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SEP 25 1979

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
rates and practices of Aldo J.)
Lazzarini, dba American Van Lines,)
a sole proprietorship.)

OII No. 27
(Filed September 19, 1978)

Aldo J. Lazzarini, for himself, respondent.
Robert Cagen, Attorney at Law, and
Ed 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 Aldo J. Lazzarini (Lazzarini), doing business as American Van Lines, a sole proprietorship. Public hearing was held before Administrative Law Judge Arthur M. Mooney in San Francisco on November 6, 1978, on which date the matter was submitted.

Lazzarini operates pursuant to radial highway common carrier and household goods carrier permits. At the time of the Commission staff investigation referred to hereinbelow, Lazzarini had a terminal in San Francisco; employed four drivers, three helpers, three office and sales personnel, and additional help as needed; operated four tractors, three trailers, two truck vans, one pick-up, and one step van; and had received Minimum Rate Tariff 4-B (MRT 4-B) and the applicable distance table, together with all supplements and additions to each. His gross operating revenue for the year ending June 30, 1977 was \$253,948, and this included some revenue from transportation on private property and interstate shipments.

Staff's Presentation

A representative of the Commission staff visited Lazzarini's place of business on various occasions commencing in April 1977 and reviewed his records for the period July 1976 through April 1977. The representative testified that an informal complaint regarding the carrier's estimating practices had been received from a shipper and that because of this and the fact that the carrier's records had not been reviewed for some time, the investigation was undertaken. He stated that on some of his visits he was accompanied by one or two other staff members. He explained that he initially requested 1976 records but that as his investigation progressed, he decided to review the more current 1977 records also. The witness stated that the carrier's employee who furnished him with the information he requested during the investigation was cooperative.

The witness testified as follows regarding the shipment transported by Lazzarini for the shipper who had filed the informal complaint: As a result of the investigation of the informal complaint, it was determined by the staff that Lazzarini had violated several estimating rules in MRT 4-B and, as a result, was required to refund \$186.45 to the shipper. A letter dated December 29, 1976 was sent to the carrier informing him of this. Lazzarini did not make the refund, and there were exchanges of correspondence between the staff and him regarding this. The shipper filed an action in the Small Claims Court on January 10, 1978 and was awarded a judgment for the refund amount which Lazzarini then paid. Copies of documentation and correspondence regarding this claim are included in Exhibit 2 and Part 1 of Exhibit 4.

The witness stated that the investigation disclosed 11 other instances wherein Lazzarini had violated the estimating rules in MRT 4-B. In this regard, he testified that (1) an overcharge letter dated June 6, 1977 was sent to Lazzarini directing him to refund certain amounts to each of the 11 shippers; (2) Lazzarini made only a partial refund of \$34.51 to one of the shippers and none to the other 10; (3) there were exchanges of correspondence between the

staff and Lazzarini regarding this; (4) on January 12, 1978, Lazzarini was placed on official written notice by the staff for his failure to comply with the June 6, 1977 overcharge letter; (5) as a result of Lazzarini's continued failure to comply, the formal investigation herein was instituted; and (6) copies of the overcharge letter, other correspondence, and the documentation relating to the 11 shipments are included in Exhibit 3 and Parts 2 through 12 of Exhibit 4.

A staff rate expert testified that he took the set of documents and other information in Exhibits 2, 3, and 4, together with the supplemental information testified to by the representative, and formulated Exhibit 7, which shows the following for each of the 12 shipments in issue: (1) the rates and charges assessed by the respondent carrier; (2) the maximum total charges and amount to be refunded to the debtor computed by the staff; and (3) the alleged minimum rates and charges and penalty to be paid by Lazzarini. He pointed out that: (1) there is no penalty on four of the shipments; (2) as stated by the representative, Lazzarini has already paid the refund to one shipper and a partial refund to another shipper, and with these adjustments, the total of the refunds and penalties shown in Exhibit 7 are \$1,641.42 and \$749.25, respectively; and (3) these were the result of violations by Lazzarini of estimating and related rules in MRT 4-B.

The pertinent rules in MRT 4-B involved herein are the Probable Cost of Services (Items 31 and 31.1), Basis for Carrier's Probable Cost of Services (Item 32), Table of Measurements (Item 33), Addendum Order for Services (Item 33.5), and Penalties and Reporting of Underestimates (Item 33.7) Rules. A complete copy of these rules is set forth in Exhibit 5, and the rate expert's explanation thereof is set forth in Exhibit 6. In essence, the rules provide that the carrier may issue a Probable Cost of Services (PCS) document, commonly referred to as an estimate, after visual inspection of the household goods, to advise the shipper of the approximate cost of the proposed

