

ORIGINAL

Decision No. 92400 NOV 4 1980

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 SOUTHWEST )  
 TRAILS, a California corporation; )  
 LARRY MENDEZ, an individual doing )  
 business as B-Mendez Trucking; Maurice )  
 A. Reeves, an individual doing business )  
 as REEVES TRUCKING; LEONARD DALE WILSON, )  
 an individual doing business as CALVAC; )  
 CHARLES ROBERT NORRIS, an individual )  
 doing business as CHUCK NORRIS TRUCKING; )  
 LUTHER WAFFORD, an individual doing )  
 business as WAFFORD TRUCKING; JIMMIE D. )  
 OTT, an individual doing business as )  
 JIM OTT TRUCKING; NEIL BOYCE SHORT, an )  
 individual; C. O. COOK, INC., a Cali- )  
 fornia corporation; JAMES JUNIOR MATHIS, )  
 JAMES FORREST MATHIS, JAMEY LYNN MATHIS, )  
 and GREGORY JUNIOR MATHIS, the members )  
 of and constituting a partnership doing )  
 business as ICHI BAN TRUCKING; GEORGE )  
 RAY ESTES and SOLAN LEE ESTES, the )  
 members of and constituting a partner- )  
 ship; CAROL L. BEAGLEY and JOSEPH R. )  
 BEAGLEY, the members of and constituting )  
 a partnership doing business as SILVER )  
 CLOUD TRUCKING; B & J TRANSPORTATION, )  
 INC., a California corporation; TRIPLE )  
 JAY TRANSPORT, INC., a California )  
 corporation; and MOTORENT LEASING, INC., )  
 a California corporation. )

OII No. 74  
(Filed July 2, 1980)

James Lyons, Attorney at Law, for Southwest Trails,  
 respondent.  
Alvin S. Pak, Attorney at Law, and Edwin H. 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 Southwest Trails (Southwest), a California corporation, engaged in the business of transporting property over the public highways of this State for compensation, under a highway contract carrier permit issued on July 8, 1975 and a petroleum contract carrier permit issued on March 16, 1976; 13 carriers, collectively referred to hereinafter as the subhauler group, all operating under various types of permits issued by the Commission; and Motorent Leasing, Inc. (Motorent), a wholly owned subsidiary of respondent Southwest.

The purpose of the investigation is to determine:

1. Whether Southwest, in performing transportation for Motorent, violated Sections 3664, 3667, 3668, and/or 3737 of the Public Utilities Code (Code) by using Motorent as an alter ego to evade payment of the full rates and charges applicable to said transportation to the members of respondent subhauler class employed to perform the actual transportation.
2. Whether respondent Southwest, in performing transportation for Motorent, violated Section 3774 of the Code by failing to assess its rates using the unit of measurement, viz., gross gallons loaded, required by Minimum Rate Tariff 6-B, Item 180. ✓
3. Whether the members of the respondent subhauler class, in performing transportation for respondent Southwest, violated Sections 3664, 3667, and/or 3737 of the Code by failing to collect the full rate.
4. Whether shipper-respondent Motorent has paid less than the applicable rates and charges for transportation performed by or under the supervision of respondent Southwest.
5. Whether any sums of money are due and owing respondent Southwest from shipper Motorent.

6. Whether Southwest should be ordered to collect from Moto-rent or from any persons liable therefor the difference between the charges billed and/or collected and charges due under the applicable minimum rate tariff.
7. Whether we find Southwest should be ordered to pay to any or all of the members of the subhauler class or to any persons entitled to the difference between the amount paid to them by Southwest and the amounts due them under the applicable minimum rate tariff.
8. Whether Southwest and members of the subhauler class should be ordered to cease and desist from all unlawful operations and practices.
9. Whether the operating authority of Southwest should be canceled, revoked, or suspended, or as an alternative, a fine should be imposed on Southwest pursuant to Section 3774 of the Code.
10. Whether Southwest should be ordered to pay a fine in the amount of any or all of the undercharges pursuant to Section 3800 of the Code.
11. Whether any order or orders that may be appropriate should be entered into the lawful exercise of the Commission's jurisdiction.

A duly noticed public hearing was held in Los Angeles on August 27, 1980 before Administrative Law Judge Bernard A. Peeters.

The staff introduced a stipulation of facts, issues, and recommended fines which was concurred in, entered into, and signed by the president of Southwest and its attorney, the attorney for the staff, and the Transportation Division staff representative. The stipulation was received in evidence as Exhibit 1. The stipulation was supported by various documents resulting from the staff's investigation which were identified and received as Exhibits numbered 1-A, 1-B (consisting of nine separate volumes), 1-C (a rate statement), and 1-D (a profile of the carriers).

