

ORIGINAL

Decision No. 87627 JUL 19 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of Newsome Transport, Inc.; and Orban Lumber Company, a California corporation.

Case No. 10249  
(Filed February 1, 1977)

Kathe Newsome, for Newsome Transport, Inc.;  
and Sam L. Stone, Attorney at Law, for  
Orban Lumber Company; respondents.  
Thomas Grant, Attorney at Law, and  
Ken Henderson, for the Commission staff.

O P I N I O N

Hearing was held before C. T. Coffey in Eureka on March 15, 1977 on this investigation on the Commission's own motion to determine whether or not Newsome Transport, Inc. (Newsome), which operates as a radial highway common carrier may have violated Public Utilities Code Sections 3664, 3667, 3668, and 3737 in performing for-hire transportation of freight for the Orban Lumber Company (Orban), dba Carlotta Lumber Company, by charging and collecting from Orban less than the prescribed minimum rates. The Commission's official files reflect that all parties were duly served with copies of the Order Instituting Investigation and notice of hearing. The matter was submitted upon receipt of the transcript on April 20, 1977.

At the hearing, on staff motion, the following was stricken from the language of that Order Instituting Investigation:

- "2. Whether respondent Newsome has violated Section 3737 of the Public Utilities Code by failing to comply with the requirements of rules established by Item 255 of Minimum Rate Tariff No. 2 and by Commission General Order No. 102-F by neglecting to show weights of shipment and rates and charges assessed on freight bills, and by failing to issue subhaul agreements."

The following stipulation as to facts was signed by Kathe Newsome, for Newsome, Sam L. Stone for Orban, and Thomas Grant for the Commission staff and was received in evidence as Exhibit 3:

- "1. The information in the document entitled 'Carrier Data', and marked for identification as Exhibit No. 1, is true and correct;
- "2. On various days in September, 1974 and January, February and March, 1975, a member of the staff conducted an investigation into respondent Newsome's 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 Newsome's shipping documents and supplemental information obtained by the staff during said investigation for transportation performed by Newsome for Orban Lumber Company (Orban) and marked for identification as Exhibit No. 2 are true and correct."

Item 85 of MRT 2 provides that each pickup of shipments transported in multiple lots shall be noted as a separate shipment if any of the property is picked up without complying with the following provision:

- "(a)2. 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. Preparation by the shipper of the required single multiple lot document for the entire shipment, referred to in paragraph 3 of this item, for execution by the shipper and carrier prior to or at the time of initial pickup, will constitute compliance with this paragraph." (Emphasis added.)

Exhibit 4 sets forth the minimum rates and charges on 26 separate shipments of lumber transported by Newsome from the Carlotta Lumber Co. in Carlotta to Orban in Palos Verdes. Orban was charged \$418 for each shipment as part of a multiple lot shipment. In no instance did Orban comply with paragraph (a)2 of Item 85 quoted above.

Counsel for Orban argued that this is a case of a very technical violation of Item 85 in "that these shipments did in fact go in accordance with the rules set out in Item No. 85, with the one exception that there is not a single document which is acceptable to the Public Utilities Commission that would qualify as the document called for in Item No. 85 in a single-lot document." Counsel saw no good purpose in any additional charges.

An experienced staff witness testified that it was his opinion that 95 percent of the shippers and carriers are able to comply with Item 85, that the requirements of Item 85 are not unreasonably burdensome on shippers and carriers, and that Newsome had the proper documentation on multiple shipments for companies other than Orban.

The subject of this hearing was also the subject of an undercharge citation which included two debtors besides Orban. The total amount of the undercharge citation was approximately \$2,300. Newsome collected approximately \$270 and paid that amount as a fine to the Commission. Orban refused to pay the balance of approximately \$2,043. Also, a citation forfeiture was issued to Newsome in the amount of \$200. Newsome has complied with the citation forfeiture and paid \$200.

The staff recommends that two fines be assessed against Newsome. The first fine, pursuant to Public Utilities Code Section 3800, is the total of the undercharges, \$2,043.23, of the 26 shipments at issue in this proceeding. To encourage Newsome to file suit against Orban before the statute of limitations on these shipments bars suit and before the Commission's decision in this

case, the staff suggested that Newsome be ordered to pay the undercharges whether or not they are ultimately collected from Orban. A second fine of \$250 as a punitive fine, pursuant to Public Utilities Code Section 3774, was also recommended.

The small punitive fine was suggested since Newsome has no prior history of violation. The staff believes that the evidence shows the carrier did not intend to evade the requirements of the Commission regulation and may have thought that they were complying with the regulation, and Newsome has cooperated with the staff in its investigation and case preparation.

Newsome pleaded that the punitive fine would serve no purpose in changing its attitude since it had already changed its operation to comply. Further, Newsome undertook to file suit against Orban pending decision in this matter.

#### Findings and Conclusions

The Commission finds that the facts in the case are those set forth in the above stipulation, that the requirements of paragraph (a)2 of Item 85 of MRT 2 were not met by Orban on 26 shipments of lumber, and that those shipments should have been rated as separate shipments. We conclude that Newsome has violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code; that Newsome should be ordered to collect the undercharges involved; that Newsome should be fined \$2,043.23, which is the amount of the undercharges; and that Newsome, in view of the mitigating circumstances, should be fined punitively in the amount of \$250, to be permanently suspended if an action was filed which tolled the statute of limitations.

O R D E R

IT IS ORDERED that:

1. Newsome Transport, Inc. shall pay a fine of \$250 to this Commission, pursuant to Public Utilities Code Section 3774, on or before the fortieth day after the effective date of this order. Newsome Transport, 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. This fine will be permanently suspended if Newsome Transport, Inc. files proof that it has timely filed suit to collect the undercharges herein involved.
2. Newsome Transport, Inc. shall pay a fine to this Commission, pursuant to Public Utilities Code Section 3800, of \$2,043.23 on or before the fortieth day after the effective date of this order.
3. Newsome Transport, Inc. 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.
4. Newsome Transport, 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 Newsome Transport, Inc.'s operating authority until the report is filed.

5. Newsome Transport, 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.

The Executive Director of the Commission shall cause personal service of this order to be made upon respondent Newsome Transport, Inc. and cause service by mail of this order to be made upon respondent Orben. The effective date of this order as to each respondent shall be twenty days after the completion of service on that respondent.

Dated at San Francisco, California, this 19<sup>th</sup> day of JULY, 1977.

Robert Butrum  
President  
William Squon Jr.  
Jerome L. Sturgeon  
Richard W. Swalle  
Commissioners

Commissioner CLAIRE T. DEDRICK

Present but not participating.