

ORIGINAL

Decision No. 92439 NOV. 18 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion into the operations, rates)
and practices of Glenn D. Brooks,)
dba Bishop Moving and Storage, T-78,)
255.)

OII No. 55
(Filed July 3, 1979)

Glenn Dillard Brooks, for himself,
respondent.
Randolph L. Wu, for the Commission
staff.

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O P I N I O N

The body of the Commission's Order instituting Investigation (OII) in OII 55 concerning Glenn D. Brooks (Brooks) reads as follows:

"Glenn D. Brooks, hereinafter referred to as respondent Brooks, doing business as Bishop Moving and Storage, is engaged in the business of transporting property over the public highways of this State for compensation as a household goods carrier. Respondent Brooks' business address is 218 Wye Road, Bishop, California 93514. Respondent Brooks may have violated Sections 5139, 5196, 5197 and 5245 of the Public Utilities Code and Minimum Rate Tariff 4-B.

"Based on the foregoing facts,

"IT IS ORDERED that an investigation on the Commission's own motion is hereby instituted into the operations, rates and practices of respondent Brooks for the purpose of determining:

- "1. Whether respondent Brooks violated Public Utilities Code Section 5245 and Item 31 of Minimum Rate Tariff 4-B by issuing verbal probable costs of services to prospective shippers.
- "2. Whether respondent Brooks violated Public Utilities Code Sections 5196 and 5197 and Item 31.1 of Minimum Rate Tariff 4-B by assessing a final charge in excess of the probable cost of services given to a shipper, plus the allowable tolerance.
- "3. Whether respondent Brooks should be ordered to cease and desist from any and all unlawful operations and practices as a household goods carrier.
- "4. Whether respondent Brooks should be ordered to refund any monies collected from shippers.
- "5. Whether the operating authority of respondent Brooks should be cancelled, revoked or suspended; or, as an alternative, whether a fine should be imposed pursuant to Public Utilities Code Section 5285.
- "6. Whether any other order that may be appropriate should be issued in the lawful exercise of the Commission's jurisdiction.
- "The scope of the aforementioned investigation includes, but is not limited to, the transportation described below:

<u>Freight Bill No.</u>	<u>Date</u>
2032	6/15/77
2139	8/18/78
2158	10/14/78
2166	11/7/78
2076	10/21/77"

Five days of public hearing were held before Administrative Law Judge Norman Haley between October 25 and December 14, 1979. There was one day of hearing in Los Angeles, one day in San Francisco, and three days in Bishop. Twelve witnesses testified and thirteen exhibits were received. The matter was submitted February 20, 1980, with the mailing of concurrent briefs.

Summary of Decision

This decision requires Brooks to refund an overcharge of \$127.54 to Sierra Datsun (debtor) for transportation of household goods of Mr. and Mrs. Frank Mahler from Bishop to Los Osos on June 15, 1977. It also requires Brooks to pay a penalty of \$464.68 to the Commission for collecting a final charge that exceeded his written estimate.

We also determine in this decision that only one of the remaining four shippers, Margaret Adcock, received a verbal estimate from Brooks before her move began. Accordingly, a refund of \$397.74 to Adcock is ordered, as well as a penalty of \$354.34 to the Commission.

The record developed for this decision does not conclusively show that Brooks issued verbal estimates to any of the remaining three shippers before their moves began or were negotiated. However, we do direct Brooks in this order to return deposits to these three shippers which were not credited on their freight bills.

Evidence of Staff

Staff called two staff witnesses, Kenneth Koss and Gordon McColl. Staff also called four shipper witnesses who testified concerning their particular shipments. They are identified below with respect to their freight bill numbers. They were Margaret Adcock (2076), Gerald Patrick (2139), Felice Skov (2158 and 2168), and A. E. Huskins (2166). No shipper witnesses were called in connection with the Sierra Datsun-Mahler shipment (2032).

