

ORIGINAL

Decision No. 88360 JAN 17 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 Chris Braxton Patton, an individual doing business as Western Express Company; Western Express, Inc., a California corporation; Wilbur Ellis Company, Cargill of California, Inc. and A. H. Martin, Inc., all California corporations.

Case No. 10413
(Filed September 7, 1977)

Chris Braxton Patton, for himself, and Western Express, Inc., respondents.
Thomas F. Grant, Attorney at Law, and Kenneth Henderson, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion instituted into the operations, rates, charges, and practices of respondent Chris Braxton Patton (Patton), dba Western Express Company, and his successor company, Western Express, Inc., a California corporation, for the purposes of determining whether Patton performed transportation services for Wilbur Ellis Company (Ellis), Cargill of California, Inc. (Cargill), and A. H. Martin, Inc. (Martin) at less than the minimum rates covered by Minimum Rate Tariff 14-A (MRT 14-A) resulting in violation of Sections 3664, 3667, 3668, 3669, and 3737 of the Public Utilities Code.

The Commission staff requests that if the alleged violations are found to have occurred that Patton and Western Express, Inc. pay a fine in the amount of the undercharges found to have existed, they be ordered to collect said undercharges, and that they be fined no less than \$500 as exemplary damages. A hearing was held on the matter at Fresno on November 15, 1977 before Administrative Law Judge Pilling.

The undisputed facts are that Patton picked up 9 truckloads, each in excess of 50,000 pounds but below 100,000 pounds of beet pellets in July 1976 at the request of Ellis for delivery to a single consignee. On pickup each load was receipted for separately. Patton handled the moves under his radial highway common carrier permit and for rating purposes as though the loads comprised multiple lots of a single shipment and assessed the rate (using the rail alternative rate) accordingly, which resulted in a charge of from \$128 to \$147 less per load than if the loads had been rated as separate shipments. Item 11 of MRT 14-A defines a "shipment" as being one lot of freight picked up at one time for one consignee "for which a single shipping document has been issued" and Item 50 of MRT 14-A requires each shipment to be rated separately. The latter item also forbids a carrier from consolidating shipments but allows a carrier to handle a single shipment in multiple lots as provided by Items 140 and 141 which provides that either the carrier or shipper furnish the other a single shipping document covering the combined moves. No such single shipping document was furnished by the carrier or the shipper. The staff contends that each load should have been rated as a separate shipment since neither the carrier nor the shipper furnished the other a single shipping document covering the combined moves as required by Items 140 and 141 of MRT 14-A. In October 1976 Patton moved a 58,000-pound load of beet pellets for Ellis incorrectly charging Ellis the rate based on a 100,000-pound shipment. Total undercharges for all ten shipments amounted to \$1,425.16.

In October 1976 Patton moved 10 loads of bulk corn for Martin and charged Martin a total of \$136.28 less than the applicable minimum rates because of an error in computing the constructive mileage applicable to the shipments.

Between October 16 and 20, 1976 Patton handled 6 loads of wheat for Cargill and charged Cargill the rate based on the shortest

constructive mileage between the origin and destination of the shipments but failed to take into consideration the extra mileage required to get to and from the grain inspection point, resulting in total undercharges of \$101.45.

The investigation made by the staff which produced the above facts was made on October 26, 1976, and thereafter the staff issued an undercharge citation to Patton to collect the undercharges and remit them to the Commission as a fine. Patton stated that he did not issue a balance due bill to Ellis, after the staff informed him of the alleged undercharges, because in subsequently talking over the matter with a representative of Ellis, who was apparently unmindful that the issue was improper documentation, the representative of Ellis assured Patton the rate charged was the applicable rate. Patton also stated, while he had billed Martin at the incorrect rate of 44 cents per 100 pounds on the 10 loads of corn, Martin had in fact made payment of charges on 9 of the loads at 46 cents per 100 pounds by a series of checks dated from October 27, 1976 through October 30, 1976 thus leaving only one load on which undercharges--amounting to \$11.44--had not been paid, and requests that he not be fined in the amount of undercharges involved in those 9 loads. The staff points out that the dates of the Martin checks were after the date on which the staff had conducted its investigation and informed Patton of the alleged undercharges and that Patton could have telephoned Martin on October 26 or 27, 1976 with the information about the staff's investigation and alleged undercharges and that Martin made out the checks in accordance with the applicable rate. The staff asks that the Commission levy a punitive fine against Patton not to exceed \$500 for Patton's failure to take any action in collecting the undercharges, except as to the 9 Martin loads, within the year between the time the undercharges were called to Patton's attention and the date of the hearing on the matter,

particularly in view of the fact that the undercharges were glaringly evident. Patton claims that when he hauled the loads for Ellis he had only operated the truck line for seven or eight months and that he was not familiar with the tariff provision requiring that multiple lot loads had to be evidenced by a single shipping document before the volume rate applicable to the combined weight of the lots could be lawfully charged. Patton defends his actions in charging the rates that he did in stating that he relied on the shippers' assertions what the proper rates were.

The Commission's records do not disclose that Patton or Western Express, Inc. have previously been cited for any infraction of the Commission's rules or regulations except for the undercharge citation covering the subject undercharges.

Findings

1. In transporting the above described loads for Ellis, Cargill, and Martin, Patton undercharged them \$1,425.16, \$101.45, and \$136.28, respectively, and has failed to collect any amount of such undercharges, except for the collection of \$124.84 from Martin.
2. The subject undercharges were brought to Patton's attention on October 26, 1976 and up to the date of hearing at least Patton has made no attempt to collect the undercharges, except for the \$124.84 paid by Martin.
3. The collection of \$124.84 undercharges from Martin was made subsequent to the date the staff called Patton's attention to the undercharges.
4. Patton should have relied on his own reading of the tariff to determine the applicable rate to be charged.

Conclusions

1. Patton and Western Express, Inc. have violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code in hauling for Ellis, Cargill, and Martin by undercharging them in the amounts of \$1,425.16, \$101.45, and \$136.28, respectively, and a combined fine in the total amount of those three items should be levied against Patton and Western Express, Inc.

2. None of the subject undercharges have been collected by Patton except to the extent of the collection of \$124.84 undercharges from Martin subsequent to the time the Commission staff called such undercharges to Patton's attention.

The Commission expects that Patton and Western Express, Inc. 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 they or their 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. Chris Braxton Patton and Western Express, Inc. shall pay a combined fine of \$1,662.89 to this Commission pursuant to Public Utilities Code Section 3800 on or before the fortieth day after the effective date of this order.

2. Chris Braxton Patton and Western Express, Inc. shall pay a combined fine to this Commission pursuant to Public Utilities Code Section 3774 of \$500 on or before the fortieth day after the effective date of this order. They 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.

3. Chris Braxton Patton and Western Express, Inc. shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 1 and shall notify the Commission in writing upon collection.

4. Chris Braxton Patton and Western Express, 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, respondents 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 any operating authority issued to either of them until the report is filed.

5. Chris Braxton Patton and Western Express, 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 respondents Chris Braxton Patton and Western Express, 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 17th day of JANUARY, 1978.

President
William J. Sweeney
Vernon L. Strydom
Charles D. Davis
Clare L. Delville
Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.