services. It is not mandatory that such a document be issued by the carrier; however, if the carrier, at the request of the shipper, issues a PCS document, then the following conditions must be met: (1) the carrier's estimator shall, after visual inspection of the household goods, prepare the Basis for Carrier's Probable Cost of Services (BCPCS) document, which shall be signed by the shipper and a copy thereof left with him, and if distance rates are to be applied, the Table of Measurements document shall be prepared; (2) the estimator shall utilize only the information in the aforementioned documents as a basis for preparing the PCS document and shall leave a signed copy of this document with the shipper; (3) if the shipper thereafter requests additional services, not covered in the BCPCS document, the carrier shall prepare an Addendum Order for Service (Addendum) document specifying the additional services and the charges therefor, and prior to the commencement of the additional services, this document shall be signed by both the carrier and the shipper and a copy given to the shipper; and (4) the maximum total charges assessed by the carrier shall not exceed the amount shown on the PCS document by more than 10 percent or \$15.00, whichever is greater, plus the charge on the Addendum document under hourly rates or by more than 2½ percent or \$15.00, whichever is greater, plus the charges on the Addendum document under distance rates. The Penalties and Reporting of Underestimates provisions in Item 33.7 of the tariff provide for a penalty for underestimating in the amount of the difference between the charge under the applicable minimum rates and the charge on the PCS document plus the allowable tolerance, plus the charge on the Addendum document, if any, and set forth procedures for payment of penalties and for the reporting of shipments subject to penalties.

In his closing statement, staff counsel recommended that: (1) with the exception of the refund and partial refund that have already been made, Lazzarini be directed to refund the amounts and also pay the penalties shown in the staff's Exhibit 7; (2) a punitive fine of \$2,000 be imposed on the carrier with \$1,500 of this amount suspended on the condition that he does not appear as a respondent

before the Commission in a formal proceeding for a three-year period; and (3) Lazzarini be directed to cease and desist from any future violations of MRT 4-B.

Respondent

Lazzarini testified that: (1) he has been in the moving business for many years; (2) he handles approximately 250 household and office moves per year, most of which are household goods; (3) some of the office moves are for various state agencies, including the Commission; (4) PCS documents are prepared for about 60 percent of the household goods shipments; (5) the Addendum document is seldom used; (6) each driver has been instructed to have an Addendum document with him and to use it when a shipper requests additional services not included in the PCS document; however, some drivers will either not prepare it or will not fill it out completely; (7) the investigation herein was commenced because of the informal complaint to the staff by the shipper who filed the action in Small Claims Court; (8) the staff sent a representative to Small Claims Court to assist this shipper; and (9) with the possible exception of one, he did not receive any complaints from the other 11 shippers listed in the staff exhibits regarding the amounts he had charged them.

According to Lazzarini's testimony and his Exhibit 8, the charges the staff alleges should be refunded resulted from the performance of additional services the various shippers requested after the PCS document had been issued, including the transportation of additional items, extra packing material and labor, unpacking, an extra stop for partial unloading, long carries, increase valuation of the household goods, and/or other such services. Lazzarini asserted that: (1) although Addendum documents were not prepared for most of the shipments and were not completely filled out for the remaining shipments, the shippers were aware that additional services not shown on the PCS documents were to be performed and that they were expected to pay for such services; (2) in all instances, value was given for the amount charged; (3) for the shipments for which

an Addendum document was not prepared, the employees involved either, through inadvertence, did not have blank documents with them or, because of lack of education or other circumstances, were unable to fill it out; and (4) in those instances where the Addendum documents were incomplete, the errors, if any, were technical in nature.

In his closing statement, Lazzarini asserted that: (1) he does not agree with the violations alleged by the staff; (2) it has always been his intent to abide by the applicable rates and regulations; and (3) the facts and circumstances herein do not warrant any refunds or the imposition of any penalties or fine whatsoever.

Discussion

We concur with the staff that for the 12 shipments in issue, Lazzarini failed to comply with the applicable estimating rules in MRT 4-B referred to above, and we, likewise, agree with the ratings, refunds, and penalties computed by the staff in its Exhibit 7 for each of the shipments.

Estimates below the total charges billed by the carrier have been a problem of long standing in the household goods carrier industry. Generally, the average householder has occasion to move only once in several or more years and is not familiar with the services offered by household goods carriers or their rates and charges. He must rely on the carrier or its representative for such information and will usually employ the carrier with the lowest bid. It is apparent that underestimating can be an effective means of obtaining business. As a remedy to this problem, the comprehensive rules governing estimates have been established in the household goods tariff. These rules have been refined from time to time and were adopted after extensive public hearings at which all parties had an opportunity to be heard and present their views. It is the duty of every household goods carrier to comply with these rules. Unless all information regarding services to be performed and the charges therefor are entered on the documents, it is not possible to determine whether the estimates are within the required limits

of accuracy. Lack of understanding or neglect on the part of the carrier or its employees regarding these rules is not an acceptable excuse for failure to comply therewith.

It is to be noted that the Commission is required by legislative mandate, which is set forth in Section 5245 of the Public Utilities Code, to establish such rules and regulations as are necessary to control estimates given by a household goods carrier to a shipper and to enforce such rules and regulations. This section was added to the Code in 1963. Again in 1973, the Commission was requested by House Resolution No. 57 of the California State Assembly to investigate the problems associated with deliberate underestimating by household goods carriers as a competitive practice. As we have heretofore stated, "because of the difficulty of determining whether an underestimate is deliberate, and because underestimates, whether or not deliberate, constitute an unfair business practice and they tend to mislead and deceive the uninformed shipper of household goods, additional rules designed to minimize underestimates are required." (In re MRT 4-B (1973) 75 CPUC 275, 288). To remedy this problem, the present estimating and related rules were established.

