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ORIGINAL

Decision No. **88492** FEB 7 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 Rush Delivery Service Co., a California corporation; Fashion First, J & T Manufacturing Co., J. M. Manufacturing Co., Domino of California, Inc., a California corporation, dba California Trends and Tom Boy of California, Scott-Louis Inc., a California corporation, dba Oops.

Case No. 110429 (Filed September 27, 1977)

Donald Murchison, Attorney at Law, for Rush Delivery Service Co.; and Manuel Seligman, Attorney at Law, for Domino of California, dba Tom Boy; respondents. Richard D. Rosenberg, Attorney at Law, and Edward H. Hjelte, for the Commission staff.

OPINION

This is an investigation on the Commission's own motion into the operations, rates, charges, and practices of Rush Delivery Service Co. (Rush), a corporation, for the purpose of determining whether Rush charged less than the applicable minimum rates and charges for the transportation of garments on hangers for the shipper respondents named in the above caption.

Public hearing was held before Administrative Law Judge Arthur M. Mooney in Los Angeles on November 15, 1977 on which date the matter was submitted. Notice of the hearing was sent to all respondents. Both Rush and Domino of California, Inc. (Domino), doing business as California Trends and Tom Boy, were represented by counsel. No appearances were made by or on behalf of the other

respondents. A written stipulation by Rush's attorney and counsel for the Commission staff was received in evidence as Exhibit 1. The stipulation covered all issues herein. Among other things, it stated that Rush had undercharged the respondent shippers \$6,906.92, of which \$2,625.30 was in connection with transportation performed for Domino; that the undercharges resulted from the preparation of duplicate billings by Rush for the transportation under investigation; that there were no apparent errors in the charges shown on the copies of the billings retained by it; and that the charges shown on the copies issued to the respondent shippers and collected from them were less than the applicable minimum charges for the transportation performed. The stipulation recommended that Rush be directed to collect the undercharges and pay a fine in the amount thereof plus a punitive fine of \$4,000, payable in monthly installments of \$1,000 each. We concur with the stipulation.

The following testimony was presented by the vice president of Rush: He has been with Rush for approximately a year and has had considerable prior experience in the garment transportation industry. The rate errors in issue occurred prior to his employment by Rush. The transportation of garments is very competitive. He is of the opinion that other garment carriers are charging less than minimum rates. Since the investigation, Rush has lost one account and is about to lose another. Rush will request authority under Section 3666 of the Public Utilities Code to charge less than the minimum rates for the transportation it is performing.

The attorney for Domino argued that his client was not aware that Rush was assessing incorrect rates; that had Domino known the applicable charges were higher than it had paid, it might have considered purchasing its own trucks; that since it became aware of this problem, it has been paying the correct charges; and that the equities of this situation dictate that it not be required to pay any additional charges to Rush for the transportation in question.

In this connection, Section 3800 of the Public Utilities Code provides in part, that whenever the Commission, after a hearing, finds that a highway permit carrier has charged less than the minimum rates and charges, it shall require such carrier to collect the undercharges involved. We are, therefore, mandated by the legislature to direct Rush to collect the undercharges from Domino found herein.

Findings

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

1. Rush operates pursuant to a radial highway common carrier permit. Its principal place of business is in Los Angeles. At the time of the investigation referred to in Finding 2, it operated 10 trucks, employed 12 people, and had been served with all applicable minimum rate tariffs. Its gross operating revenue for the year 1976 was \$375,366.

2. On various days during 1976 and 1977, members of the Commission staff conducted an investigation of Rush's operations for the period June 30, 1976 through September 30, 1976. The staff made true and correct photostatic copies of documents covering the transportation in issue, and the copies are included in Appendix A of Exhibit 1.

3. The staff ratings of the transportation in issue and the resulting undercharges shown in Appendices 2 through 6 of Exhibit 1 are correct.

4. Rush issued duplicate billings for the transportation summarized in Appendices 2 through 6 of Exhibit 1. There were no apparent errors in the charges shown on the copies of the billings retained in its files. The charges shown on the copies of the billings issued by it to the respondent shippers and the amounts collected from them were less than the applicable charges for the transportation performed.

Rush or its attorney has not been diligent, or has not used 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.

Rush charged less than the lawfully prescribed minimum rates in the instances set forth in the Appendices 2 through 6 of this Exhibit. The amount of the undercharges for each of the respondent shippers and the total thereof are shown below:

<u>No.</u>	<u>Shipper</u>	<u>Amount of Undercharges</u>
2	Fashion First	\$ 750.53
3	J & T Manufacturing Co.	437.02
4	J. M. Manufacturing Co.	1,201.43
5	Domino	2,625.30
6	Scott Louis, Inc., dba Oops	1,892.64
Total in five appendices		\$6,906.92

6. Rush paid citation forfeiture fines of \$200 in 1975 and \$500 in 1976 for failure to issue proper shipping documents as required by Item 255 of Minimum Rate Tariff 2.

Conclusions

1. Rush violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code.
2. Rush should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$6,906.92 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$4,000, payable in monthly installments of \$1,000 each.
3. Rush should be directed to cease and desist from violating the rates and rules of the Commission, including the rules governing the issuance of freight bills.

The Commission expects that Rush 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. The staff of the Commission will make a subsequent field investigation into such measures. If there is reason to believe that Rush or its 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. Rush Delivery Service Co., a corporation, shall pay a fine of \$4,000 to this Commission pursuant to Public Utilities Code Section 3774 in four consecutive monthly installments of \$1,000 each, with the first installment due on or before the first day of the month following the fortieth day after the effective date of this order. Rush Delivery Service 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. Rush Delivery Service Co. shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$6,906.92 on or before the fortieth day after the effective date of this order.

3. Rush Delivery Service 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 5 and shall notify the Commission in writing upon collection.

4. Rush Delivery Service Co. 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 Rush Delivery Service Co.'s operating authority until the report is filed.

5. Rush Delivery Service Co. shall cease and desist from violating the rules and regulations governing the issuance of freight bills and 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 Rush Delivery Service 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 thirty days after completion of service on that respondent.

Dated at San Francisco, California, this 7th day of FEBRUARY, 1978.

Robert Batyanch
President
William Aguirre
Virginia L. Stinson
Richard P. Smith
Clare J. DeBevoise
Commissioners