

AP

ORIGINAL

Decision No. 86981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the rules,)
regulations and practices of all)
household goods carriers relating)
to the transportation of used)
household goods and related)
property.)

Case No. 10151
(Filed August 3, 1976)

(Appearances are shown in Appendix A.)

O P I N I O N

C.10151 was issued for the receipt of evidence concerning a proposed general order prepared by the Commission's Transportation Division relating to service performed by household goods carriers, pursuant to the provisions of Section 5139 of the Public Utilities Code.

Public hearing in C.10151 was held in San Francisco on October 18, 1976 and in Los Angeles on October 20, 1976 and the matter was continued for further hearing. The recommendations of the Commission's Transportation Division set forth in Exhibits 2 and 3 and described below were taken under submission on October 20, 1976.

The Commission's Transportation Division staff presented evidence to the effect that certain rules contained in Minimum Rate Tariff 4-B (MRT 4-B) pertaining to the services of obtaining weights of shipments transported by household goods carriers are in conflict with the requirements of the California Business and Professions Code.

An associate transportation rate expert testified substantially as follows:

The Division of Measurement Standards, Department of Food and Agriculture, recently brought to the attention of the staff that certain rules in MRT 4-B contain information which is contrary to the requirements of the Business and Professions Code. The conflicting sections are Items 120, 180, and 431 of MRT 4-B and Section 12702 of the Business and Professions Code, as follows:

Minimum Rate Tariff 4-B

Item 120, Para. (a) "Weighmaster's Certificate", provides that:

"On shipments estimated as weighing less than 1,000 pounds, the carrier may have the shipment weighed over a platform or hand scales in lieu of obtaining a weighmaster's certificate, provided a written statement of the weight signed by the weigher is obtained."

Item 180 (Note 1), "Storage In Transit", provides that:

"On shipments subject to hourly rates both into and out of point of storage-in-transit the weight of the shipment for purposes of determining the storage-in-transit charge may be estimated by multiplying the total cubic feet by storage space occupied by the shipment on the warehouse platform or in the warehouse by 7 pounds per cubic foot."

Item 431, "Important Notice to Shippers of Household Goods Weights", provides that:

"If your shipment weighs less than 1,000 pounds, the carrier may weigh it at its terminal without securing a weighmaster's certificate."

Business and Professions Code

Division 5, Chapter 7, Section 12702, states:

"No person shall perform any act described in this chapter unless licensed as a public weighmaster, pursuant to this chapter.

"A public weighmaster shall issue a state certificate of weights and measures whenever payment for the commodity or service represented is dependent on a written or printed weight, measure or count."

The witness testified that the failure to obtain a weighmaster's certificate whenever payment for a service is dependent on a written weight or printed weight is a misdemeanor according to the Business and Professions Code, Division 5, Chapter 7, Section 12732, which provides that "Any person who violates any of the provisions of this chapter is guilty of a misdemeanor."

The witness stated that two options are available to resolve the discrepancy, either to amend MRT 4-B, Items 120, 180, and 431, or to change the Business and Professions Code to accommodate the rules in MRT 4-B.

Since changing the Business and Professions Code requires legislative action and since immediate action is necessary to bring carriers into conformity with Section 12702 of the Business and Professions Code, the witness recommended that MRT 4-B be revised to require weighing of all weight-rated shipments by a public weighmaster and by providing that storage-in-transit charges for hourly rated shipments be based on seven cents per cubic foot.

The staff recognized that the removal of the option in the tariff which permits weighing shipments less than 1,000 pounds without securing a weighmaster's certificate will create a burden on small carriers; therefore, the staff recommended to the Commission that legislation be proposed by it to add for-hire carriers to the exemption in the Business and Professions Code, Division 5, Chapter 7, Section 12701, paragraph (c).

California Moving and Storage Association (CMSA), the California Department of Consumer Affairs, and other interested parties had no objection to the proposed tariff amendments. CMSA stated that it recognized that a conflict exists and that the proposed tariff amendments are necessary unless and until an exemption for household goods carriers is provided in the Business and Professions Code. CMSA urged that the Commission sponsor legislation to provide such exemption.

Discussion

The record indicates that the Division of Measurement Standards of the California Department of Food and Agriculture intends to enforce the requirement of Section 12702 of the Business and Professions Code against household goods carriers that fail to obtain weighmaster certificates on all shipments subject to weight rates.

