

ORIGINAL

Decision No. 88328 JAN 10 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
 motion into the operations, rates and)
 practices of Preston Trucking Co., a)
 California corporation and General)
 Brewing Company, a California)
 corporation.

Case No. 10332
 (Filed May 17, 1977)

Handler, Baker & Greene, by Marvin Handler,
 Attorney at Law, for Preston Trucking Co.,
 respondent.

Elmer Sjostrom, 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 Preston Trucking Co. (Preston), a corporation, for the purpose of determining whether Preston charged less than the applicable minimum rates in Minimum Rate Tariff 2 (MRT 2) and failed to conform to the interim authority to depart from MRT 2 rates granted to it by Decision No. 84720 dated July 28, 1975 in Application No. 55719 in connection with the transportation of beer for the General Brewing Company (General), a corporation, and whether Preston engaged other carriers as purported subhaulers to transport beer for its alleged alter ego, Metro-Distributing Co. (Metro), and paid such other carriers less than 100 percent of the applicable minimum rates.

Public hearing was held before Administrative Law Judge Arthur M. Mooney in San Francisco on October 19, 1977, on which date the matter was submitted. Notice of hearing was sent to all

respondents. Preston was represented by counsel. No appearance was entered by or on behalf of General. A written stipulation by Preston's attorney and counsel for the Commission staff was received in evidence as Exhibit 1. Except for the question of knowledge and intent by Preston to charge less than the minimum applicable rates in connection with the transportation for General, the stipulation affirmed that the staff allegations were true and correct and that the facts were as stated in the findings herein. As to the issue of intent, it is Preston's position that the rate errors that did occur were unintentional, and it is the staff position that they were intentional. However, with the recommendation by the staff that a punitive fine of \$3,000 be imposed on Preston, the respondent carrier stated that it would not object to the recommendation or pursue the issue further. We will adopt the staff recommendation, and no further consideration of this issue is necessary.

Findings

We find that the following information and data set forth in the stipulation and appendices thereto in Exhibit 1 are facts:

1. Preston operates pursuant to radial highway common carrier and highway contract carrier permits. It has offices and truck parking areas in Los Angeles and Van Nuys; employs 14 drivers, a dispatcher, and four office personnel; operates 15 tractors and 22 trailers; and has been served with all applicable minimum rate tariffs, distance tables, and exception ratings tariffs. Its gross operating revenue for 1976 was \$2,336,076, of which \$724,077 was paid to subhaulers.

2. On February 19, 1976 and various days thereafter, a representative of the staff conducted an investigation of the operations of Preston for the period November 1975 through January 1976. The representative made true and correct photostatic copies

of the freight bills and related documents for the transportation in issue, Decision No. 84720, the transportation agreement between Preston and General, and the petition for modification of Decision No. 84720, and these copies are set forth in Appendices 2, 3, and 4 of Exhibit 1. The representative included in Appendix 3 a report of the corporate officers and stockholders of Preston and various other entities which clearly establishes an alter ego relationship between Preston and Metro.

3. Because of the alter ego relationship between Preston and Metro, other carriers engaged by Preston as ostensible subhaulers to transport property for Metro are in fact prime carriers and should be paid not less than 100 percent of the applicable minimum rates for such transportation.

4. The staff ratings of the transportation summarized in Appendix 5 of Exhibit 1 and the resulting undercharges payable by General to Preston and the underpayments by Preston to the other carriers are correct.

5. The undercharges by Preston referred to in Finding 4 resulted from failure to comply with the multiple lot and split delivery rules in MRT 2, the incorrect rating of components of multiple shipments as separate shipments, the incorrect application of alternative rail rates and stop-in-transit charges, failure to assess off-rail charges and applicable surcharges, and the incorrect application of the interim deviation authority granted to Preston by Decision No. 84720.

6. The underpayments by Preston to the other carriers referred to in Finding 4 resulted from the payment of less than 100 percent of the applicable minimum rates to them by Preston for transportation it had engaged them to perform as ostensible subhaulers for Metro, its alter ego.

7. In the instances summarized in Appendix 5 of Exhibit 1, Preston charged General and paid the ostensible subhaulers \$20,879.22 and \$1,105.81 less than the lawfully prescribed minimum rates and charges, respectively. The identity of and the amount due each of the ostensible subhaulers are shown in Parts 3, 12, 43, 60, 71, and 83 of the appendix.

8. The permits held by Preston now include Metro in the alter ego restriction therein.

Conclusions

1. Preston violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code.

2. Preston should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$20,879.22 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$3,000.

3. Preston should be directed to pay the other carriers referred to in Finding 7 the amount of the underpayments payable to each.

4. Preston should be directed to cease and desist from violating the statutes, regulations, rate deviation authorities, and tariffs governing its operations and any restrictions in its permits.

The Commission expects that Preston will proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges (including, if necessary, the timely filing of complaints pursuant to Section 3671 of the Public Utilities Code) and to pay the other carriers the amounts found due them in Finding 7. The staff of the Commission will make a subsequent field investigation into such measures. If there is reason to believe that Preston or its attorney has not been diligent, or has not taken all reasonable measures to collect all undercharges and to pay the

other carriers that which is due them, 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. Preston Trucking Co., a corporation, shall pay a fine of \$3,000 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Preston Trucking Co. 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. Preston Trucking Co. shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$20,879.22 on or before the fortieth day after the effective date of this order.
3. Preston Trucking Co. shall take such action, including legal action instituted within the time prescribed by Section 3671 of the Public Utilities Code, as may be necessary to collect the undercharges set forth in Finding 7, and shall pay the other carriers the amounts set forth in Finding 7, and shall notify the Commission in writing upon collection and payment.
4. Preston Trucking Co. shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges and to pay the other carriers. In the event the undercharges or payments ordered to be collected and paid by paragraph 2 of this order, or any part of such undercharges or payments, remain uncollected or unpaid 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 or the payments remaining to be made, specifying the action taken to collect such undercharges or make such payments and the result of such action, until such undercharges have been collected in full or until the total payments have been made or until further order of the Commission.

5. Preston Trucking Co. shall cease and desist from violating the statutes, regulations, rate deviation authorities, and tariffs governing its operations and any restrictions in its permits, including those requiring the payment of not less than the minimum payments prescribed by the Commission to other carriers engaged by it to transport property for its affiliated companies listed therein.

The Executive Director of the Commission shall cause personal service of this order to be made upon respondent Preston Trucking Co. 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 10th day of JANUARY, 1978.

Robert B. ...
President
William ...
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Commissioners