

ORIGINAL

Decision No. 87285

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own )  
motion into the operations, rates and )  
practices of Lloyd A. Cannon, an )  
individual, doing business as Lloyd )  
Cannon Trucking; Middleton Brokerage )  
Co., Inc., a California corporation. }

Case No. 10161  
(Filed August 17, 1976)

R. M. Farran, for Lloyd Cannon  
Trucking; and Russell, Schureman,  
Fritzie & Hancock, by R. Y.  
Schureman, Attorney at Law, for  
Middleton Brokerage Co., Inc.;  
respondents.  
Elmer Sjostrom, Attorney at Law,  
and E. E. Cahoon, for the  
Commission staff.

ORDER

This is an investigation on the Commission's own motion into the operations, rates, and practices of Lloyd A. Cannon, an individual doing business as Lloyd Cannon Trucking (Cannon), for the purpose of determining whether he violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code by charging and collecting less than minimum rates in Minimum Rate Tariff 2 (MRT 2) for transportation performed for Middleton Brokerage Co., Inc. (Middleton), particularly as evidenced by 23 freight bills identified on page 2 of the Order Instituting Investigation (OII), bearing dates from May 28, 1975 to October 22, 1975.

Public hearing was held October 7, 1976 at Fresno before Examiner Norman Haley, at which time the matter was submitted.

The Commission staff conducted an investigation of Cannon's operations on certain days during October, November, and December 1975, and February and March 1976. Based on its investigation the staff contends that undercharges from the 23 shipments listed in the OII total \$11,000.57. The staff seeks an order (1) directing Cannon to collect \$11,000.57 from Middleton pursuant to Ordering Paragraph 4 of the OII; (2) assessing Cannon a fine of \$11,000.57 for undercharges to Middleton pursuant to Section 3800 of the Public Utilities Code; and (3) assessing Cannon a fine of at least \$2,000 for undercharges pursuant to Section 3774 of the Public Utilities Code. Middleton disagrees substantially with the amount of undercharges the staff contends have resulted.

Evidence of Staff

Evidence on behalf of the staff was presented by an associate transportation representative who introduced Exhibits 1, 2, and 3, and by an associate transportation rate expert who introduced Exhibit 4.<sup>1/</sup> According to Exhibit 2

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<sup>1/</sup> Exhibit 1 was introduced as a stipulation of facts, issues, and recommended fines. The stipulation was executed by staff counsel, Cannon's representative, Cannon's wife and his auditor. Exhibits 2, 3, and 4 are appendices to the Exhibit 1 stipulation. Those exhibits contain carrier data and facts relative to the shipments involved, photocopies of invoices and supporting documents, summary of shipping document data, and statements of applicable minimum rates. The stipulation affirms, among other things, that the allegations in Ordering Paragraphs 1 through 5 of the OII are true and correct; that data gathered by the staff and incorporated in Exhibits 2, 3, and 4, including the staff's ratings, are true and correct; and that the total resulting undercharges are \$11,000.57. Middleton opposed the stipulation. Middleton was the owner of all merchandise after being loaded on Cannon's trucks, and was responsible for all freight charges.

Cannon operates pursuant to a radial highway common carrier permit. He employs 25 drivers, 3 mechanics, and 5 people in the office. He operates 31 tractors and 40 sets of dry van-type trailers. His main terminal and office is in Fresno, with other terminals in Montebello (Los Angeles County) and San Leandro (Alameda County). For the year ended March 31, 1976 gross earnings were \$1,952,687, of which \$138,392 was earned from subhauling. Cannon paid subhaulers \$171,411. He has been fined by the Commission three times for undercharges, and his operating authority has been suspended once because of rate violations.<sup>2/</sup>

Exhibit 3 shows that the shipments in question consisted of egg cartons and egg case filler flats, as described in Items 41520 and 60360, respectively, of National Motor Freight Classification 100-B (NMFC). The shipments consisted generally of two truckloads (a truckload was one set of doubles consisting of a tractor and two semitrailers). The shipments moved from Packaging Company of California (PCC) at Berkeley mainly to Middleton at Pico Rivera (Los Angeles County). Both

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<sup>2/</sup> Decision No. 81467 (1973), Case No. 9363.  
Undercharge fine - \$7,193.90; punitive fine - \$1,000.

Decision No. 72975 (1967), Case No. 8610.  
Undercharge fine - \$5,113.11; punitive fine - \$2,000.

Decision No. 66335 (1963), Case No. 7673.  
Collect undercharges of \$2,574.99; punitive fine - \$5,000.

Decision No. 62632 (1961), Case No. 7099.  
Suspension of operating authority for ten days because of rate violations.

