

ORIGINAL

Decision No. 87981 OCT 12 1977

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)
Robert W. Barenchi, an individual)
doing business as R&B Trucking;)
R&B Materials, Inc; individuals,)
partnerships, and corporations)
listed in Attachment A,)
respondents.)

Case No. 10320
(Filed April 26, 1977)

Graham & James, by James T. Proctor,
Attorney at Law, for Robert W.
Barenchi, an individual doing
business as R&B Trucking; and
Jean Robinson, for Steinmetz &
Robinson; respondents.
Maxine C. Dremann, Attorney at Law,
and E. E. Cahoon, 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 Robert W. Barenchi (Barenchi), an individual doing business as R&B Trucking, for the purpose of determining whether Barenchi engaged the 53 respondent carriers listed in Attachment A to the Order of Investigation herein purportedly as subhauliers to provide transportation at rates less than 100 percent of the applicable minimum rates in Minimum Rate Tariff 7-A and supplements thereto in violation of the restriction in his operating authority which provides that whenever permittee engages other carriers for the transportation of property of Barenchi or R&B Trucking or customers or suppliers of said individual or company, permittee shall not pay such other carriers less than 100 percent of the applicable minimum rates for such transportation.

Public hearing was held before Administrative Law Judge Arthur M. Mooney in San Francisco on June 22, 1977. The matter was submitted upon the receipt of late-filed Exhibit 3 on July 26, 1977.

Notice of hearing was sent to all respondents, including those listed in Appendix A to the order of investigation. Barenchi was represented by counsel, and Mrs. Robinson appeared on behalf of Jim Robinson, a respondent listed in Appendix A. A written stipulation by Barenchi's attorney and counsel for the Commission staff covering all issues in the proceeding was received in evidence as Exhibit 1. Mrs. Robinson questioned the amount of money shown in Appendices 3 and 4 of the exhibit as payable by Barenchi to Jim Robinson. The staff agreed to review this and on June 30, 1977 filed late-filed Exhibit 2 revising the amount payable to Jim Robinson from \$516.95 to \$542.52. Barenchi had no objection to this revision. However, by letter dated July 25, 1977 Barenchi's attorney stated that his client in reviewing Exhibit 1 and certain documents he had just located and which were attached to the letter had determined that the correct amount payable to Frank C. Alegre is \$478.43 rather than the \$500.65 shown in Appendices 3 and 4 of the exhibit. We agree with the staff and Barenchi's revisions and have received the attorney's letter in evidence as late-filed Exhibit 3.

Findings

We find that the following information and data set forth in the stipulation in Exhibit 1, as amended by late-filed Exhibits 2 and 3, are facts:

1. Barenchi operates pursuant to radial highway common carrier and dump truck carrier permits, both of which include the restriction referred to above. He has an office and terminal at Tracy; employs 12 drivers, four office personnel, and a mechanic; operates 12 tractors, 15 sets of bottom-dump trailers, and 4 semi-end dump trailers; and has been served with all applicable minimum rate tariffs, distance tables, and directories. For the year 1976, Barenchi had gross operating revenue of \$1,349,351, of which \$741,488 was paid to subhaulers.

2. On September 13, 1976 and various days thereafter, a representative of the staff conducted an investigation of the operations of Barenchi and R&B Materials, Inc. (Materials). The investigation covered the transportation of borrow material by Barenchi from the Delta-Mendota Canal and Roberts Island to the construction site of the Stockton Tertiary Treatment Facility for D. Roberdes Engineering Contractor (Roberdes) during the months of May, June, and July 1976. The material was sold by Materials to Roberdes. Barenchi and his wife own all of the stock of Materials and are its principal officers and directors. Barenchi engaged the 53 other carriers listed in Appendix A to the investigation order as purported subhaulers to perform all of the transportation in issue, and he paid them 95 percent of the applicable minimum rates for this transportation. Because of the restrictions in Barenchi's operating authority and the alter ego relationship between Barenchi and Materials, the other carriers were in fact prime carriers, and Barenchi should have paid them 100 percent of the applicable minimum rates for the transportation they performed.

3. The photostatic copies of the freight bills and underlying documents relating to the transportation in issue included in Appendix 2 to Exhibit 1 were prepared by the representative and are true and correct copies.

4. The staff ratings of the transportation in issue and the amounts of the undercharges payable by Barenchi to the other carriers set forth in Appendices 3 and 4 of Exhibit 1, as amended by late-filed Exhibits 2 and 3, are correct.

5. Barenchi paid the other carriers listed in Attachment A to the Order of Investigation \$10,576.65 less than the lawfully prescribed minimum rates for the transportation in issue.

6. Barenchi has not been paid by Roberdes for the material and transportation furnished to it during July 1976. This involves a substantial sum of money, particularly for the material, and is now in litigation. Because of this, it would be a serious financial strain on Barenchi to pay the other carriers the entire \$10,576.65 owed to them on a one-payment basis at this time. In order to obtain sufficient funds to pay them the 95 percent already paid, it was necessary for Barenchi to borrow money from his bank on 90-day notes, and he has been paying the interest on these notes and renewing them.

