks, Attorney at Law, and James G. Schuneman, for Ted Lewis, respondent.  
Thomas J. MacBride, Jr., Attorney at Law, and Edwin H. Hjelt, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the operations and practices of Ted Lewis (Lewis), dba Northern Cement Transportation, Inc., James L. Wright (Wright), dba Wright Trucking, and James G. Schuneman (Schuneman), dba Schuneman Trucking, for the purpose of determining whether Lewis, Wright, and Schuneman may have violated the Public Utilities Code in connection with the transportation of cement for American Cement Corporation, De Mar Baron Pool Plastering Corporation, and Tri-City Concrete, Inc.

Public hearing was held before Examiner Tanner on September 13, 1976 at which time the matter was submitted for decision.

All substantive issues were stipulated to in writing by Lewis, Schuneman, and the Commission's staff (staff). The stipulations were received in evidence as Exhibits 1 and 2.

Findings

1. Lewis operates as a cement carrier pursuant to Decision No. 78044 dated December 8, 1970 and as a highway contract carrier and dump truck carrier pursuant to permits issued on January 28, 1971.
2. Schuneman operates as a cement contract carrier pursuant to a permit issued on September 10, 1974 and as a radial highway common carrier pursuant to a permit issued on April 8, 1970.
3. During the period July 1973 through December 1973, Lewis's gross operating revenue was \$171,406.
4. During the period of January 1974 to March 1974, the staff conducted an investigation of and into the operations, rates, and practices of Lewis for the period July 1973 through December 1973.
5. During the period July through December 1973, Lewis engaged subhaulers without having obtained and filed with the Commission the required subhaul bond as prescribed by General Order No. 102-E and Section 1074 of the Public Utilities Code.
6. During the period July through December 1973, Lewis transported cement on the public highways of California to locations and designations beyond the scope of the authority issued to Lewis by the Commission.
7. During the period July through December 1973, Lewis transported property C.O.D. within California without having obtained and filed with the Commission the required C.O.D. bond as prescribed by General Order No. 84-G of the Commission.
8. Lewis performed transportation within California between August 27, 1973 and September 5, 1973, a period of time when Lewis's operating authority was in suspension.

9. During the period July through December 1973, Lewis entered into a leasing arrangement with Wright, which arrangement did not then fully and completely comply with the rules and regulations of the Commission; which arrangement, however, was apparently cured pursuant to staff recommendations made during the latter part of the period of time during which staff conducted its investigation.

10. During the period July through December 1973, Lewis entered into a leasing arrangement with Schuneman, which arrangement did not then fully and completely comply with the rules and regulations of the Commission, and which was a lease device or arrangement by which Lewis obtained transportation of property over the public highways at rates and charges less than, or different from, the rates and charges prescribed by the applicable minimum or tariff rates and charges.

11. The difference between the applicable rates and charges for the transportation hereinabove mentioned in paragraph 10 hereof, and that which was paid by Lewis to Schuneman is \$1,694.

12. During the period July through December 1973, Lewis performed transportation of property on the public highways of California at rates and charges less than those prescribed by the applicable minimum or tariff rates and charges.

13. Some of the undercharges resulting from the transportation described in paragraph 12 may be uncollectible by reason of the defense of the applicable statute of limitations.

14. During the period January 1974 through March 1974, staff conducted an investigation into the rates, operations, and practices of Schuneman for the period July 1973 to December 1973.

15. During the period September 1973 to December 1973, Schuneman transported cement on the public highways of California for compensation without first obtaining authority from the Commission.

16. During the period July 1973 to December 1973, Schuneman transported property for compensation on the public highways of California for Lewis, allegedly under the terms of a purported lease-employment agreement, but, in fact, as a subhauler.

17. As a result of the arrangement described in Finding 16, Schuneman permitted Lewis to obtain transportation of property over the public highways at rates and charges less than those prescribed in Minimum Rate Tariff 10 and Western Motor Tariff Bureau's Tariff No. 17.

18. As a result of the arrangement described in Finding 16, Schuneman charged and collected from Lewis amounts less than the applicable rates and charges prescribed in Minimum Rate Tariff 10 and Western Motor Tariff Bureau's Tariff No. 17, which undercharges totalled \$1,694.

19. Schuneman has at all times from the period of staff investigation to the present cooperated fully with the staff by making a thorough and complete disclosure of all facts relevant to his operations during the period.

20. The Commission takes official notice of Decision No. 79955 in Case No. 9207 wherein Lewis was assessed a punitive fine of \$3,000 for similar violations.

#### Conclusions

1. Lewis violated General Orders Nos. 84-G and 102-E and Sections 493, 1061, 1067, 1074, 3541, 3575, and 3775 of the Public Utilities Code.

2. Schuneman violated Sections 3621, 3664, 3668, and 3775 of the Public Utilities Code.

3. Lewis should pay or cause to be paid to Schuneman the sum of \$1,694, provided, however, that Lewis shall make said payment of \$1,694 payable to Schuneman and the Commission.

4. Lewis should pay a punitive fine pursuant to Sections 1070 and 3774 of the Public Utilities Code in the sum of \$3,000.

5. Schuneman should pay a fine pursuant to Section 3300 of the Public Utilities Code in the sum of \$1,694.

6. The investigation of Wright should be discontinued.

O R D E R

IT IS ORDERED that:

1. Ted Lewis (Lewis) shall pay a fine of \$3,000 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Respondent carrier shall pay interest at the rate of seven percent per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent. ✓

2. Lewis shall pay or cause to be paid to James G. Schuneman (Schuneman) the sum of \$1,694, said payment shall be made payable to Schuneman and the Commission.

3. Schuneman shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$1,694 on or before the fortieth day after the effective date of this order.

4. Respondents, Lewis and Schuneman, shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the rates and charges prescribed by this Commission.

5. Lewis shall cease and desist from paying to subhaulers amounts less than the minimum payments prescribed by this Commission.

6. The investigation of James L. Wright is discontinued.

The Executive Director of the Commission is directed to cause personal service of this order to be made upon respondents, Lewis and Schuneman, and to cause service by mail of this order to be made upon all other respondents. The effective date of this order as to each respondent shall be twenty days after completion of service on that respondent.

Dated at San Francisco, California, this 5<sup>th</sup> day of JANUARY, 1977.

Robert Bateman  
President  
William Squares  
Yvonne L. Stinson  
Alton  
Commissioners