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Decision No. 87830 SEP 7 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation for the purpose of considering and determining minimum rates for transportation of any and all commodities statewide including, but not limited to those rates which are provided in Minimum Rate Tariff 2 and the revisions or reissues thereof.	Case No. 5432 Petition for Modification No. 942 (Filed January 17, 1977)
And Related Matters.	Case No. 5439 Petition for Modification No. 300 Case No. 5441 Petition for Modification No. 381 (Filed January 17, 1977)

Ronald C. Broberg and H. W. Hughes, for California Trucking Association, petitioner.
Donald J. Harvey, for the Commission staff.

O P I N I O N

This is a petition by California Trucking Association to incorporate into Minimum Rate Tariffs (MRTs) 1-B, 2, 9-B, and 19 a. provision regarding the prepayment of charges for shipments delivered to construction jobsites when freight charges are computed upon weights of less than 5,000 pounds. Public hearing was held June 6, 1977 before Administrative Law Judge J. E. Thompson at San Francisco and the matter was submitted.

Petitioner seeks a rule which would require the consignor to contract with the carrier to pay the charges for any shipment

weighing less than 5,000 pounds, consigned for delivery at a point at which the shipment is to be used in construction of a facility. Petitioner contends that such rule is required in order to avoid carrier expenditure of money to collect the freight charges. The typical circumstance was described. Carriers, including highway common carriers, have shippers who regularly utilize the carrier's services. With respect to those regular shippers, the carrier has taken precautions deemed by it to be sufficient to assure payment of charges within the credit period prescribed in the minimum rate tariffs. Upon occasion those shippers will tender a shipment with charges collect consigned to a destination at which there is construction in progress. At the destination receipt for delivery ordinarily is given the carrier by a foreman on the project or some other person, such as a guard or custodian, who has some responsibility for the security of property at the jobsite. Those persons ordinarily are not empowered, nor are they in a position, to pay the carrier the transportation charges upon delivery of the goods. Upon delivery the goods may be the property of the entity holding title to the jobsite, a general contractor, or one of a number of subcontractors; and in many instances the carrier has not been informed or is misinformed by the consignor of the entity responsible for payment of the freight charges. In many instances when the carrier has been informed of the party who is to pay the freight charges, because of the shortness of time involved, it does not have adequate opportunity to take precautions regarding the credit of the consignee. The prompt delivery of goods in small shipments to construction jobsites usually is critical.

Upon acceptance of tender of the goods from the shipper, the carrier is faced with a choice of: (1) holding the shipment at its terminal until it identifies the party responsible for the freight charges and ascertains the credit of that party, or (2) delivering the

goods without doing so. According to petitioner, there is no real choice. By holding the goods at the terminal pending investigation, the carrier risks a delay in delivery which may cost the shipper's customer considerable money. That customer will complain to the shipper; and if it is an important one to the shipper, all of the traffic of that shipper will be lost to the carrier and given to a competitor.

An employee of petitioner presented documents pertaining to three examples of conditions resulting from transporting collect shipments to construction jobsites. He testified that the examples are typical of situations related to him by petitioner's rate policy committee and of individual circumstances disclosed to him by eleven carriers. In Example 1 the shipment was picked up on February 11, 1977 consigned to Marshall School freight collect and was delivered February 14. A bill for $27.95 was sent to the consignee and was rejected with advice to bill a party in Burlingame. That party denied responsibility. After considerable investigation the carrier ascertained that the charges should be collected from another party. On April 11 a bill was sent to that party. It had not been collected prior to the hearing. In Example 2 the shipment was made June 22, 1976. The carrier's original billing was rejected. After being referred to three other parties and after considerable investigation, the carrier ascertained the responsible party. The witness was informed just prior to the hearing date that the bill for $18.41 had been paid by that party. In Example 3 a shipment of 9,665 pounds of fabricated steel was shipped on June 2, 1976 from Los Alamitos to Spanos Construction in Sacramento. The documents show that Spanos Construction was a developer of property who had engaged Michel and Pfeffer to provide materials for construction, and B. J. Construction Co. to construct portions of the development from the materials furnished. The bill of lading shows the shipment consigned to "Spanos

Const., c/o Michel & Pfeffer/ B J Const.", with the notation "Bill to B J Construction Co.". The documents show that there is a dispute between Michel & Pfeffer and B. J. Construction regarding the interpretation of the contracts respecting the development and regarding the responsibility for the payment of the freight charges which amount to $235.11; and that the carrier made numerous long-distance telephone calls and expended considerable time in an attempt to mediate the dispute and collect the freight charges. At some time after March 20, 1977, the carrier initiated a suit in small claims court to collect the charges.

The testimony shows that the circumstances described occur relatively frequently in connection with transportation of materials to construction jobsites and that they do adversely affect carrier earnings and burden other traffic. In the first two examples, there is little doubt that the expenses to the carrier of attempting to collect the charges exceeded the charges themselves. That is one reason petitioner suggests that the rule apply to shipments of less than 5,000 pounds. In the transportation of truckload lots, very often the consignee engages the carrier and in those instances the latter has little difficulty in obtaining payment for collect shipments. Petitioner asserts that inasmuch as a dividing point has to be made somewhere, it is its belief that a shipment of 5,000 pounds is a point where the freight charge would normally exceed the cost of investigation and collection; and for shipments under that weight the charge might be such that there would be less burden upon other traffic, and the carrier would be better off financially, to forego the investigation and collection and to write the revenue off of its books as a bad debt. The latter, however, would be in violation of the present provisions of the minimum rate tariffs (Item 250 of MRT 2).

