

Decision No. 87253

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
 own motion into the operations,  
 rates, charges and practices of  
 HAL SIMMONS TRUCKING CO., a  
 California corporation; LOUISIANA-  
 PACIFIC CORPORATION, a Delaware  
 corporation; GEORGIA-PACIFIC  
 CORPORATION, a Georgia corporation;  
 COASTAL FOREST PRODUCTS, INC., a  
 California corporation; RAY HILL  
 LUMBER CO., a California corpora-  
 tion; COCA-COLA BOTTLING CO. OF  
 EUREKA, CALIFORNIA, INC., a  
 California corporation; G & R  
 METALS EUREKA, INC., a California  
 corporation; and BRACUT  
 INTERNATIONAL, doing business as  
 BRACUT CO., a California corpor-  
 ation.

Case No. 10207  
 (Filed November 16, 1976)

Charles E. Buxton, Jr., Attorney at  
 Law, for Hal Simmons Trucking Co.;  
Roy M. Seim, for Georgia-Pacific  
 Corporation; George J. Rynecki,  
 for G & R Metals, Inc.; and Kent  
Studebaker, Attorney at Law, for  
 Louisiana Pacific Corporation;  
 respondents.  
Lionel B. Wilson, Attorney at Law,  
 and Eugene Cahoon, for the  
 Commission staff.

O P I N I O N

Hearing was held before Examiner Coffey in Eureka on January 18 and 19, 1977 on this investigation on the Commission's own motion to determine whether or not Hal Simmons Trucking Co., which operates as a radial highway common carrier and a highway contract carrier, may have violated Public Utilities Code Sections 3664, 3667, 3668, 3670, 3737, 4304, and 5003.1 in performing for-hire transportation of freight for the Louisiana-Pacific Corporation, whose agent for service is the United States Corporation Company, Georgia-Pacific Corporation, whose agent for service is CT Corporation System, G & R Metals Eureka, Inc., Coastal Forest Products, Inc., Ray Hill Lumber Co., Coca-Cola Bottling Co. of Eureka, California, Inc., Bracut International (dba Bracut Lumber Co.) by charging and collecting from such shippers less than the prescribed minimum rates. The Commission's official files reflect that all parties were duly served with copies of the Order of Investigation and the notice of hearing. The matter was submitted upon the receipt of the transcript and staff exhibit on February 4, 1977.

At the hearing, the following stipulation was signed by respondent Hal Simmons Trucking Co. and the Commission staff and was entered into evidence, without objection, as Exhibit 12:

"Hal Simmons Trucking Co. (Simmons), as respondent to the above-named action, hereto acknowledges that it is in agreement with the Staff of the California Public Utilities Commission (Staff) as to the facts, issues and fine recommendations relating to Section 3800 of the Public Utilities Code relevant to Case No. 10207 which are listed specifically as follows:

"1. The information in the document entitled 'Carrier Data', Exhibit No. 11, is true and correct;

"2. On March 12, 1975, and various other days in March, April and July, 1975, a member of the Staff conducted an investigation into respondent Simmons' operations, rates, charges and practices. The scope of said investigation included transportation listed in the Order Instituting Investigation (O.I.I.) of this case;

"3. The copies of shipping documents obtained by the Staff during said investigation for transportation performed by Simmons for Louisiana-Pacific Corporation (Louisiana-Pacific), Georgia-Pacific Corporation (Georgia-Pacific), Coastal Forest Products, Inc. (Coastal), Ray Hill Lumber Co., (Ray Hill), Coca-Cola Bottling Co. of Eureka, California, Inc., (Coca-Cola), G & R Metals, Eureka, Inc. (G & R), and Bracut International (Bracut) attached hereto as Exhibits 1, 2, and 3 are true and correct;

"4. Based on Exhibits 1, 2, and 3 the issues raised by Ordering Paragraph Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the O.I.I. in Case No. 10207 be answered in the affirmative for transportation performed by Simmons for Louisiana-Pacific, Georgia-Pacific, Coastal, Ray Hill, Coca-Cola, G & R, and Bracut;

"5. The Staff's ratings of the transportation documents in Exhibits 4, 5, 6, 7, 8, 9 and 10 are true and correct;

"6. The amount of undercharges from the ratings in Exhibits 4 through 10 are \$4,332.01 for Louisiana-Pacific (Exhibit 6), \$1,609.36 for Georgia-Pacific (Exhibit 5), \$6,550.52 for Coastal (Exhibit 4), \$240.96 for Ray Hill (Exhibit 9), \$144.45 for Coca-Cola (Exhibit 10), \$369.94 for G & R (Exhibit 7), and \$798.84 for Bracut (Exhibit 8), and these sums are to be promptly collected by Simmons pursuant to Ordering Paragraph 10 of the O.I.I. in Case No. 10207;

"7. Based on Ordering Paragraphs 6 and 13 of the O.I.I. the total amount of monetary fee and penalty due on \$14,046.08 of Undercharge revenue is \$76.00 pursuant to Sections 4304, 4307(a), 5003.1 and 5007 of the Public Utilities Code;

