

ORIGINAL

Decision No. 87315

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of Mammoth Freight Lines, Inc., a California corporation; Mik-Mar Foods Co., a California corporation; Davis Canning Company, a California corporation; Interstate Kol-Pak; Shamrock Meats Inc., a California corporation; Smith Food King No. 1, a foreign corporation; United Food Supply Company, a California corporation; Danfood Corporation, a California corporation; Vons Grocery Company, a foreign corporation; C. H. B. Foods, Inc., a California corporation; Los Angeles Meat Co., a California corporation.

Case No. 10004
(Filed November 18, 1975)

Marvin Handler, Attorney at Law, for Mammoth Freight Lines, Inc., respondent.
Elmer J. Sjoström, Attorney at Law, and E. Hjelt, for the Commission staff.

O P I N I O N

Decision No. 86461 dated October 5, 1976 directed Mammoth Freight Lines, Inc. (Mammoth), a California corporation, to collect undercharges of \$9,696.07 and pay a fine in the amount of the undercharges by December 7, 1976, file monthly status reports of the action to collect the undercharges, and to pay a punitive fine in the amount of \$1,000. The amount of the undercharges and the punitive fine were the result of a stipulation negotiated by the

Commission staff and Mammoth. The stipulation reflected a modification of the staff's exhibits to delete from the formal proceeding transportation on which the statute of limitations would have run before a hearing date could be set.

On December 9, 1976 the staff contacted Mammoth to determine why the undercharges and punitive fine had not been paid. On December 28, 1976, Mammoth remitted \$2,262.48 representing the undercharges of six of the respondent shippers and \$250.00 to be applied toward the punitive fine.

Through Mammoth's counsel a meeting was arranged between the staff and Mammoth's vice president. The meeting was held on January 19, 1977 at which time Mammoth's vice president advised that no suits to toll the statute of limitations had been filed and that the balance of the punitive fine would be paid on his return trip to Fresno. The statute of limitations has now run on the undercharges remaining to be collected and paid in the amount of \$7,683.59.

On March 3, 1977 the matter was reopened by the assigned examiner to receive evidence to the extent to which Mammoth complied with the directives contained in Decision No. 86461 and whether further sanctions should be imposed on Mammoth.

On March 4, 1977 a check in the amount of \$750 paying the balance of the \$1,000 punitive fine was received.

Hearing was held on April 4, 1977 at San Francisco before Examiner Banks. At the hearing the staff proposed that the outstanding balance of undercharges in the amount of \$7,683.59 be paid to the Commission at \$500 per month until paid in full. In addition, the staff proposed an additional punitive fine in the amount of \$2,000, with \$1,500 suspended and \$500 payable within ten days after the effective date of an order issued by the Commission. The \$1,500 suspended fine would be due and payable immediately should Mammoth fail to make a scheduled \$500 monthly payment.

Mammoth agreed to the staff's proposal except that it was felt that the imposition of the punitive fine should not be levied without proper notice. The parties finally stipulated that the \$500 payment would be due the first of each month until paid in full. If a payment is not received at the Commission on or before the first of the month, a notice of nonreceipt would be given Mammoth within ten days. Mammoth would then have twenty days in which to make payment. If payment is not received within the twenty days, the suspended \$1,500 punitive fine becomes due and payable.

Based on the record herein, we believe that the stipulation should be accepted.

Findings

1. Decision No. 86461 dated October 5, 1976 ordered respondent Mammoth to take such action, including legal action, to collect undercharges in the amount of \$9,696.07 from respondent shippers and pay to the Commission within forty days from the effective date of the order.
2. Mammoth was ordered to pay a punitive fine of \$1,000 pursuant to Section 3774 of the Public Utilities Code.
3. Mammoth collected and paid undercharges in the amount of \$2,012.48.
4. Mammoth failed to collect and toll the statute of limitations from respondent shippers undercharges in the amount of \$7,683.59.
5. A punitive fine in the amount of \$1,000 ordered by Decision No. 86461 has been paid by Mammoth.
6. Mammoth should be allowed to pay the uncollected undercharges at the rate of \$500 per month.
7. Mammoth should pay an additional punitive fine in the amount of \$2,000 pursuant to Section 3774 of the Public Utilities Code, of which \$1,500 should be suspended and \$500 should be payable within ten days from the effective date of this order.

8. Failure to make the monthly \$500 payment within twenty days from the date of notice of nonreceipt will cause the suspended portion of the \$1,500 fine to become immediately due and payable.

Conclusions

1. The stipulation for payment of the uncollected undercharges ordered pursuant to Decision No. 86461 should be adopted.

2. Mammoth should pay a fine in the amount of \$2,000 pursuant to Section 3774 of the Public Utilities Code, \$1,500 suspended and \$500 payable on or before the tenth day after the effective date of this order. The \$1,500 suspended fine shall become due and payable upon failure of Mammoth to make the \$500 monthly payment within twenty days from the date of notice of nonreceipt of monthly payment.

O R D E R

IT IS ORDERED that:

1. Mammoth Freight Lines, Inc. shall pay the unpaid balance of the fine imposed by Decision No. 86461 at the rate of \$500 per month due on the first of each month until paid. The first payment shall be due on the first day of the month after the effective date of this order.

2. Mammoth Freight Lines, Inc. shall pay a fine to the Commission pursuant to Section 3774 of the Public Utilities Code of \$2,000 of which \$1,500 is suspended and \$500 is payable on or before the tenth day after the effective date of this order.

3. Failure to make the monthly payment as ordered in Ordering Paragraph 1 herein will cause the suspended fine imposed by Ordering Paragraph 2 in the amount of \$1,500 to become immediately due and payable within twenty days after the date of notice of nonreceipt of monthly payment.

C.10004 km

4. Provisions of Decision No. 86461 not changed by this order shall remain in full force and effect.

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

Dated at San Francisco, California, this 10th day of MAY, 1977.

Robert Bateman
President
William J. Quinn
Yuan J. Sturgeon
Richard D. Smith
Commissioners