Petitioner asserts that the best manner of meeting the problem is for the Commission to require that as a condition of

transportation of shipments weighing less than 5,000 pounds destined to construction jobsites that the consignor contract to pay the freight charges (i.e., ship freight prepaid). It contends that such requirement will not adversely affect the procurement of materials to be used at construction jobsites in that it is presently a common practice for purveyors to quote prices of materials on the basis of F.O.B. plant plus transportation and to make sales on that basis. The only result would be to make that practice the standard in California with respect to sales of materials weighing less than 5,000 pounds destined to a construction jobsite.

In order to accomplish that objective, petitioner proposes that a new item be incorporated into the aforesaid minimum rate tariffs providing as follows:

"DELIVERIES TO CONSTRUCTION JOB SITES

"A shipment must be prepaid when the point of destination is a construction job site and transportation charges are computed at rates subject to minimum weights of 5,000 pounds or less or when freight charges are computed upon weights of less than 5,000 pounds. (See Note)

"Note: For the purpose of applying the provisions of this item, job site means a point at which the shipment was, or is to be, used in construction of a facility."

Questions were asked of petitioner's witness regarding the intended application of the proposed rule and the testimony shows that the application would result in the creation of a number of unintended and untoward side effects. In other words, the proposed cure for the one illness would cause additional different maladies. We need not go into them inasmuch as the proposed rule would not accomplish petitioner's objective.

The minimum rate tariffs are not tariffs in the strict sense of the term. In the strict sense of the term, tariffs are publications of public utilities setting forth the services that they hold themselves out to the public to perform, the conditions and

limitations under which the service will be rendered, and the rates and charges that will be assessed for service rendered under the various conditions and limitations. The minimum rate orders of the Commission do not set forth the service that each and every highway carrier holds itself out to perform nor the conditions and limitations under which individual carriers will perform that service. It merely sets forth the lowest rate or charge that a highway carrier lawfully may collect for various transportation services and accessorial services that the highway carrier performs under specified conditions.

With the foregoing in mind, petitioner's proposal would have to be construed as either: (1) there is no minimum rate established for shipments destined to a construction jobsite when the transportation charges are computed at rates subject to minimum weights of 5,000 pounds or less or when freight charges are computed upon weights of less than 5,000 pounds except when such shipments are tendered with charges prepaid, or (2) the minimum charge for shipments, other than shipments tendered with freight charges prepaid, when the point of destination is a construction jobsite shall be the charge computed at the rate applicable to a weight of 5,000 pounds[1/] of the articles in the shipment.

Petitioner asserted that the aforesaid construction is not what is intended, nor would the evidence offered in the proceeding support a rule resulting in the cancellation of the minimum rates nor

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1/ The testimony reflects an intention of petitioner that the "dividing line" be 5,000 pounds, but the language of the proposed new item contains the phrase "subject to minimum weights of 5,000 pounds or less". MRT 2 provides class rate scales for minimum weights of 5,000 pounds and 10,000 pounds. among others. MRT 1-B, MRT 9-B, and MRT 19 provide class rate scales for minimum weights of 4,000 pounds and for 10,000 pounds, among others. The language could be construed that the minimum charge would be for a weight of 10,000 pounds.

the establishment of a new and different minimum charge. Under those circumstances the petition should be denied.

We recognize that the circumstances resulting from present practices by highway carriers contribute to greater costs of conducting highway carrier operations and provide a greater transportation burden, and what appears to be an unjust burden, to be shared by all ratepayers. We agree with petitioner that something should be done to remedy those circumstances. The problem here is that the remedy sought by petitioner, which is a Commission order in a minimum rate proceeding prohibiting any highway carrier from transporting collect shipments weighing less than 5,000 pounds to construction jobsites, is not one which the Commission may make.

There are any number of other possible remedies, including a minimum charge prescribed in the minimum rate tariffs for the transportation under consideration or the adoption by carriers of a rule to the effect "the carrier does not undertake to transport and will not deliver shipments weighing less than 5,000 pounds to construction jobsites unless the shipments are tendered with charges prepaid by the consignor". The adoption by highway common carriers of such rule in their tariffs would alleviate the situation. As a matter of fact, in each of the three examples presented by petitioner, the carrier could have lawfully collected the charges with a cost of one letter instead of the moneys expended in telephone calls, extensive correspondence, and other investigative activity. Under the contracts of carriage that were entered into with respect to each of those shipments, after the presentation of the freight bill to the consignee designated on the contract and after the credit period provided in the minimum rate tariff, the carrier had only to present

a freight bill to the consignor for payment. Under the contracts the consignor was liable for the payment of those freight charges.[2/] Petitioner asserts that the carriers are hesitant to enforce the provisions of the contracts lest the consignors give their traffic to competing carriers. We have no way of knowing, other than petitioner's assertion, that any such apprehension has validity. If it does, another possible remedy could be to amend the regulations in the minimum rate tariffs for the collections of charges to prescribe a rule the same as, or similar to, Section 7 of the Uniform Straight Bill of Lading and to provide regulations for its implementation and enforcement.

We claim no omniscience with respect to the matter involved herein. The carriers and the shippers involved have knowledge of the facts and the consequences of any of the many alternative possible remedies. We believe that they should consider what may be the better solution to the problem. If any such solution requires approval or action by the Commission, we will be receptive.

2/ The contracts of carriage were executed on Uniform Straight Bills of Lading which provide:

"Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

"The carrier shall not make delivery of this shipment without payment of freight and all other charges."

In each instance the statement was not signed by the consignor Section 7 provides as a term and condition of the contract of carriage that the consignor shall be liable for the freight and all other charges unless it affixes its signature to that statement.

O R D E R

IT IS ORDERED that the Petitions for Modification in these proceedings are denied.

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

Dated at San Francisco, California, this 7th day of SEPTEMBER, 1977.

Robert Batinovich
President

I dissent.
William Symons, Jr.

Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.