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AUG 28 1979

ORIGINAL

Decision No. 90723

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of SNOOZIE SHAVINGS, INC., a California corporation, and NORTHCREST, INC., a California corporation.

Case No. 10636
(Filed July 25, 1978)

Frederick L. Hilger, Attorney at Law, for Snoozie Shavings, Inc.; and Roy M. Towers, for Northcrest, Inc.; respondents.
Peter Fairchild, Attorney at Law, and Ed Hielt, 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 Snoozie Shavings, Inc. (Snoozie) for the purpose of determining whether Snoozie charged less than applicable minimum rates, falsified shipping documents, and improperly consolidated multiple lot and split delivery shipments in connection with the transportation of lumber and stakes for Northcrest, Inc. (Northcrest).

Public hearing was held in Crescent City before Administrative Law Judge Arthur M. Mooney on November 15, 1978, on which date the matter was submitted.

At the time of the staff investigation referred to hereinbelow, Snoozie had an office and terminal in Crescent City and a paint shop in Eureka; employed eighteen people, including six full-time and two part-time drivers; operated six tractors

and six semitrailers; and had received all applicable minimum rate tariffs, distance tables, and exception rating tariffs. Its gross operating revenue for the year 1977 was \$1,317,705.34, of which \$34,678.50 represented subhauling for other carriers and \$35,895.33 represented interstate and foreign hauling.

Staff

A representative of the Commission staff visited Snoozie's place of business in September 1977 and on subsequent occasions and reviewed its records covering transportation performed for Northcrest during the period April through July 1977. The representative testified that he made true and correct photostatic copies of shipping orders, delivery receipts, and other supporting documents for this transportation and that all of the copies are included in Exhibit 2. He stated that: (1) the shipping orders and the delivery receipts (which are also referred to as mill tags in the evidence) were prepared by Northcrest; (2) a separate shipping order and delivery receipt was made up for each individual order and delivery; (3) all of the transportation originated at Northcrest's Crescent City mill, which is not served by rail facilities; (4) in each instance transportation was performed, multiple pickup and/or split delivery service was provided; (5) he was informed by the carrier that the master bill of lading for such services was not prepared until after the transportation moved and that no written instructions for multiple shipments were furnished by the shipper to the carrier prior to or at the time of the first pickup as required by the applicable tariff rules; (6) incorrect destinations were shown on many of the shipping documents, and he obtained the correct destination for three of the shipments himself and was furnished with

the correct location of the other destinations by Northcrest which he found to be very cooperative during the investigation; (7) the correct destinations are shown in Exhibits 3 and 4; (8) prior to the transportation under investigation herein, Snoozie was engaged in the hauling of wood shavings and chips; and (9) this was the first time that Snoozie transported lumber as a prime carrier.

A staff rate expert testified that he took the sets of documents in Exhibit 2, together with the supplemental information testified to by the representative and the data in Exhibits 3 and 4, and formulated Exhibit 5, which shows 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. The witness pointed out that: (1) the rules governing multiple lot and split delivery shipments in Items 85 and 172 of Minimum Rate Tariff 2 (MRT 2) require the shipper to furnish the carrier with written instructions or master documentation for the entire shipment prior to or at the time of the initial pickup; (2) the rules further provide that if this requirement has not been met, each pickup and/or delivery shall be rated as a separate shipment; (3) since no written instructions were issued by the shipper and the master documentation was not prepared until after the transportation moved, it was necessary to rate all component pickups and deliveries as separate shipments; and (4) the total amount of the undercharges in Exhibit 5 is \$15,138.52.

In closing, staff counsel asserted that the fact incorrect destinations were shown on many of the shipping documents constituted falsification of shipping documents. He recommended that Snoozie be required to collect the undercharges shown in Exhibit 5 and that a fine in the amount of the undercharges plus

a punitive fine of \$5,000 be imposed on the respondent carrier. He stated that the reason for recommending a punitive fine in this amount was because of the falsification of documents.

