

ORIGINAL

Decision No. 90164

APR 10 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
rates and practices of Eugene M.)
Vrabel, an individual, doing)
business as Gene's Services, PDQ)
Products, a corporation, and)
Tri-Alloy, Inc., a corporation.)

OII No. 28
(Filed September 19, 1978)

Eugene M. Vrabel, for himself; and Phillip
Cardoza, Attorney at Law, for PDQ Products,
a corporation, and Tri-Alloy, Inc.;
respondents.
Elmer Sjostrom, Attorney at Law, and E. Hjelt,
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 Eugene M. Vrabel (Vrabel), doing business as Gene's Services, for the purpose of determining whether Vrabel charged less than the applicable minimum rates in connection with transportation performed for PDQ Products (PDQ), a corporation, and Tri-Alloy, Inc. (Alloy), a corporation.

Public hearing was held before Administrative Law Judge Arthur M. Mooney in Los Angeles on January 30, 1979, on which date the matter was submitted.

Vrabel operates pursuant to a radial highway common carrier permit which authorizes the transportation of general commodities on a statewide basis. He has a terminal in Downey, employs one driver, and operates two tractors and trailers. He has been served with all applicable minimum rate tariffs, distance tables, and exception ratings tariffs. His gross operating revenue for the year 1977 was \$59,984.

Staff

A representative of the Commission staff visited Vrabel's place of business on June 30, 1977, and subsequent dates and reviewed his records for the months of April, May, and June, 1977. The representative testified that he made true and correct photostatic copies of freight bills and underlying documents in the files of Vrabel covering the transportation of 54 shipments of scrap aluminum or aluminum and steel combined and aluminum ingots for PDQ between the shipper's location in Pittsburg and Alloy's plant in Montclair and 8 shipments of scrap aluminum or aluminum and steel combined for Alloy from PDQ in Pittsburg to Dulien Metal Sales, Inc. (Dulien) and Magna Aluminum in Compton during the review period and that all of the photocopies are included in Exhibit 2. The witness stated that PDQ and Dulien are served by spur track facilities of the Southern Pacific Transportation Company and that the other two locations are off rail. The representative pointed out that, as shown on the documents in Exhibit 2, Vrabel assessed a flat charge of \$250 for each of the aforementioned shipments. He testified that Vrabel had informed him that the flat charge had been agreed upon between himself and the debtors and that it appeared Vrabel was not knowledgeable of transportation rates.

A staff rate expert testified that he took the sets of documents in Exhibit 2, together with the supplemental information included therein and that testified to by the representative, and formulated Exhibits 3 (PDQ) and 4 (Alloy), which show the rates and charges assessed by the respondent carrier, the minimum rates and charges computed by the staff, and the alleged undercharges for the transportation in issue. According to the rate expert, the undercharges resulted from the assessment by the carrier of a flat charge of \$250 for each of the shipments in issue rather than computing the charge under the applicable rates and alternative application provisions in Minimum Rate Tariff 2 as shown in the staff ratings in

the two exhibits. He stated that the amount of the undercharges shown in Exhibits 3 (PDQ) and 4 (Alloy) is \$26,422.36 and \$3,059.02, respectively, and that the total of the undercharges shown in the two exhibits is \$29,481.38.

The staff recommended that Vrabel be directed to collect the undercharges shown in its rate exhibits and to pay a fine in the amount thereof plus a punitive fine of \$2,000.

Respondents

Vrabel testified as follows: Several years ago he bought a truck, obtained a permit from the Commission's Santa Ana office, and commenced his own trucking business. Prior to this time, he had been a truck driver for other companies but had no experience whatsoever in rating shipments. When he obtained his permit, he was advised by the Commission employee to whom he spoke that he should go to school to learn rating procedures. Because all of his time was devoted to driving his equipment, he was unable to do this. During the time period covered by the staff investigation, he hauled primarily for the two respondent shippers. The carrier who previously handled this transportation was paid \$200 a load, and this amount was increased to \$250 a load after he took over. He does not know how this charge was determined and was not aware that it was in violation of the Commission's minimum rates. Any rate errors that did occur were inadvertent, and he is taking steps to assure that they do not occur in the future. In this connection, his daughter has completed a short course in transportation billing, he has been familiarizing himself with tariffs, and he is now restricting most of his hauling to the transportation of steel in Southern California, which substantially limits and simplifies the ratings with which he must be familiar. He is purchasing another carrier's operating authority which includes rights from the Interstate Commerce Commission to operate from the Los Angeles harbor. All of his income is being used to pay off his equipment loans, the interstate operating rights, other debts, and to support his family.

