

Decision No. 87319

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 W. S. Emerian }  
Trucking, Inc., a California corpor- }  
ation, and Soule Steel Company, a }  
California corporation. }

Case No. 10216  
(Filed November 30, 1976)

Wallace Emerian and Rick Emerian, for  
W. S. Emerian Trucking, Inc., and  
Walter L. Heinrichs, for Soule Steel  
Company, respondents.  
Jasper Williams, Attorney at Law, and  
E. 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, rates, charges, and practices of W. S. Emerian Trucking, Inc. (Emerian) for the purpose of determining whether Emerian charged less than the applicable minimum rates in connection with transportation performed for Soule Steel Company (Soule), a corporation.

Public hearing was held before Examiner Arthur M. Mooney in Fresno on January 11, 1977, on which date the matter was submitted.

Emerian operates pursuant to a radial highway common carrier permit. During the period covered by the staff investigation referred to below, Emerian had a terminal in Fresno, operated 5 tractors and 10 40-foot flatbed trailers, employed 5 drivers, and had all applicable minimum rate tariffs, distance tables, and exception tariffs. Its gross operating revenue for the year ending June 30, 1975 was \$246,720.

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On various days between August 25, 1975 and March 11, 1976 a representative of the Commission's staff visited Emerian's place of business and examined its records covering the transportation of steel reinforcement bars for Soule during the period March 1 to June 3, 1975. The representative testified that he made true and correct photostatic copies of various freight bills and other underlying documents relating to this transportation and that they are included in Exhibit 2; that all of the transportation originated at Soule's plant in Long Beach and was destined to either Fresno or Sacramento; and that in each of the 38 instances documented in Exhibit 2, Emerian had incorrectly consolidated two separate pickups as a single shipment and applied alternative rail rates to the transportation without complying with the applicable provisions of Item 85 of Minimum Rate Tariff 2 (MRT 2). He pointed out that, as evidenced by the documentation in Exhibit 2, the 2 individual loads in each shipment were not picked up within the same 24-hour period. The witness stated that Wallace Emerian informed him that at times the consignee wanted only part of a shipment on one day and the balance on another day, and at other times all of the shipment was not ready for pickup on the same day; that Soule issued a separate bill of lading for each pickup at the time thereof and a master bill of lading for the entire multiple lot shipment at the time of the last pickup; and that although he knew how many loads were to be picked up, no written documentation was issued by Soule for the entire multiple lot shipment prior to or at the time of the initial pickup. The representative testified that this information was confirmed by Soule's Production Control Clerk. He stated that the staff had given Emerian the opportunity to handle this matter on an informal basis without a public hearing; that in this connection, an Undercharge Citation for Violation of

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Public Utilities Code was served on the carrier on October 8, 1976 (Exhibit 3); that on the same date the respondent signed Form 2 which is a denial of the charges in the Undercharge Citation (Exhibit 4); and that for this reason, the investigation order was issued and the instant hearing held.

A rate expert for the commission staff testified that he took the sets of documents in Exhibit 2, together with the supplemental information testified to by the representative, and formulated Exhibit 5, which shows the rates and charges assessed by Emerian, the rates and charges computed by the staff, and the alleged undercharges for the transportation in issue. He stated that, as pointed out by the representative, the alleged rate errors resulted from violations of the Multiple Lot Rule in Item 85 of MRT 2. He pointed out that paragraph (a)2 of Item 85 requires the shipper to furnish to the carrier, prior to or at the time of the initial pickup, written information describing the kind and quantity of property in the multiple lot shipment; that in all instances summarized in Exhibit 2, this had not been done; that paragraph (a)4.b of the item provides that if alternative rail rates are used and the carrier does not leave trailer equipment with the shipper for loading by it without the presence of carrier personnel or motor equipment, the entire shipment must be picked up within a 24-hour period computed from 12:01 a.m. of the date on which the initial pickup commences; that for the transportation covered by each of the 38 parts of Exhibit 5, Emerian had not left trailing equipment with the shipper for loading by it, had picked up part of the freight beyond the 24-hour period, had consolidated all of the transportation as a single shipment for rating purposes, and had applied alternative rail rates to the transportation; that alternative rail rates produced the lowest charges for this transportation; and that for the reasons

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stated, the staff rated the two pickups covered by each part of the exhibit as a separate shipment. The rate expert testified that the total of the undercharges shown in Exhibit 5 is \$15,286.87.