Respondents

The president, who is also the managing officer of Snoozie, testified as follows: He has held this position since 1968. Prior to early 1977, all of the lumber hauling done by Snoozie was as a subhauler for another carrier. As a subhauler, it was paid \$350 a load to the Los Angeles area. This was not enough revenue for this hauling so he explored the possibility of transporting lumber as a prime carrier. Before doing this, he contacted the Commission's Eureka office by telephone to find out the price to charge for hauling lumber to the Los Angeles area. He then obtained the Northcrest account, and it was his understanding that the charges his company assessed were at or above the minimum rates. He does not recall whether, in his discussions with the Eureka office, he discussed written instructions and master documentation for multiple lot and split delivery shipments. Northcrest always requested several trucks, and these requests were by telephone and not in writing. The drivers received the shipping orders showing where deliveries were to be made from the shipper when the loads were picked up. He is not familiar with MRT 2 and was of the opinion that all necessary rules and documentation requirements had been complied with. He was not aware that some of the deliveries were made to destinations other than those shown on the shipping documents. This information was given to the driver by the shipper.

The secretary-treasurer of Northcrest, who is also an owner of the company, testified that he is responsible for making arrangements with truckers for shipments to customers. In explaining the

procedure followed by Northcrest during the period covered by the staff investigation, he testified that: (1) Northcrest would place an order with Snoozie for equipment a day or two before it was needed; (2) the equipment was always ordered in multiples of two, either two or four, to qualify for multiple loads; (3) all of the lumber was sold to brokers; (4) Northcrest would show the destinations of the transportation on the shipping orders and delivery receipts which it prepared; (5) the delivery receipt is a multiple form with four copies and carbons held together by a 1-inch stub which is torn off and thrown away when the copies are separated; (6) if the broker were to change a destination for any of the deliveries, Northcrest would write the new destination on the bottom stub of the multiple delivery receipt form; (7) Northcrest would make a photocopy for its files of the entire delivery receipt form, including the stub which showed any delivery change that may have been made, and give the entire form to Snoozie's driver who would deliver the freight to the destination shown on the document or, if there were a change, to the new destination shown on the stub; (8) when delivery was made, the driver would tear apart the multiple form and throw away the stub; (9) the four copies of the delivery receipt were distributed as follows: one to the customer, one to the carrier's office, and two to Northcrest; (10) the only place, therefore, where destination changes would be shown would be on the photocopy retained by Northcrest; and (11) the master document is prepared by Snoozie. The witness asserted that he was of the opinion that this procedure complied with Commission rules. He explained that he had suggested leasing to Snoozie, but it wanted to use the equipment for other hauling on return trips.

He stated that although Northcrest does hold permits from the Commission, the transportation it performs is primarily exempt agriculture commodities, and for this reason, it is not familiar with Commission regulations. He testified that it was his understanding that correct rates were assessed for the transportation in issue, and it was never the intent of Northcrest to violate any of the Commission's rates or regulations.

In closing, the representatives of Snoozie and Northcrest asserted that there was no intent to falsify destinations on any of the documents; that any mistakes that might have been made were technical and unintentional; and that the facts and circumstances herein do not warrant any finding by the Commission of undercharges or the imposition of any fines.

Discussion

We concur with the ratings and undercharges computed by the staff for the transportation summarized in Parts 1-7, 9-14, 17-21, 24, 29, 31-33, and 35 of Exhibit 5. We do not agree that there are any undercharges for the transportation summarized in Parts 8, 15, 16, 22, 23, 25-28, 30, and 36 of the exhibit. We are also of the opinion that the undercharge of \$434.91 shown in Part 34 of the exhibit should be reduced to \$214.51. With these revisions, the total amount of the undercharges for the transportation in issue is \$12,571.48.