The essential parts of the stipulation indicate that Southwest is the alter ego of Motorent through common ownership, management, and control and by reason of that relationship Southwest violated Sections 3664, 3667, 3737 of the Code which resulted in underpayments to the de facto prime carriers named as the subhauler class in OII 74. Paragraph 5 of Exhibit 1 shows the following underpayments between Southwest and members of the subhauler class as follows:

|                            |                 |
|----------------------------|-----------------|
| Larry Mendez               | \$ 121.14       |
| Maurice Reeves             | 4,454.96        |
| Leonard Wilson             | 5,654.15        |
| Charles Norris             | 3,561.90        |
| Luther Wafford             | 8,837.60        |
| Jimmie D. Ott              | 5,774.41        |
| Neil Short                 | 2,529.06        |
| C. O. Cook, Inc.           | 5,942.48        |
| James Junior Mathis        | 13,239.59       |
| George Estes               | 9,655.76        |
| Carol L. Beagley           | 276.60          |
| B & J Transportation, Inc. | 119.41          |
| Triple Jay Transport, Inc. | <u>2,672.78</u> |
| Total                      | \$62,839.84     |

Paragraph 8 of the stipulation states that the Ordering Paragraphs in OII 74 numbered 1, 2, 7, 8, and, as to the alternatives stated, 9, all should be answered in the affirmative.

Paragraph 9 of the stipulation limits the violations agreed upon only to the transportation described in Exhibits 1-B and 1-C and none other, and that the staff agrees not to pursue any investigation for the purpose of determining whether further underpayments exist in connection with transportation performed by Southwest for Motorent prior to December 31, 1979 where subhaulers were employed.

It is also agreed that Southwest will pay and should be ordered to pay the net underpayments of \$62,839.84 shown in Exhibit 1-C to the members of the subhauler class in the amount

specified and that Southwest requests, with the concurrence of the Commission staff, that the net underpayments to said members of the subhauler class shall be remitted to subhaulers on a uniform, monthly schedule within a period of three years from the effective date of the Commission's decision in OII 74, payments to commence within 30 days of said date.

Paragraph 11 of Exhibit 1 states that any underpayments which Southwest has been unable to remit be placed in a special account by Southwest, the disposition of which shall be determined by further order of the Commission.

Under Paragraph 12 of the stipulation it is stated "That by virtue of Southwest Trails' culpability in the violations agreed to in this stipulation and considering all of the circumstances of this case, the Commission staff and Southwest Trails agree that Southwest Trails should pay and be ordered to pay a punitive fine of \$3,500 pursuant to Section 3774 of the Public Utilities Code, \$2,500 of which shall be payable upon the effective date of the Commission's decision in OII 74 with the balance due only upon failure of Southwest Trails to make timely payment of the underpayments as described hereinabove." It was also agreed between the parties that the stipulation shall not be admitted or admissible in any proceeding other than OII 74.

Exhibit 1-D shows that a highway contract carrier permit was issued July 8, 1975 to Motovent, dba Southwest Trails, under File T-88,388 which authorized transportation of commodities ratable under Minimum Rate Tariff 2. The carrier's name was changed to Southwest Trails on October 27, 1975. The permit contains no alter ego clause regarding subhaulers. A petroleum contract carrier permit was transferred from Coastal Transport Terminal File T-108,473, on March 16, 1976 to Southwest Trails. This permit authorized the

transportation of commodities for which rates are provided in Minimum Rate Tariff 6-B. This permit likewise contains no alter ego clause regarding subhaulers.

Southwest employs 40 drivers, 7 shop personnel, 2 dispatchers, and 5 office personnel. Southwest has 11 tractors, 12 tank trucks, 3 sets of tank doubles, 3 sets of semi- and full-tank trailers, 14 semi-tank trailers, 8 semi-van trailers, and 3 converter gears. The carrier's headquarters are located in Long Beach and consist of offices and a car-parking area. Its operating terminal is located in Gardena, which consists of a trailer coach housing the dispatchers, certain files, and the mechanical maintenance function. This facility also includes the carrier's shops and truck-parking yard. Southwest has a subhaul bond, No. 102872, issued by Reserve Insurance Company effective July 14, 1978, on file. Its gross revenues for 1978 amounted to \$2,480,532 of which \$561,799 was paid to subhaulers. The staff review upon which this OII is based covered the period December 1978 and January and February 1979.

The parties agreed that Ordering Paragraphs Nos. 1, 2, 7, 8, and as to the alternatives stated, 9, of OII 74 should be answered in the affirmative.

The staff stated that it had no evidence with respect to the subhauler class having violated Sections 3664, 3667, 3668, and/or 3737 of the Code.

Findings of Fact

1. File T-88,388 shows that a highway contract carrier permit was issued to Motorent, dba Southwest Trails, on July 8, 1975. Said file also shows the carrier's name was changed to Southwest Trails on October 27, 1975 and that the permit contains no alter ego clause regarding subhaulers.

2. File T-108,473 shows that a petroleum contract carrier permit was transferred from Coastal Transport Terminal on March 16, 1976 to Southwest. This permit does not contain an alter ego clause regarding subhaulers.

3. The permits referred to in Findings 1 and 2 above were in effect during the time the transportation was performed which is the subject of this investigation.

4. Exhibit 1-D contains the articles of incorporation of Motorent and Southwest. Said articles and other documents contained in Exhibit 1-D show that both corporations have common management, control, and ownership.