Following is a summary of the testimony presented by the president and the vice president of Emerian: For the transportation summarized in Parts 5 and 13 of the staff's Exhibits 2 and 5, the drivers' time cards clearly establish that the 2 loads covered by each part were both picked up at the same time and not on different days as erroneously shown on the component bills of lading for each pickup; since the 2 loads, in each instance, were picked up at the same time, they constituted a single shipment; and for this reason, the rates and charges computed by Emerian for these two parts were correct. For the transportation covered by each of the other 36 parts of the 2 staff exhibits, the dates on the individual bills of lading for each pickup are correct and show, as the staff asserted, that the 2 loads were not picked up on the same day. Although Emerian always picked up 2 truckloads each day to make the 80,000-pound weight on which the alternative rail rate it used was based, the two loads were not always part of the same multiple lot shipment. As to shipping instructions for multiple lot shipments, Soule did inform Emerian by telephone of the orders it had, however, it did not furnish Emerian with written instructions or other master documentation for all of the freight in a multiple lot shipment until the last pickup was completed because of variances in the sizes and weights of the steel reinforcing bars ordered. The violations here are technical paperwork violations of Item 85, and Emerian should not be required to collect undercharges from Soule. There has never been any fraudulent intent on the part of either the shipper or carrier to violate Commission rules. It has always been Emerian's intent to charge the correct rate. Emerian and Soule are now complying with the technical requirements of Item 85.

With the exception of Parts 5 and 13 for which Emerian had driver time cards showing all pickups on the same day, we concur with the staff ratings and undercharges shown in Exhibit 5. For the remaining 36 parts of Exhibit 5, the record clearly establishes the violations of Item 85 pointed out by the staff. The violation of any of these provisions alone would have required the rating of the components as separate shipments as asserted by the staff. Emerian considers these mere technical violations which the Commission should overlook. We do not agree. It is a general rule that each shipment must be rated separately. The Multiple Lot Rule in Item 85 is an exception to this general rule. As stated in our decision in Investigation of Gem Freight Lines ((1963) 61 CPUC 411), the multiple lot shipment exception allows property tendered together as a single shipment to be transported in more than one physical movement, without incurring the higher rates for separate shipments, and to qualify for this exception, all applicable documentation and other requirements must be strictly complied with. By eliminating Parts 5 and 13 from Exhibit 5, the total of the remaining undercharges shown therein is \$14,498.79.

The staff recommended that Emerian be directed to collect the undercharges shown in Exhibit 5 and pay a fine in the amount thereof plus a punitive fine of \$1,500. Emerian did not object to the recommended punitive fine; however, as pointed out above, it argued that it would be unjust to direct collection of the undercharges and to impose a fine in the amount thereof on it. For the reasons stated, we will, with the exception of the undercharges shown in Parts 5 and 13 of Exhibit 5, adopt the staff recommendations.

Findings

1. Emerian operates pursuant to a radial highway common carrier permit.

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2. During the period covered by the staff investigation, Emerian had copies of all applicable minimum rate tariffs, distance tables, and exception tariffs.

3. It has not been shown that Emerian incorrectly rated the transportation summarized in Parts 5 and 13 of Exhibit 5.

4. With the exception of Parts 5 and 13, Emerian and Soule did not comply with all applicable provisions of Item 85 or MRT 2 in connection with the transportation summarized in Exhibit 5.

5. With the exception of Parts 5 and 13, the minimum rates and charges and undercharges computed by the staff in Exhibit 5 are correct.

6. With the exception of Parts 5 and 13, Emerian charged less than lawfully prescribed minimum rates in the instances set forth in Exhibit 5 resulting in undercharges in the total amount of \$14,498.79.

#### Conclusions

1. Emerian violated Sections 3664 and 3737 of the Public Utilities Code.

2. Emerian should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$14,498.79 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$1,500.

3. Emerian should be directed to cease and desist from violating the rates and rules of the Commission.

The Commission expects that Emerian will proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. The staff of the Commission

will make a subsequent field investigation into such measures. If there is reason to believe that Emerian 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. W. S. Emerian Trucking, Inc. shall pay a fine of \$1,500 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. W. S. Emerian Trucking, Inc. 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. W. S. Emerian Trucking, Inc. shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$14,498.79 on or before the fortieth day after the effective date of this order.
3. W. S. Emerian Trucking, Inc. shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 6 and shall notify the Commission in writing upon collection.
4. W. S. Emerian Trucking, Inc. 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 W. S. Emerian Trucking, Inc.'s operating authority until the report is filed.

5. W. S. Emerian Trucking, Inc. is placed on notice that failure to collect the undercharges will not serve as an equitable cause for a reduction in the undercharge fine pursuant to Public Utilities Code Section 3800.

6. W. S. Emerian Trucking, Inc. 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.



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The Executive Director of the Commission shall cause personal service of this order to be made upon respondent W. S. Emerian Trucking, Inc. 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 10<sup>th</sup> day of May, 1977.

Robert Bateman  
President  
William L. Quinn  
Thomas L. Stinson  
Richard D. Howell  
Commissioners