As to the 24 parts of Exhibit 5 with which we agree with the staff, the transportation covered by each of the parts, with the exception of Part 29, involved multiple deliveries. Since, as the evidence establishes, the consignor did not furnish the carrier with the single document setting forth written instructions

for split delivery service for any of this transportation as required by paragraph 2 of Item 172 of MRT 2, it was necessary, as pointed out by the staff, to rate each delivery as a separate shipment as provided in paragraph 4 of the item. Furthermore, it is noted that for this transportation, the evidence establishes that (1) numerous master bills of lading, which were prepared by the carrier after the transportation moved and were actually its freight bills, and shipping orders and delivery receipts, which were prepared by the shipper, failed to include correct destination information; (2) the carrier billed many of these shipments to a single point of destination and applied a flat charge irrespective of the fact that two or more deliveries were involved; (3) incorrect rail spur information at destination was shown on a number of the carrier's billings; and (4) in one instance, the carrier billed two truckloads of lumber as a forklift charge. With respect to Part 29, the carrier's freight bill and shipper's documentation in Exhibit 2 for the transportation covered by this part shows two loads of lumber picked up on the same day and delivered to Product Sales Co. in Santa Ana, located on a rail spur; whereas, according to the evidence, the two loads were, in fact, delivered to California Fence Co. in Riverside, an off-rail destination. Because of this incorrect destination information, respondents should not be given the benefit of combining the two loads as a single shipment for rating purposes from one origin to one destination. While we have done this with some of the transportation discussed below, the documentation for that transportation showed correct destination information. We agree with the staff that each load should be rated as a single shipment from Crescent City to Riverside.

As to the 11 parts listed above with which we do not agree undercharges exist, either all or several components of the transportation covered by each part were delivered to the same destination. The documentation for this transportation in Exhibit 2 showed the correct destination for the various components, and all components in each

part were picked up on the same date. For this reason, we have, for the purpose of this proceeding, considered the components delivered to the same destination to have been available for pickup at the same time and to be a single shipment and have rated them as such. By so doing, there are no undercharges for these 11 parts. With respect to Part 34, the documentation in Exhibit 2 for this part likewise shows the correct destinations to which the transportation was delivered. As with the aforementioned 11 parts, some of the components were delivered to the same destinations and for the same reason, we have combined deliveries to the same destination as single shipments rather than as separate shipments as shown in Exhibit 5. By rating Part 34 in this manner, the undercharge is, as state above, \$214.51.

The next issue for our consideration is whether Snoozie falsified its billings to Northcrest in those instances where freight was delivered to destinations not shown on the billings. Snoozie alleges this was not documentation falsification. The staff alleges it was. In support of its position, the president of Snoozie asserted that (1) the only information the carrier's office had regarding destinations was that shown on the shipping order and delivery receipt documents prepared by Northcrest; (2) any changes in destinations from those shown on these documents were recorded by Northcrest on the throwaway stubs of the delivery receipt forms which were given to the drivers only; and (3) since destination changes were never communicated to Snoozie's office, any destination errors on any of its billings were inadvertent errors due to lack of knowledge of such changes and were not intentional documentation falsification. The staff, however, pointed out that (1) Snoozie's drivers prepared a trip ticket for each load transported; (2) the trip ticket shows the driver's name, truck number, date the trip was completed, total mileage traveled, the city or cities to which the freight was actually delivered, and in some instances, the name of the consignee or consignees; and (3) there were copies of the trip tickets in Snoozie's files with the other documents referred to above for most

of the transportation under investigation. The staff included photocopies of the trip tickets in Exhibit 2 for all of the shipments except those covered by Parts 3, 6, and 9. Even assuming Snoozie's office was not otherwise informed of the destination changes, the fact remains that it did have documents in its files, namely driver trip tickets, that placed it on notice that this was occurring with many of the loads transported for Northcrest. With such available information, a plea of lack of knowledge is unacceptable. Furthermore, it does not seem possible that a carrier would not know where or to whom its drivers were delivering freight. We agree with the staff on this issue.

One last matter to be commented on is the statements by Snoozie's president that he contacted the Commission's Eureka office to ascertain the applicable lumber rates for most of the transportation in issue and that he was not aware of any rate errors. He did admit, however, that he could not recall whether he requested any information regarding rules and regulations governing documentation and split delivery shipments, the violation of which is the major cause of the undercharges herein. Even assuming he was given incorrect information by the Eureka office, which the evidence certainly does not support, "it is a well-established principle of administrative law that statements of policy, administrative opinions, or interpretations of laws and regulations by employees of such an agency cannot be used to preclude the agency from taking whatever action is necessary." (In re Coast Trucking Co. (1962) 60 CPUC 67, 70.) This obviously includes statements regarding minimum rates. Furthermore, we have consistently held that a lawful duty rests upon highway permit carriers subject to our jurisdiction to observe minimum rates, and the law will not permit them to offer excuses for not doing so, including allegations of lack of familiarity with applicable tariff rules and rates. (See In re Morrison Trucking Co. (1963) 61 CPUC 234.)