PCC and Middleton are located on rail. However, some of the loads were diverted in transit by Cannon for Middleton for delivery to Egg City in Moorpark (Ventura County), an intermediate point to Pico Rivera not located on rail. All shipments were power-loaded by the consignor and power unloaded by the consignee without assistance of the driver or expense to the carrier. Cannon does not leave any trailer equipment for loading at Berkeley without the presence of carrier motive equipment and carrier personnel. Cannon made dispatch records available to the staff in addition to shipping documents.

According to the staff rate expert the primary cause of the undercharges was violation of paragraph 4.b.(2) of Item 85 (shipments transported in multiple lots). The shipments in question were rated by Cannon under rail tariffs. The governing provisions of Item 85 provide, among other things, that under rail rates the entire shipment must be picked up in one 24-hour period unless the carrier's trailers were placed for loading by the consignor without the presence of carrier personnel or motive equipment. When trailers are left for loading without the presence of carrier personnel or motive equipment, the carrier has two days to pick up each entire shipment. Mostly, the component parts of the shipments here involved were picked up in a period of two days. It was the opinion of the rate expert that the 24-hour pickup requirement in paragraph 4.b.(2) of Item 85 was violated in connection with the shipments involved.

It was the testimony of the rate expert that multiple lot documents (master bills) were not prepared by the shipper prior to or at the time of the first pickup as required by Item 85. He explained that under Item 85 the carrier shall not transport a multiple lot shipment unless prior to or at the time

of the initial pickup written information has been received from the consignor describing the kind and quantity of property which will constitute the multiple lot shipment. Assertedly, the actual date of each pickup was the date shown on the bill of lading for each individual truckload. The dates on individual bills of lading covering separate loads comprising one composite shipment were sometimes different because Cannon did not pick up the complete shipment in one 24-hour period. The date on the master bill was the date the last component load of the total shipment was picked up. He gave an example from Part 3 of Exhibit 4. Master bill 12281 and sub-bill 12280 were both dated June 2, 1975. However, sub-bill 12279 to the master bill was dated May 30, 1975. Different dates on sub-bills occurred throughout the 23 parts of Exhibit 4. Master bills were dated from one to three days after the date of the first sub-bills.

The shipments involved were rerated by the rate expert under rates and rules in MRT 2, including rules providing for use of rail rates where applicable. The lowest of either the rail rate or the published minimum rate was used. Generally, each lot of merchandise which the carrier rated as one shipment was rerated as two shipments. This approximately doubled the number of shipments as documented by Cannon. It was explained that when the individual truckloads were rated as separate shipments, undercharges resulted because rail carload minimum weights had to be protected or the rail rates themselves could not be used.

With respect to the Moorpark deliveries, the rate expert gave an example in Part 3 of Exhibit 4 of a two-load shipment (sub-bills 12266 and 12267 dated May 28 and 29, 1975, respectively), which was shown on master bill 12268 as being destined and delivered to Middleton at Pico Rivera. However,

reference to the driver's hand tag in Exhibit 3 discloses that one load in the shipment covered by sub-bill 12267 was delivered to Moorpark, and the load covered by sub-bill 12266 was delivered to Pico Rivera. Parts 3, 9, 12, 15, 16, and 21 of Exhibit 4 cover seven such situations. The diverted loads went directly to Moorpark without first going to Pico Rivera. The diversions were arranged through Cannon's dispatcher at Montebello who contacted the drivers or subhaulers enroute by telephone. There is no record of the points enroute where the diversions were made. No separate bills of lading were issued for the off-rail deliveries to Moorpark, and no additional charges were assessed in addition to the rail rate to Pico Rivera.

On cross-examination the rate expert agreed that there was nothing in MRT 2 to preclude Middleton from rating complete shipments to Pico Rivera at rail rates (if applicable) and then rating portions as if they had moved back to Moorpark as separate shipments. He explained, however, that rail rates would not be applicable to any of the 23 shipments under Item 85 because they were picked up within a two-day period, and final documentation bore the date of the second day. He agreed that the individual bills of lading in Exhibit 3 (sub-bills) make reference to the master bills, and that the first bill of lading issued contains a description of the commodities to be moved. He also agreed that the commodities involved have a low density in pounds per cubic foot of space occupied, come in different size cartons, and that it would not be possible to determine in advance the exact number of packages or pounds that could be loaded in a given semitrailer.