Section 12701(c) of that Code provides that among the entities construed not to be public weighmasters are "common carriers issuing waybills or bills of lading on which are recorded, for the purposes of computing transportation charges, the weights of commodities offered for transportation."

Household goods carriers are not common carriers as that term is defined in Section 2168 of the Civil Code or in Section 211 of the Public Utilities Code. Because household goods carriers, although serving the public generally, are not within either legal definition of common carrier, they do not fall specifically within the exemption cited and, therefore, must comply with Section 12702. It is this Commission's opinion that adherence by the Division of Measurement Standards to a strict interpretation of the exemption in Section 12701(c) places an undue burden on household goods carriers that is not met by the vast majority of other for-hire carriers. Such enforcement also may be contrary to the legislative intent of Section 12701, which intent appears to be to exempt all for-hire carriers from the weighmaster certificate requirements. Therefore, the strict enforcement of the weighmaster certificate provisions against household goods may be discriminatory under the law.

This Commission has found in prior orders that the current weighing provisions in MRT 4-B are reasonable and are justified by transportation conditions. It is not our intent to amend the weighing provisions of MRT 4-B in view of the apparent ambiguity of Sections 12701 and 12702 of the Business and Professions Code. The proper step in our view is to seek prompt amendment of Section 12701(c) to include household goods carriers in the exemption for common carriers, so as to remove any conflict between our tariff

provisions heretofore found reasonable by this Commission and Section 12702 of the Business and Professions Code. Until such amendment is accomplished, we caution household goods carriers that failure to obtain a public weighmaster's certificate for all shipments of household goods transported under weight rates may result in fines or other penalties under Division 5 of the Business and Professions Code.

Findings and Conclusions

In the circumstances, we find that amendment of MRT 4-B as proposed by the staff is not in the public interest, and that immediate steps should be taken to remove the conflict between the provisions of Sections 12701 and 12702 of the Business and Professions Code, on the one hand, and MRT 4-B, on the other hand, by amendment of Section 12701(c) to exclude permit carriers as well as common carriers from weighmaster certificate requirements of the Business and Professions Code.

We conclude that this Commission should propose immediate amendment of Section 12701(c) of the Business and Professions Code, and that the staff proposals in issue should not be adopted.

O R D E R

IT IS ORDERED that the Commission's General Counsel shall prepare recommended legislation to revise paragraph (c) of Section 12701 of the Business and Professions Code to include highway permit carriers.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 15th day of FEBRUARY, 1977.

Robert Bateman
President

William J. Gussow

J. K. S.

Richard D. Gravelle
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

LIST OF APPEARANCES

Respondents: Robert C. Johnson, for Bekins Moving & Storage Company; Robert W. Foy, for Pacific Storage Company; Gerald Evans, for Lyon Moving & Storage Company; James A. Nevil, for Nevil Storage Company; Jack E. Macy, for Macy Movers, Inc. and California Moving and Storage Association; Quig M. Driver, for Stringer & Driver Moving & Storage; Alvin J. Glatt, for NACAL, Inc.; Dennis G. Moran, for Moran Moving & Storage; Guillermo "Bill" Saavedra, for Saagan Moving and Storage Company; Sam S. Blank, for Dependable Moving & Storage Company; W. F. Goines, for Southwest Van & Storage Company; David M. Sanders, for Tanner-Trans American Van Lines; Roger S. Pondel, for The Bekins Co.; Fred Nason, Jr., for Beverly Hills Transfer & Storage Co.; Jeffrey L. Lutz and William R. Shepard, for Escondido Storage Company; and E. R. Chapman, for All City Moving and Storage Inc.

Interested Parties: Loughran & Hegarty, by Edward J. Hegarty, Attorney at Law, and Thomas J. Hays, for California Moving & Storage Association; C. D. Gilbert, H. Hughes, and J. C. Kaspar, for California Trucking Association; John C. Jessup, for Foremost McKesson, Inc.; David Reese Wallace, for Department of General Services; Joseph Garcia, Attorney at Law, for Richard Spohn, Director, California Department of Consumer Affairs; Robert L. Comyns, for Pacific Gas and Electric Company; LeRoy J. Edwards and Charles E. Beebe, for State of California, Division of Measurement Standards; Lee Jones, for County of Los Angeles, Purchasing & Stores Department; Stanley G. Alexander, for Environmental Relocators; Tad Muraoka, for IBM Corporation; and Jess J. Butcher, for California Manufacturers Association.

Commission Staff: Mary Carlos, Attorney at Law, and Everest Benton.