7. The time-payment schedule for payments of the amounts owed by Barenchi to the other carriers set forth in Appendix 4 of Exhibit 1, as amended by late-filed Exhibits 2 and 3, is reasonable and should be adopted. The schedule provides that Barenchi should make payments totaling approximately \$600 per month over an 18-month period to the other carriers. The number of installments to be paid to each carrier depends on the total amount owed to it and ranges from 1 to 18 payments. Most would be paid in less than a year.

8. Barenchi agrees to pay a fine in the amount of \$1,000 pursuant to Section 3774 of the Public Utilities Code.

9. Barenchi cooperated fully with the staff during the investigation and provided the staff with all pertinent information.

Conclusions

1. Barenchi violated Sections 3668 and 3737 of the Public Utilities Code.

2. Barenchi should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$1,000.

3. Barenchi should be directed to pay the other carriers listed in Attachment A to the Order of Investigation the amount of underpayments payable to each for the transportation in issue in accordance with the time-payment schedule set forth in Appendix A hereof.

4. The permits held by Barenchi should be amended to specifically include Materials in the alter ego restriction therein.

5. Barenchi should be directed to cease and desist from violating the statutes, regulations, and tariffs governing his operations and any restrictions in his permits.

The Commission expects that Barenchi will proceed promptly, diligently, and in good faith to pursue all reasonable measures to pay the other carriers listed in Attachment A to the Order of Investigation the amounts found due them in Finding 5 in accordance with the time-payment schedule set forth in Appendix A hereof. The staff of the Commission will make a subsequent field investigation into such measures. If there is reason to believe that Barenchi or his attorney has not been diligent, or has not taken all reasonable measures to pay the other carriers that which is due them, as provided in Appendix A hereof, or has not acted in good faith, the Commission will reopen this proceeding for the purpose of determining whether further sanctions should be imposed on him.

O R D E R

IT IS ORDERED that:

1. Robert W. Barenchi, an individual doing business as R&B Trucking, shall pay a fine of \$1,000 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Robert W. Barenchi shall pay interest at the rate of seven percent per annum on the fine; such interest to commence upon the date payment of the fine is delinquent.

2. Robert W. Barenchi shall pay the other carriers listed in Attachment A of the Order of Investigation the amounts set forth in Finding 5 in accordance with the time-payment schedule set forth in Appendix A hereof. The initial payment to each of the other carriers shall be made on the first Monday of the month following the fortieth day after the effective date of this order and all additional installment payments due any of the other carriers shall be made on the first Monday of each succeeding month until all of the installments have been paid in full.

3. Robert W. Barenchi shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to pay the other carriers as provided in Ordering Paragraph 2.

4. Robert W. Barenchi shall file with the Commission, on the first Monday of each month, a report of the payments made and those remaining to be made specifying the action taken to make such payments and the result of such action until all of the payments have been made or until further order of the Commission.

5. On the effective date of this decision, the Executive Director of the Commission shall cause to be amended, the radial highway common carrier and dump truck carrier permits issued to Robert W. Barenchi by including the name R&B Materials, Inc. in the alter ego restriction in Paragraph 10 of each permit.

6. Robert W. Barenchi shall cease and desist from violating the statutes, regulations, and tariffs governing his operations and all restrictions in his permits.

87981

The Executive Director of the Commission shall cause personal service of this order to be made upon respondents Robert W. Barenchi and R&B Materials, 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 the completion of service on that respondent.

Dated at San Francisco, California, this 12th day of OCTOBER, 1977.

Robert Barenchi
 President

William Aguirre Jr.

Vernon L. Sturgeon

Richard P. Howell

Clair T. DeLoach
 Commissioners

APPENDIX A
Robert W. Barenchi (R & B Trucking)

CARRIER	18 Month Schedule of Payments to Carriers																		Amount Owed
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	
Frank C. Alegre	\$ 11.50	\$ 12.61	\$ 14.35	\$ 16.03	\$ 16.43	\$ 17.65	\$ 17.91	\$ 18.95	\$ 20.76	\$ 22.19	\$ 24.59	\$ 29.12	\$ 32.95	\$ 61.94	\$ 92.50	\$ 68.95	-	-	\$ 478.43
Lawrence W. Allen	11.50	12.61	9.76	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	32.87
Ray Axton	11.50	2.99	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	14.49
Ayah Bros.	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	20.70	-	-	-	-	-	-	213.67
B & P Trucking	6.45	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6.45
Herran Bell Trucking	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	29.12	32.95	8.95	-	-	-	-	263.99
David Borth	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	11.84	-	-	-	-	-	-	-	180.22
Jim Borth	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	26.09	-	-	-	-	-	-	-	194.47
Larry Britton	11.50	12.61	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	23.99
George Cardoza	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	29.12	32.95	61.94	92.50	149.16	600.00	373.48	1,532.12
Mike Cardoza	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	29.12	32.95	7.95	-	-	-	-	262.99
Rufus Cervantes	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	29.12	32.95	9.40	-	-	-	-	264.44
Collins Trucking	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	5.25	-	-	-	-	-	-	198.22
W. T. Cook	11.50	12.61	14.35	16.03	16.43	17.65	17.91	9.20	-	-	-	-	-	-	-	-	-	-	115.68
Willie O. Cooksey	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	29.12	35.94	-	-	-	-	-	258.03
Dave De Lucchi	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	29.12	34.84	-	-	-	-	-	256.93
Sal DiSalvo	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	29.12	32.95	26.35	-	-	-	-	281.39
Dray Trucking	11.50	12.61	2.81	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	26.92
Robert Alves Duncan	11.08	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	11.08
Joe Dunn	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	29.12	32.95	15.16	-	-	-	-	270.70