Snoozie will be directed to collect the undercharges found herein and to pay a fine in the amount thereof plus a punitive fine of \$5,000. We recognize that this is the first time Snoozie has transported lumber as a prime carrier. However, the evidence clearly establishes a complete disregard by it of applicable rules and regulations governing documentation and rates. Such behavior will not be tolerated and warrants the imposition of the maximum amount of punitive fine.

Findings of Fact

1. Snoozie operates pursuant to radial highway common carrier and highway contract carrier permits.
2. Snoozie was served with copies of all applicable minimum rate tariffs, distance tables, and exception rating tariffs.
3. The staff ratings and undercharges for the transportation covered by Parts 1-7, 9-14, 17-21, 24, 29, 31-33, and 35 of Exhibit 5 are correct.
4. The undercharge of \$434.91 shown in Part 34 of Exhibit 5 should be \$214.51.
5. There are no undercharges for the transportation summarized in Parts 8, 15, 16, 22, 23, 25-28, 30, and 36 of Exhibit 5.
6. For the transportation covered by the parts of Exhibit 5 listed in Findings 3 and 4, Snoozie charged less than the lawfully prescribed minimum rate in the amount of \$12,571.48.
7. Snoozie falsified its billings to Northcrest in those instances where freight was delivered to destinations not shown on the billings.

Conclusions of Law

1. Snoozie violated Sections 3664, 3667, and 3737 of the Public Utilities Code.
2. Snoozie should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$12,571.48 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$5,000.

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

The Commission expects that Snoozie 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 Snoozie 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. Snoozie Shavings, Inc. shall pay a fine of \$5,000 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Respondent carrier 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. Respondent carrier shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$12,571.48 on or before the fortieth day after the effective date of this order.

3. Respondent carrier 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 6 and shall notify the Commission in writing upon collection.

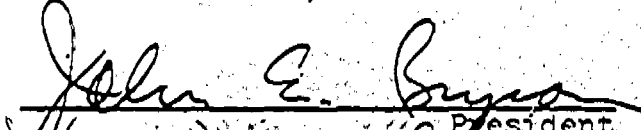
4. Respondent carrier shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. In the event the undercharges ordered to be collected by paragraph 3 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, respondent carrier 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 respondent carrier's operating authority until the report is filed.

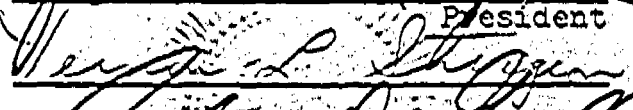
5. Respondent carrier shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the minimum rates and charges prescribed by this Commission.

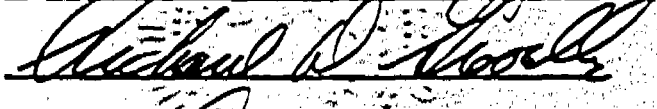
6. Respondent carrier shall cease and desist from failing to comply with applicable documentation rules.

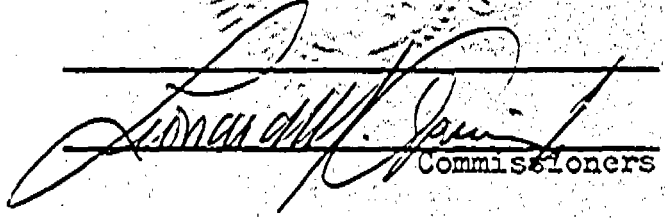
The Executive Director of the Commission shall cause personal service of this order to be made upon respondent Snoozie Shavings, Inc. and cause service by mail of this order to be made upon Northcrest, Inc. The effective date of this order as to each respondent shall be thirty days after completion of service on that respondent.

Dated AUG 28 1979, at San Francisco, California.



President






Commissioners

Commissioner Claire T. Dodrick, being necessarily absent, did not participate in the disposition of this proceeding.