5. Exhibit 1-C shows that Southwest paid the respondent subhaulers less than the minimum rates and charges applicable to the transportation performed by said subhaulers. The total of such underpayments amounts to \$62,839.84.

6. The respondent subhaulers performed the transportation which is the subject matter of this investigation under permits that were lawfully in effect during the periods of time involved.

7. The respondent subhaulers were unaware of the relationship between Southwest and Motorent.

8. Southwest paid the subhauler class respondents less than the applicable minimum rates and charges.

9. The shipments which are the subject of this investigation were made for the account of Motorent.

10. The amounts of underpayments to the subhauler class are as follows:

|                            |                 |
|----------------------------|-----------------|
| Larry Mendez               | \$ 121.14       |
| Maurice Reeves             | 4,454.96        |
| Leonard Wilson             | 5,654.15        |
| Charles Norris             | 3,561.90        |
| Luther Wafford             | 8,837.60        |
| Jimmie D. Ott              | 5,774.41        |
| Neil Short                 | 2,529.06        |
| C. O. Cook, Inc.           | 5,942.48        |
| James Junior Mathis        | 13,239.59       |
| George Estes               | 9,655.76        |
| Carol L. Beagley           | 276.60          |
| B & J Transportation, Inc. | 119.41          |
| Triple Jay Transport, Inc. | <u>2,672.78</u> |
| Total                      | \$62,839.84     |

11. Motorent obtained transportation for less than the minimum rates in the amounts stated in Finding 10 above.

12. Southwest should be ordered to pay to the respondent subhaulers the amounts listed after their names in Finding 10.

13. Southwest should be ordered to establish a special account for the receipt of any underpayments which Southwest is unable to remit to the carriers named in the subhauler class in Finding 10.

14. Southwest's willful or otherwise culpable conduct 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 \$3,500 is appropriate.

Conclusions of Law

1. Southwest is the alter ego of Motorent.
2. Southwest, in performing transportation for Motorent, violated Sections 3664, 3667, and 3668 of the Code.



3. Southwest, in performing transportation for Motovent, violated Section 3737 of the Code by failing to assess its rates using the unit of measurement required in Item 180 of Minimum Rate Tariff 6-B.

4. Motovent paid less than the applicable rates and charges for the transportation performed by or under the supervision of Southwest.

5. No moneys are due and owing Southwest from Motovent since each is the alter ego of the other.

6. Southwest should be ordered to pay a punitive fine of \$3,500, \$2,500 of which shall be payable upon the effective date of this decision. The \$1,000 balance due will be payable only upon the failure of Southwest to make timely payment of the underpayments set forth in Finding 10 heretofore.

7. Southwest should be ordered to cease and desist from all unlawful operations and practices. ✓

8. The carriers in the subhauler group are the actual primary carriers. ✓

O R D E R

1. Southwest Trails shall pay a fine of \$3,500 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. \$1,000 of said fine is canceled and shall be payable only on failure of Southwest Trails to make timely payment of the underpayments to be ordered to be made to the subhauler class.

2. Southwest Trails shall pay \$62,839.84 to the members of the subhauler class in the amounts specified below:

|                            |                 |
|----------------------------|-----------------|
| Larry Mendez               | \$ 121.14       |
| Maurice Reeves             | 4,454.96        |
| Leonard Wilson             | 5,654.15        |
| Charles Norris             | 3,561.90        |
| Luther Wafford             | 8,837.60        |
| Jimmie D. Ott              | 5,774.41        |
| Neil Short                 | 2,529.06        |
| C. O. Cook, Inc.           | 5,942.48        |
| James Junior Mathis        | 13,239.59       |
| George Estes               | 9,655.76        |
| Carol L. Beagley           | 276.60          |
| B & J Transportation, Inc. | 119.41          |
| Triple Jay Transport, Inc. | <u>2,672.78</u> |
| Total                      | \$62,839.84     |

Said payments to the above subhauler class shall be remitted on a uniform, monthly schedule within a period of three years from the effective date of this decision. Payments are to commence within thirty days of said date. Southwest Trails shall present a schedule of such payments for the three-year period prior to the first payment and shall file quarterly reports showing payments made and balances remaining with each quarterly report due successively on December 31, March 31, June 30, and September 30.

3. In the event Southwest Trails is unable to remit any underpayments to carriers named in the subhauler class in Ordering Paragraph 2, such payment shall be placed in a special account by Southwest Trails.

4. Southwest Trails 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.

5. This investigation shall remain open for a period of three years from the effective date of this decision to receive the quarterly reports and dispose of the canceled portion of the fine ordered paid in paragraph 1 above together with any payments made to the special account pursuant to Ordering Paragraph 3.

The Executive Director of the Commission shall cause personal service of this order to be made upon respondent Southwest Trails 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.

The effective date of this order shall be thirty days after the date hereof.

Dated NOV 4 1980, at San Francisco, California.

John E. Byrne  
President

George L. Sturgeon

Richard D. Howell

Paul J. ...

Edward J. ...  
Commissioners