We are not persuaded by Lazzarini's assertions that: (1) the basic problem here, if any, is a technical violation resulting from the failure by his employees either to prepare or to prepare in accordance with the the tariff rules the Addendum document for the shipments in issue; (2) he has attempted to train his employees to fill out this document properly; and (3) in all instances, value was given for the amount charged. The tariff rules in question have been in MRT 4-B for a considerable period of time, and it is expected that all household goods carriers have developed some workable procedure to assure that they and their employees comply with them.

We are of the opinion that Lazzarini should be directed to: (1) pay the refunds and penalties recommended by the staff; (2) pay a punitive fine of \$250; and (3) cease and desist from future violations of MRT 4-B. In arriving at the amount of the punitive fine,

we have taken into account the facts that the shipments on which the errors occurred accounted for only a very small percentage of the business Lazzarini handles and that he has not heretofore been a respondent in a formal investigation. However, Lazzarini is placed on notice that future violations of the applicable estimating and related rules will not be tolerated and that it is his responsibility to assure that his estimators, drivers, and other employees are knowledgeable of the tariff rules in issue and the consequences of any failure to comply therewith.

Findings of Fact

1. Lazzarini operates pursuant to household goods carrier and radial highway common carrier permits.
2. Lazzarini was served with copies of all applicable minimum rate tariffs and distance tables.
3. For the transportation covered by the investigation herein, Lazzarini either failed to prepare or did not prepare in accordance with applicable tariff rules the Addendum documents and, in certain instances, the estimates given for transportation to be performed were not within the tolerance specified in the estimating rule.
4. Lazzarini was directed by Small Claim's Court to refund \$186.45 in connection with the transportation covered by Part 1 of Exhibit 7. The refund has been made. He has also made a partial refund of \$34.51 in connection with the transportation covered by Part 7 of the exhibit.
5. The rates and charges and resulting refund and penalty amounts computed by the staff in its Exhibit 7 for the transportation in issue are correct. As shown in the exhibit, penalties are applicable on 8 of the 12 shipments.
6. With the exception of the refund amounts referred to in Finding 4 that have already been paid, Lazzarini charged more than the authorized maximum total charges in the instances set forth in Exhibit 7 in the total amount of \$1,641.42, and the appropriate amount shown in each of Parts 2 through 12 of the exhibit should be refunded to the debtor involved. Also the penalties in the total amount of \$749.25 shown in Parts 1, 3, 4, 6, 7, 10, 11, and 12 of Exhibit 7 should be paid by Lazzarini.

Conclusions of Law

1. Lazzarini violated Sections 5139, 5193 and 5245 of the Public Utilities Code.

2. Lazzarini should pay the refunds and penalties referred to in Finding 6, and in addition thereto, should pay a fine pursuant to Section 5285 in the amount of \$250.

3. Lazzarini should be directed to cease and desist from violating MRT 4-B, including the estimating and related rules therein.

4. The Commission expects that Lazzarini will proceed promptly, diligently, and in good faith, to pursue all reasonable measures to pay the refunds and penalties referred to in Finding 6. The Commission staff will make a subsequent field investigation into such measures. If there is reason to believe that he has not been diligent, or has not taken all reasonable measures to comply with this directive, 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:

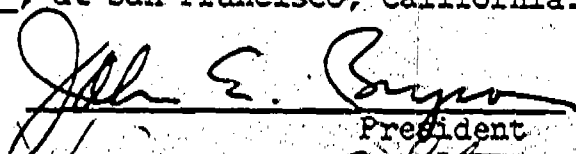
1. Aldo J. Lazzarini, doing business as American Van Lines, shall pay a fine of \$250 to this Commission pursuant to Public Utilities Code Section 5285 on or before the fortieth day after the effective date of this order. Aldo J. Lazzarini shall pay interest at the rate of seven percent per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent.

2. Aldo J. Lazzarini shall pay the refunds and penalties set forth in Finding 6 within forty days after the effective date of this order and shall notify the Commission in writing upon the completion of such payments.

3. Aldo J. Lazzarini shall cease and desist from violating the rates, rules and regulations in Minimum Rate Tariff 4-B, including the estimating and related rules therein.

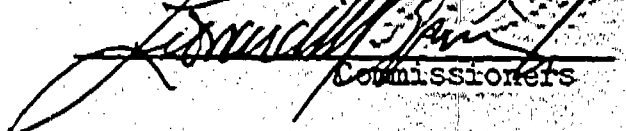
4. The Executive Director of the Commission shall cause the personal service of this order to be made upon Aldo J. Lazzarini, and the effective date of this order shall be twenty days after the completion of such service.

Dated SEP 25 1979, at San Francisco, California.


President






Commissioners