"8. With regard to Ordering Paragraph 12 of the O.I.I., (1) the records review specified for the period September 1, 1974 to November 16, 1976 shall be consummated and report made to the Commission by Simmons by April 1, 1977; (2) the report shall include the identity of all shipments hauled without charge for Coastal and Georgia-Pacific and show the minimum rate and charge applicable to each such shipment; (3) Simmons shall, by April 15, 1977, bill Coastal and Georgia-Pacific for the minimum rate and charge applicable to each shipment hauled without charge during the aforementioned period; (4) in the event any undercharges remains uncollected by June 1, 1977, Simmons shall promptly utilize its legal remedy to effect collection and shall file with the Commission on the 1st Monday of each month thereafter, a report covering the collection status of the undercharges;

"9. Respondent Simmons should be assessed a fine in the amount of \$14,046.08 for undercharges to Louisiana-Pacific, Georgia-Pacific, Coastal, Ray Hill, Coca-Cola, G & R, and Bracut pursuant to Section 3800 of the Public Utilities Code."

The following written stipulation between Louisiana-Pacific Corporation and the Commission staff was entered into evidence, without objection, as Exhibit 13:

- "1. Parts 1 through 15 of Exhibit 2 represent transportation performed by Hal Simmons Trucking Company for Louisiana-Pacific.
- "2. Part 1 of Exhibit 2 represents a shipment in which Hal Simmons Trucking Company made a split delivery.
- "3. Parts 2 through 15 of Exhibit 2 represent multiple loads which for rating purposes were consolidated into single shipments by Hal Simmons Trucking Co.
- "4. Item 172 of minimum rate tariff No. 2 requires that in order to rate a split delivery as a single shipment, the shipper must provide the carrier with proper written instructions prior to, or at the time the shipment takes place, as provided in paragraph 2 of said item.
- "5. Item of 85 of MRT 2 requires that in order to rate a multiple lot shipment as a single shipment, the shipper must provide the carrier with proper written instructions as provided in paragraph 2 of said item prior to or at the time the shipment takes place.
- "6. With respect to Parts 1 through 15 of Exhibit 2, under the procedure established by Hal Simmons Trucking Co., written instructions were not provided to Hal Simmons Trucking Co. until after the transportation had actually been performed.
- "7. That with respect to each part of Parts 1 through 15 of Exhibit 2, all other tariff requirements allowing the rating of multiple lot loads and split deliveries as a single shipment were met."

A representative of G & R Metals pleaded that if it had to pay more transportation costs, it would lose money, which it cannot afford.

The president and general manager of Westfall Stevedore Company, serving Humboldt Bay, testified:

1. On September 16, 1974, a subsidiary corporation of Westfall Stevedore Company, Hal Simmons Trucking Co. purchased the assets of a proprietorship doing business as Simmons Trucking Co.

2. One of the sellers of Simmons Trucking Co., Harold W. Simmons became the president and general manager of Hal Simmons Trucking Co. ✓

3. For \$210 per month and other fringe benefits, Mr. Simmons "entirely" ran Hal Simmons Trucking Co. subject only to weekly contacts lasting 30 to 45 minutes by owner.

4. Five days before the hearing on this proceeding, Mr. Simmons resigned at the "recommendation" of the owner, and, subsequently, the owner took active control of the corporation.

5. That the owner intends to carry out the various directions of the stipulation and do his best to collect what can be collected.

In mitigation of a punitive fine under Section 3774 of the Public Utilities Code, counsel for Hal Simmons Trucking Co. pleads that:

1. A punitive fine is inappropriate since the individual who created the difficulty is not the one who has to pay.

2. The owner of Hal Simmons Trucking Co. had no personal knowledge or involvement in any undercharging or improper invoicing or free loads or whatever was involved.

3. The parent company of the owner of Hal Simmons Trucking Co. had never had any difficulty with any regulatory authority.

4. The purpose of the punitive fine as a warning not to repeat the offenses is not served in this case because Mr. Simmons is no longer with the company and will not be in the future. Counsel recommended half of the potential fine.

Counsel for Louisiana-Pacific argued for no fine being imposed because of a picayune, technical paper work violation. Alternatively, a reduced or suspended fine was recommended.

Staff counsel emphasized that it is not proposed that Louisiana-Pacific pay a fine but that it pay the rates for transportation required by Minimum Rate Tariff 2. The staff asks that Hal Simmons Trucking Co. be required to pay a fine of \$5,000 pursuant to Code Section 3774, which is the maximum allowed by the code.

Harold W. Simmons, as an individual doing business as Simmons Trucking Co., was assessed an undercharge fine of \$3,966.80 and a punitive fine of \$750 by Decision No. 79797 dated September 14, 1972 in Case No. 9256. Undercharge letters were sent to Simmons Trucking Co. on August 10, 1960, September 22, 1961, December 2, 1964, June 28, 1966, January 8, 1968, and on March 14, 1972. Hal Simmons Trucking Co. has no history of violations.

#### Discussion

How flagrant is the violation? The following review of the degree of willfulness of the violation matter is made in consideration of (1) the volume of fine that should be punitively assessed pursuant to Section 3774 of the Public Utilities Code and (2) the ground that should be covered by a directed review of records.