The rate expert stated that for purposes of comparison he also rerated the shipments involved as if the documentation had been correct, i.e., the master bill had been prepared prior to or at the time of the first pickup. For that purpose he rated the shipments under MRT 2 rates (not under rail rates) because they were picked up in two days. On this basis the total undercharges would have been \$11,358.97, or \$358.40 more than the \$11,000.57 determined under Exhibit 4.

Evidence of Middleton

Evidence on behalf of Middleton was presented through the company president and a traffic consultant. The president supervises the office of Middleton. According to the president, the commodities involved were owned by Middleton when loaded on Cannon's trucks and moved freight collect, both to Pico Rivera and Moorpark. To obtain transportation someone at Middleton would call Cannon's Los Angeles office and request that freight be picked up from PCC at Berkeley. The requests were for a specific number of trailers. PCC thereafter issued the bill of lading. The commodities come in four different sizes of wrapped bundles, each having different dimensions. The packaging for each size is basically consistent; however, mixtures of the commodities vary with each truckload. For the most part large warehouse stocks of the four items were available to make up entire loads at the time of loading. However, because of variances in sizes of trailers and package dimensions it assertedly was not possible to tell to the bundle how many bundles or how much weight a given trailer or set of double trailers would hold. It was for this reason that Middleton arranged for transportation simply by ordering a specific number of trailers.

The traffic consultant has had experience with numerous freight tariffs since 1939, including MRT 2, NMFC, and rail tariffs. It was his opinion that the shipper, PCC, essentially had complied with Item 85 of MRT 2 with respect to documenting and tendering the shipments in question. He agreed that Cannon's drivers remained with the trailers during the time they were placed for loading at PCC. It was his opinion, however, that when loading was performed by the shipper, and neither the carrier's tractor nor the driver's labor was employed doing anything, the mere presence of the tractor and driver was not pertinent. He contended that under those circumstances, the meaning and intent of the 24-hour restriction in paragraph 4.b.(2) of Item 85 has no application. He asserted that it is common practice for drivers to accompany their equipment even if the shipper is loading or unloading. He said that in connection with loading at PCC, Cannon's drivers did not have any place else to go.

The consultant contended that freight charges on the loads delivered to Pico Rivera were essentially in order as originally billed, except that some overcharges were found. He said that Cannon and the staff made reference to Item 492 of Pacific Southcoast Freight Bureau Tariff 274 (rail tariff) to cover egg carrier filler flats and egg carrier cartons from Berkeley to Pico Rivera. It was his opinion that the filler flats and cartons should have been treated separately because the filler flats were subject to lower rates under Items 75 and 270 of Tariff 274. The witness stated that Item 75 provides for box fillers, liners, or partitions, including egg case fillers, fiberboard. He said that column 6 under Item 75 from Berkeley and Oakland to Pico Rivera provided a rate of 99 cents per 100 pounds instead of \$1.20 used by Cannon during the earliest part of the period in question.



It was the opinion of the consultant that freight charges billed for those loads diverted to Moorpark were incorrect and that certain undercharges resulted. He introduced and explained Exhibit 5 wherein undercharges were calculated on the seven loads delivered to Moorpark. Charges as paid by Middleton were recalculated as if the Moorpark deliveries had come out of rail-rated shipments first delivered from PCC at Berkeley to Middleton at Pico Rivera. The Moorpark deliveries were then rerated as new shipments at MRT 2 Class 60 rates, minimum weight 24,000 pounds, for 67 miles from Pico Rivera to Moorpark. As stated above, there were no bills of lading issued for the Moorpark deliveries. Freight charges paid for the seven Moorpark deliveries were \$3,602.11, charges recalculated in Exhibit 5 by the consultant's method were \$4,398.13, and the amount of undercharges thus calculated were \$796.02.

Position of Cannon

Cannon did not attend the hearing, and no separate evidence was presented on his behalf. His representative,<sup>3/</sup> wife, and auditor stipulated to the facts, statements, and ratings contained in the staff exhibits (Footnote 1, above). Cannon's representative was of the opinion that the sought fine of \$2,000 under Section 3774 of the Public Utilities Code was not relatable to Cannon's prior fines, was not based on any standard or program, and, therefore, would be discriminatory, arbitrary, and unrealistic. He contended that based on the record there should not be any fine. It was his

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<sup>3/</sup> Cannon's representative telephoned the Commission's Los Angeles office in January 1977 and stated that Cannon had died. The date and circumstances of his death are unknown. There has been no official notice to the Commission of this event.

opinion that the alleged undercharge of \$11,000.57 in all probability resulted from mistaken billing. He contended that there was no false billing on the Moorpark deliveries.