Kenneth Koss

Kenneth Koss (Koss) is employed by the Commission as an associate transportation representative. He routinely audits and reviews records of for-hire carriers. He conducted an investigation in 1979 of certain household goods shipments transported by Brooks at various times in 1977 and 1978. Among those were the five shipments identified in the OII by freight bill numbers which he investigated in detail.

Koss introduced Exhibit 1 which is a profile outlining Brooks' household goods transportation business. Among other things, Exhibit 1 shows that Brooks was issued household goods carrier permit T-78,255 on May 29, 1964. He was served with MRT 4-B on April 23, 1964. Since that time he has received supplements and additions. Brooks employs one to four employees who are all part-time and seasonal. He maintains an office, warehouse, and yard at 218 Wye Road, Bishop. He operates two tractors, two semitrailers, and one van truck. Brooks also owns other highway equipment not used in the household goods carrier business. Quarterly reports of gross operating revenue for 1978 show the following:

<u>Quarter</u>	<u>Gross Revenue</u>
1st	\$ 845
2nd	5,852
3rd	3,640
4th	<u>6,840</u>
1978 Total	<u>\$17,177</u>

Koss introduced and explained Exhibit 2 which is in five parts. Each part pertains to one shipper and one shipment, except that Part 4 pertains to one shipper who had two shipments (one into storage and one out). Each part of Exhibit 2 contains details of the shipment or shipments involved, photocopies of shipping documents, and summaries of violations alleged by Koss to have been committed by Brooks. Each of the five shippers whose documents are reproduced in Exhibit 2 were contacted by the witness. More than half of the documents in Exhibit 2 were copied from documents in the shippers' records.

In connection with freight bill No. 2032, Brooks gave Sierra Datsun a written estimate of charges (probable cost of services) as required in Item 31 of MRT 4-B. Koss contends Brooks violated Items 31.1 and 33.7 of the tariff by charging in excess of the written estimate (plus allowable tolerance), and that he failed to report the underestimate and pay the required penalty to the Commission.

In connection with the five shipments of the other four shippers, Brooks gave no written estimates of charges. MRT 4-B does not require that the carrier issue a written estimate of charges to a prospective shipper. Koss contends that Brooks gave each of the four shippers involved verbal estimates of charges. It is his position that the rules of MRT 4-B governing written estimates should apply to the asserted verbal estimates of charges as well. Brooks' Exhibit 3 is a pamphlet entitled, "Important Notice to Shippers of Household Goods Within California," issued by the Commission (information brochure). The brochure states on page 5 that an oral estimate is a violation of tariff requirements.

Koss contends that Brooks violated provisions of MRT 4-B in four instances by giving verbal estimates of charges, then charging amounts in excess of those estimates, plus the allowable tolerances, and thereafter failing to report the underestimates and failing to pay the required penalties. In addition, Koss contends Brooks violated MRT 4-B in one instance by failing to issue an information brochure to the shipper prior to commencement of the move; in two instances by failing to properly issue a document entitled, "Confirmation of Shipping Instructions and Rate Quotation",^{1/} and in two instances by misrepresenting the scope of services through advertisement. Assertedly, there was one violation of MRT 4-B caused by failing to present the freight bill to the shipper within the time period allowed by the tariff. The witness also contends there were two violations caused by assessing charges higher than minimum.

On cross-examination Koss admitted that none of Brooks' five shipping documents, where no written estimate was given, would either prove or disprove that an oral estimate had been given. He said his contention that oral estimates had been given for five of the six shipments involved is based upon statements made to him by shippers. He presumed the alleged oral estimates were given a week or more prior to the date of the move, and that the shipping documents had been signed on

^{1/} Brooks' shipping document is entitled, "Confirmation of shipping instructions, agreement for services, rate quotation, shipping document, and/or freight bill." That document is referred to variously in the record and herein as shipping document, freight bill, extended and unextended copy of freight bill, and bill of lading.