Included in Exhibits 1 and 14 is evidence relating to an "Agreed Rate" device which resulted in Simmons providing, or offering to provide, transportation without charge to Coastal and Georgia-Pacific. The evidence shows for indicated shipments the amount of the "PUC Rates", the lesser amount to be realized from an "Agreed Rate" and the resulting "Diff" (difference) credited to the account as an amount owed to Coastal and Georgia-Pacific by the carrier. Free hauls were performed, or to be performed, as the control measure utilized to reduce building balances due Coastal and Georgia-Pacific and to gain the "Agreed Rate".

The foregoing device indicates a collusive practice so repugnant that the review of records outlined in numbered paragraph 8 of Exhibit 12 (staff stipulation with Simmons) is fully justified. As stated in Gardner v Rich Mfg. Co. (1945) 68 CA 2d 725, 732, the "pressure of the shippers upon the carriers for reduced rates in violation of the statute will almost entirely be relieved if the shippers know that, notwithstanding any irregular bargaining that is made, recovery may be still had on the basis of the minimum rates fixed by the Commission". Moreover, in preserving the integrity of the applicable rate structure in Keller v Thornton Canning Company, et al. (66 Cal 2d 963) "The Public Utilities Commission has been insistent that the most effective deterrent to the destruction of the policy by undercharging is exaction from the profiting shipper of the legal rate".

With further reference to paragraph 8 of Exhibit 12, because of the date situation before us, dates will be modified in the order to provide for appropriate processing.

#### Findings and Conclusions

The Commission finds the facts in the case to be those set forth in the above stipulations and concludes that Hal Simmons Trucking Co. has violated Sections 3664, 3667, 3668, 3670, 3737, 4304, and 5003.1 of the Public Utilities Code, that Hal Simmons



Trucking Co. should be ordered to collect the undercharges involved, that Hal Simmons Trucking Co. should be fined in the amount of the undercharges, that Hal Simmons Trucking Co. in view of the mitigating circumstances, should be fined punitively in the amount of \$2,500, and that Hal Simmons Trucking Co. should be ordered to review its records and collect transportation charges applicable to any and all shipments, other than those already identified in Parts 1 through 8 of Exhibit 4, hauled without charge for Coastal and Georgia-Pacific.

The Commission expects that Hal Simmons Trucking Co. will proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges including, if necessary, the timely filing of complaints pursuant to Section 3671 of the Public Utilities Code. The staff of the Commission will make a subsequent field investigation into such measures. If there is reason to believe that Hal Simmons Trucking Co. or its attorney has not been diligent, or has not taken all reasonable measures to collect all undercharges, or has not acted in good faith, the Commission will reopen this proceeding for the purpose of determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Hal Simmons Trucking Co. shall pay a fine of \$2,500 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Hal Simmons Trucking Co. 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. Hal Simmons Trucking Co. shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$14,046.08 on or before the fortieth day after the effective date of this order.

3. Hal Simmons Trucking Co. shall pay the sum of \$76 to this Commission pursuant to Sections 4304, 4307(a), 5003.1 and 5007 on or before the fortieth day after the effective date of this order.

4. Hal Simmons Trucking Co. shall take such action, including legal action, as may be necessary to collect the undercharges set forth in the findings and shall notify the Commission in writing upon collection.

5. Hal Simmons Trucking Co. shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. In the event the undercharges ordered to be collected by paragraph 4 of this order, or any part of such undercharges remain uncollected sixty days after the effective date of this order, respondent shall file with the Commission on the first Monday of each month after the end of the sixty days, a report of the undercharges remaining to be collected, specifying the action taken to collect such undercharges and the result of such action, until such undercharges have been collected in full or until further order of the Commission. Failure to file any such monthly report within fifteen days after the due date shall result in the automatic suspension of Hal Simmons Trucking Co.'s operating authority until the report is filed.

6. Hal Simmons Trucking Co., excepting those shipments already identified in Parts 1 through 8 of Exhibit 4, shall (a) review its business records, including all freight bills, mill tags, bookkeeping and/or other supporting documents relating to the transportation of property without charge for Coastal and Georgia-Pacific, during the period from September 1, 1974 to November 16, 1976, (b) file its report with the Commission by June 1, 1977 which report shall include the identity of all shipments hauled without

charge and show the minimum rate and charge applicable to each such shipment which charges are to be billed to Coastal and Georgia-Pacific by June 15, 1977, and (c) in the event any such undercharge remains uncollected by August 1, 1977, legal remedies shall be timely utilized to effect collection, and a report covering the collection status of such undercharges shall be filed with the Commission on September 5, 1977 and the first Monday of each month thereafter until such undercharges have been collected in full or until further order of the Commission.

7. Hal Simmons Trucking Co. 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 minimum rates and charges prescribed by this Commission.

The Executive Director of the Commission shall cause personal service of this order to be made upon respondent Hal Simmons Trucking Co. and 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 26<sup>th</sup> day of APRIL, 1977.

Robert B. Brown  
President  
William J. Quinn  
Vernon L. Sturgeon  
Richard W. Howell  
Commissioners