

Decision No. 92399

NOV 4 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, charges, and practices of
Milton J. Jacklin, an individual,
dba JACKLIN TRUCKING and ALL AMERICAN
ASPHALT, a California corporation.

OII No. 65
(Filed March 4, 1980)

Milton J. Jacklin, for himself, respondent.
Harry Phelan, for California Asphalt Pavement
Association; James D. Martens, for California
Dump Truck Owners Association; and James R. Foote,
for Associated Independent Owner-Operators, Inc.;
interested parties.
William Bricca, Attorney at Law, and Paul Wuerstle
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 Milton J. Jacklin, doing business as Jacklin Trucking (Jacklin).

The purpose of the investigation is to determine whether or not Jacklin may have violated Sections 3664 and 3737 of the Public Utilities Code (Code) while transporting asphaltic concrete for respondent shipper All American Asphalt (All American) during the month of July 1978.

A public hearing was held before Administrative Law Judge Bernard A. Peeters on September 24, 1980 in Los Angeles. The matter was submitted on that date.

The staff presented its case through two witnesses and four exhibits. Exhibit 1 shows that Jacklin was issued a dump truck carrier permit on November 23, 1976 and that he was served with Minimum Rate Tariff 17-A (MRT 17-A) and Directory 1. Jacklin operates

a two-axle dump truck and had gross operating revenues of \$45,830 for the calendar year 1978. The exhibit also shows that on April 17, 1979 Jacklin was served with Undercharge Citation No. F-1678 which alleged violation of Sections 3664 and 3737 of the Code by having charged \$620.06 less than the minimum rates. This citation was denied by Jacklin, which precipitated the issuance of OII No. 65.

Exhibit 2 contains a copy of a letter sent to Jacklin on September 23, 1977 which directed him to cease and desist from assessing rates and charges less than those prescribed in the Commission's minimum rate tariffs, and advised him that violations may subject him to fines or other penalties as provided in the Code. The balance of Exhibit 2 contains the shipping documents obtained from the carrier upon which the transportation rate expert based his computations of the correct minimum rates and charges.

Exhibit 3 is a copy of Undercharge Citation No. F-1678. Part of this exhibit consists of Form 2 (Denial), which is part of the undercharge citation package. Form 2 was signed by Jacklin on May 15, 1979. Part D of Exhibit 3 is a photocopy of a check from All American dated May 3, 1979 in the amount of \$620.06 made payable to Milton J. Jacklin.

The staff's second witness was the rate expert who prepared Exhibit 4. Exhibit 4 assertedly contains the correct minimum rates and charges for the shipments represented in Exhibit 2. The total undercharges are \$620.06.

Jacklin took the stand in his own behalf and offered testimony in explanation and mitigation of the alleged violations.

Jacklin states that his first experience in dump truck operations was as a driver for his father-in-law who was a dump truck operator. At the time he was working as an employee he was hauling materials for a firm whose transportation came under the provisions

of MRT 17-A. During this period of employment it was his experience that respondent All American needed additional trucks to perform its hauling requirements. Upon receipt of his dump truck carrier permit Jacklin went to work hauling asphaltic concrete for All American. He states he was under the impression he was working as an employee although he was required to purchase his own trucking equipment. He was also under the impression that the rates to be charged were those that were found in MRT 17-A such as he had been using when he was employed by his father-in-law. Jacklin could give no reason why he did not order MRT 7-A when he was informed that the transportation he was performing for All American was ratable under MRT 7-A.

In closing, the staff recommended that a punitive fine in the amount of \$250 be assessed against Jacklin and that he be ordered to pay \$620.06 as a fine.

Discussion

The evidence is uncontradicted with respect to the transportation in question which was performed and charged for at less than the applicable minimum rates. The specific undercharges amount to \$620.06 and were paid by All American to Jacklin.

It is axiomatic that one who enters into a regulated business is presumed to know the applicable law and assumes all the risks and responsibilities. Lack of knowledge of the applicable tariffs and/or rates is not a valid excuse for violating the law. We have reviewed the circumstances involved and conclude that the conduct of the carrier justifies a punitive fine in the amount of \$250.

Findings of Fact

1. Jacklin violated Sections 3664 and 3737 of the Code by charging \$620.06 less than the minimum rates for the transportation of asphaltic concrete for All American.

2. While All American initially paid less than the applicable rates and charges for the transportation performed by Jacklin, it subsequently paid the difference (\$620.06) to Jacklin.

3. No sum of money is now due and owing Jacklin from All American. Therefore, it is not necessary to order Jacklin to collect the difference between charges billed and the charges due for the transportation performed.

4. The conduct of the carrier provides the requisite basis for the imposition of punitive measures provided under Section 3774 of the Public Utilities Code. Based on our independent review, a punitive fine of \$250 is appropriate.

Conclusions of Law

1. Jacklin violated Sections 3664 and 3737 of the Public Utilities Code.

2. Jacklin should be ordered to cease and desist from any and all unlawful operations and practices.

3. Jacklin should be ordered to pay a punitive fine in the amount of \$250 pursuant to Section 3774 of the Code.

4. Jacklin should also be ordered to pay a fine in the amount of the undercharges (\$620.06) pursuant to Section 3800 of the Code.

O R D E R

IT IS ORDERED that:

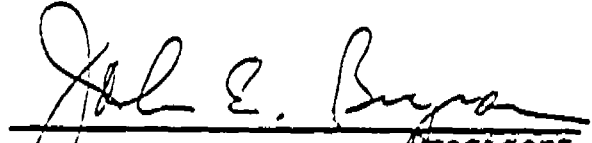
1. Milton J. Jacklin shall pay a fine of \$250 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Milton J. Jacklin shall pay interest at the rate of 7 percent per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent.

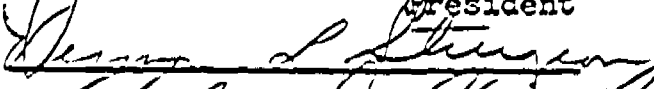
2. Milton J. Jacklin shall pay a fine of \$620.06 on or before the fortieth day after the effective date of this order.


3. Milton J. Jacklin shall cease and desist from charging and collecting compensation for 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 Milton J. Jacklin and cause service of mail of this order to be made upon All American Asphalt. The effective date of this order as to each respondent shall be thirty days after completion of service on the respondents.

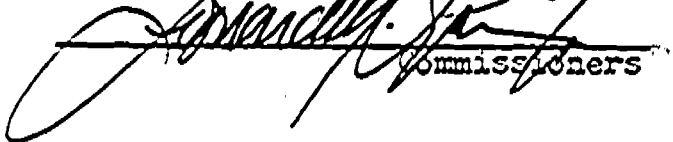
Dated NOV 4 1980, at San Francisco, California.



President








Commissioners