Discussion

The record shows that master bills for the shipments involved were not prepared prior to or at the time of the first pickup. Sub-bills for individual truckloads covered by one master bill were dated from one to three days apart. Master bills uniformly were dated the same day as the last sub-bill involved. The fact that a single multiple-lot document was not prepared prior to or at the time of the first truckload pickup made Item 85 inapplicable.

Aside from failure to issue a single multiple-lot document at the time of the first pickup, the record shows that the truckloads involved were rated at rail rates; that the component truckloads under one master bill were picked up over periods of more than 24 hours; and that Cannon's drivers and motive equipment were present while trailers were placed for loading by PCC.<sup>4/</sup> These conditions made paragraph 4.b.(2) of Item 85 inapplicable (use of rail rates).

The provisions of Item 85 are permissive. They are designed to provide carriers and shippers more flexibility in rating freight in multiple lots (resulting in lower charges) than if the item did not exist. The provisions of Item 85 are

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<sup>4/</sup> According to the record the date on the bill of lading (sub-bill) was the date of pickup. The record does not show that there were delays of as much as 24 hours in loading individual truckloads. If there had been, drivers could have taken their tractors to Cannon's San Leandro terminal (10 to 15 miles) for other assignments.

purposefully restrictive. If Cannon did not desire to comply with Item 85 he should have used other provisions of MRT 2, or sought relief under Section 3666 of the Public Utilities Code.

The record shows that the methods used by the staff rate expert to determine the applicable minimum charges, including charges on the Moorpark deliveries, were correct. We agree with the undercharges shown in Exhibit 4.

Cannon was a respondent in Cases Nos. 7099, 7673, 8610, and 9363. In each of the four proceedings penalties were imposed for various violations, including violations of multiple-lot rules.

We are of the opinion that Cannon should be directed to collect the undercharges found herein, to cease and desist violating the minimum rate tariffs, and to pay a fine in the amount of the undercharges plus a punitive fine of \$2,000.

Findings

1. Cannon operates pursuant to a radial highway common carrier permit.
2. Cannon was served with the applicable minimum rate tariff and distance table, together with all supplements and additions to each.
3. Cannon transported truckloads of egg cartons and egg case filler flats, subject to MRT 2, from PCC at Berkeley to Middleton at Pico Rivera and to Egg City at Moorpark, as shown in the 23 parts of Exhibits 3 and 4.
4. The record, including Exhibits 3 and 4, shows that master bills covering the multiple truckloads involved were not issued prior to or at the time of the first pickup.

5. The record, including Exhibits 3 and 4, shows that sub-bills to single master bills covering more than one load bore dates from one to three days apart.

6. Individual truckloads covered by one master bill were picked up at PCC during periods of more than 24 hours, computed in accordance with provisions of paragraph 4.b.(2) of Item 85 of MRT 2.

7. Cannon's drivers and motive equipment were present while trailers were placed for loading by PCC.

8. The provisions of Item 85 of MRT 2 were not applicable to the truckload movements covered by Exhibits 3 and 4.

9. The correct minimum rates and charges for the truckload movements covered by Exhibits 3 and 4 are those calculated by the staff rate expert in Exhibit 4.

10. Cannon charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibit 4, resulting in undercharges in the amount of \$11,000.57.

#### Conclusions

1. Cannon violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code.

2. Cannon should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$11,000.57 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$2,000.

3. Cannon should be directed to cease and desist violating the minimum rates and rules established by the Commission.

C.10161 car

The Commission expects that Lloyd Cannon or the legal representative of his estate will proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges including, if necessary, the timely filing of a complaint pursuant to Section 3761 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 Cannon or the legal representative of his estate or his 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. Lloyd Cannon, an individual doing business as Lloyd Cannon Trucking, or the legal representative of his estate shall pay a fine of \$2,000 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Lloyd Cannon or the legal representative of his estate 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.

C.10161 car

2. Lloyd Cannon or the legal representative of his estate shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$11,000.57 on or before the fortieth day after the effective date of this order.

3. Lloyd Cannon or the legal representative of his estate shall take such action, including timely legal action pursuant to Section 3671 of the Public Utilities Code, as may be necessary to collect the undercharges set forth in Finding 10 and shall notify the Commission in writing upon collection.

4. Lloyd Cannon or the legal representative of his estate 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 3 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 Lloyd Cannon's operating authority until the report is filed.

5. Lloyd Cannon or the legal representative of his estate 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, Lloyd Cannon or the legal representative of his estate, and cause service by mail of this order to be made upon respondent, Middleton Brokerage Co., Inc. 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 3rd day of MAY, 1977.

Robert B. Berman  
President  
William J. Aguirre  
Virginia L. Johnson  
Charles D. Howell  
Commissioners