C-107020 / 448

APPENDIX A
Robert W. Barenchi (R & B Trucking)

CARRIER	18 Month Schedule of Payments to Carriers																		Amount Owed
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	
Morrill M. Farr	11.50	12.61	14.35	16.03	18.46	-	-	-	-	-	-	-	-	-	-	-	-	-	72.93
Joe Fellso	11.50	12.61	14.35	16.01	16.43	17.65	17.91	18.95	2.92	-	-	-	-	-	-	-	-	-	128.35
Ronald E. Flaherty	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	2.47	-	-	-	-	-	-	-	-	145.66
Joseph Flores	10.23	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	10.23
George Galatras	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	29.12	32.95	61.94	92.50	69.66	-	-	479.12
Harley Hndel	11.50	12.61	14.35	6.71	-	-	-	-	-	-	-	-	-	-	-	-	-	-	45.17
Harrison Trucking Service	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	29.12	32.95	64.23	-	-	-	-	309.32
Joe G. Iturria	11.50	12.61	14.35	16.03	18.46	-	-	-	-	-	-	-	-	-	-	-	-	-	72.93
Fate Jimenez	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	4.72	-	-	-	-	-	-	-	-	-	130.15
C. W. Mas	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	23.04	-	-	-	-	-	-	221.01
G. A. McGhee	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	11.07	-	-	-	-	-	-	-	-	-	136.50
John Madotti	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	29.12	34.96	-	-	-	-	-	257.05
P. J. Oatis	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	29.12	32.95	61.94	45.01	-	-	-	361.99
Floyd Parker	11.50	11.15	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	22.65
RCP Trucking	11.50	12.61	14.35	16.03	16.43	17.65	17.91	3.35	-	-	-	-	-	-	-	-	-	-	109.83
Ponte, Inc.	11.50	12.61	5.95	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30.07
Larry Ponte	11.50	12.61	14.35	16.03	4.56	-	-	-	-	-	-	-	-	-	-	-	-	-	59.05
Poulter Trucking	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	29.12	32.95	61.94	92.50	80.98	-	-	490.46
Bob Reyna	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	29.12	32.95	4.55	-	-	-	-	259.59
Jim Robinson	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	29.12	32.95	61.94	92.50	107.47	25.57	-	542.52
Rose Trucking	11.50	9.04	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	20.55
William R. Rosler	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	29.12	32.95	33.75	-	-	-	-	294.79

CDD/PC/CM

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Robert W. Barenchi (R & B Trucking)

CARRIER	18 Month Schedule of Payments to Carriers																		Amount Owed
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Rossi & Son	11.50	12.61	14.35	16.03	16.43	17.65	17.65	8.84	-	-	-	-	-	-	-	-	-	97.41	
Ben Salamoni	11.50	9.36	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	21.06	
Jack Scott, Jr.	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	20.49	-	-	-	-	-	-	-	166.68	
George Sevo	11.50	12.61	7.56	-	-	-	-	-	-	-	-	-	-	-	-	-	-	31.67	
J. Simpson & Son	8.77	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	8.77	
Glen John Smith	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	21.50	-	-	-	-	-	214.77	
Wayne & Son Trucking	11.50	12.61	15.71	-	-	-	-	-	-	-	-	-	-	-	-	-	-	39.82	
Kirk Whitley	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	10.99	-	-	-	-	-	-	179.37	
H. Wilson	11.50	12.61	13.89	-	-	-	-	-	-	-	-	-	-	-	-	-	-	38.00	
E. Wilson	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	10.13	-	-	-	-	-	-	178.51	
D. P. Winn	11.50	12.61	14.35	16.03	16.43	17.65	17.91	18.95	20.76	22.19	24.59	29.12	32.95	41.94	47.50	101.58	-	511.06	
TOTAL	600.03	600.11	599.99	599.82	600.06	600.10	599.87	600.00	599.99	599.90	600.03	599.95	599.99	599.97	600.01	600.00	603.35	371.48	10,576.65

C-10330 /add