No evidence was presented by the two respondent shippers. Their attorney, in his closing statement, asserted that: (1) his clients are small companies; (2) neither does a substantial amount of shipping; (3) they do not have rate personnel and must rely on companies with whom they do business and truckers for transportation rates and charges; (4) there was no intent on the part of either of his clients to pay less than minimum rates for any of the transportation herein; and (5) under the circumstances the imposition of any undercharge assessments against either of his clients does not appear warranted. The attorney stated that should the decision in this matter require Vrabel to collect the undercharges alleged by the staff, his clients may not have the cash available to make such payments in lump sums, and it may be necessary for him to request a time payment schedule for either or both of them.

In closing, Vrabel asserted that he did not think any fines whatsoever should be imposed against him. He requested that if a punitive fine is to be imposed, he be authorized, because of his current difficult financial position, to pay such a fine on an installment schedule.

Discussion

We agree with the staff ratings and the undercharges shown in its two rate exhibits, and concur with its recommendations that Vrabel should be directed to collect the undercharges and to pay a fine in the amount thereof. As to the punitive fine, we are of the opinion that such a fine in the amount of \$1,000 should be imposed on Vrabel. In arriving at the punitive fine, we have taken into account that this is the first time Vrabel has been before the Commission in a formal proceeding for rate violations and his assertions that he had only recently commenced his business and was not knowledgeable of rating procedures at the time the transportation in issue moved. Such mitigation, however, does not exonerate a carrier from its responsibility to comply with applicable tariff rates and regulations. It is a well-settled principle that a for-hire carrier has the duty

to ascertain the applicable rates to be assessed and to collect the resulting charges for any and all ratable transportation it performs and that lack of knowledge on its part is not an acceptable excuse. We will, as requested by Vrabel, authorize him to pay the punitive fine in installments as provided in the order which follows.

We do not concur with the argument by the attorney for the respondent shippers that the facts and circumstances herein do not warrant any directive requiring the collection of undercharges from either of his clients. As stated, the undercharges shown in the staff rate exhibits are correct. Having so determined, we are required by legislative mandate to direct Vrabel to collect the undercharges. In this connection, Section 3800 of the Public Utilities Code provides in part that whenever the Commission, after hearing, finds that a highway permit carrier has charged less than the minimum rates and charges for the transportation of property, the Commission shall require such carrier to collect the undercharges involved. As to the attorney's statement that in the event Vrabel is required to collect undercharges from his clients, they may not be able to make such payments in a lump sum; he may, should he so desire, file a request for a time payment schedule on their behalf for our consideration.

Findings

1. Vrabel operates pursuant to a radial highway common carrier permit.
2. Vrabel was served with copies of all applicable minimum rate tariffs, distance tables, and exception ratings tariffs.
3. Vrabel assessed a flat charge for all of the transportation under investigation herein in violation of the minimum rates and rules established by the Commission.
4. The minimum rates and undercharges computed by the staff for the transportation summarized in Exhibits 3 (PDQ) and 4 (Alloy) are correct.

5. Vrabel charged less than the lawful prescribed minimum rates in the instances set forth in Exhibits 3 (PDQ) and 4 (Alloy) in the amounts of \$26,422.36 and \$3,059.02, respectively; and the total amount of the undercharges in the two Exhibits is \$29,481.38.

Conclusions

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

2. Vrabel should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$29,481.38 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$1,000.00. Vrabel should be authorized to pay the latter fine in accordance with the time schedule set forth in the order which follows.

3. Vrabel should be directed to cease and desist from violating the minimum rates and rules of the Commission.

The Commission expects that Vrabel 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 Vrabel or his 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. Eugene M. Vrabel, doing business as Gene's Services, shall pay a fine of \$1,000 to this Commission pursuant to Public Utilities Code Section 3774. Payment of the fine shall be made in accordance with the following schedule: \$250 shall be paid on or before the fortieth day after the effective date of this order and \$250 shall be paid on or before the fifteenth

day of each succeeding second month thereafter until the fine has been paid in full. Eugene M. Vrabel shall pay interest at the rate of seven percent per annum on the fine; such interest is to commence upon the day any installment payment of the fine is delinquent.

2. Eugene M. Vrabel shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$29,481.38 on or before the fortieth day after the effective date of this order.

3. Eugene M. Vrabel 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. Eugene M. Vrabel 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 Eugene M. Vrabel's operating authority until the report is filed.

5. Eugene M. Vrabel 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 respondent Eugene M. Vrabel 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 10th day of APRIL, 1979.

John E. Byrne
President
James L. Stegman
Charles D. Howell
Richard J. [unclear]
Donald M. [unclear]
Commissioners