the day of the move or one day before. He agreed that the signatures of the shippers appeared three times on each freight bill and that Brooks' signature appeared twice on each freight bill. He said that by looking at each freight bill he could not see anything that was missing which is required by the Commission; however, there could have been services provided that were not documented. Koss agreed that each shipping document carried two notations (disclaimers) to the effect that no written or visual estimate was made, and that one of these statements was typewritten and the other was printed in capital letters, and highlighted variously by hand underlining, asterisks, "X" marks, and red marks. He also agreed that the typewritten statements also carried the notation that the shipper was given rates only. Koss agreed that in connection with each of the five shipments where he asserted an oral estimate had been given, there was a printed statement, "Probable Cost of Services (if any)", which was followed by a space in which the word "None" was typed.

Koss agreed that although the information brochure (Exhibit 3) explains how to file a protest with the Commission, no protest was made relative to the shipments here involved until after the staff investigation was commenced. He said he did not ask any of the five shippers involved if they had a complaint. He did not know of any prior investigation of a household goods carrier relative to whether oral estimates had been given where the freight bills that were signed by the shippers showed that no estimates had been given.

Koss agreed that several months after the Patrick move from Mammoth Lakes to Laguna Beach had been completed, no complaint of any kind had been filed with the Commission.

He said he discussed the possibility of a refund with Mr. Patrick in connection with shipping document No. 2139. He agreed that Mrs. Patrick, the shipper, had been furnished a copy of Exhibit 3 and had signed Exhibit 4, which is the receipt for Exhibit 3.

Gordon McColl

Gordon McColl (McColl) is employed by the Commission as an associate transportation rate expert. He introduced and explained Exhibit 5 which consists of seven pages of estimating rules from MRT 4-B. He explained that it is voluntary, not mandatory, that a household goods carrier give an estimate of charges. He stated, however, that Item 31 of MRT 4-B provides that all probable costs of services shall be given after visual inspection and shall be in writing. It was his opinion that after a carrier has loaded a shipper's household goods onto his truck and weighed them, it is too late to give the shipper an estimate because the estimate is supposed to have been given prior to the move, not in the middle of the move. He said the language in Item 31 of MRT 4-B does not permit a carrier to give verbal estimates.

In connection with probable costs of services for both distance and hourly rated shipments, MRT 4-B provides that additional charges may be assessed for additional services if a written addendum order for services is properly prepared. McColl explained that a written addendum should be prepared by the carrier when the shipper requests additional services over and above those identified on the written probable cost of services document, such as additional goods to be moved. The addendum order is to be signed by both parties. Penalties for overcharges are provided in Item 33.7. There are instructions for reporting penalties to the Commission for underestimates.

McColl stated that even though verbal estimates of charges are not permitted under MRT 4-B, it was his opinion that if a carrier gives a verbal estimate, and the actual charges exceed that estimate, refunds and penalties should be calculated in the same manner required under MRT 4-B with respect to estimates in writing. He said he formed this opinion from a standpoint of equity as to how these tariff provisions should be construed and applied for the protection of shippers so they can receive the same protection from a verbal estimate as from a written one.

McColl introduced and explained Exhibit 6 which shows charges assessed, as well as charges he contends should have been assessed for each of the six shipments covered by Exhibit 2. Exhibit 6 also recommends refunds to debtors and penalties to the Commission which the witness believes are applicable. He said his ratings were based on Koss' report and documents (Exhibit 2) and also on the statements of shipper witnesses referred to in Exhibit 2. He said penalties and refunds were calculated in the same manner as penalties and refunds would have been calculated had the shipments been subject to written probable costs of services. The witness calculated that total refunds to the five debtors amount to \$5,974.80, and total penalties amount to \$3,601.37.

On cross-examination McColl stated that MRT 4-B is silent in regard to verbal estimates. He admitted that MRT 4-B does not say that the rules for written probable cost of services apply to verbal estimates or that verbal estimates, which are not permitted, shall be used as bases for calculating transportation charges. He said it is a basic rule of tariff interpretation

that in case of an ambiguity in the tariff, the tariff should be resolved against the carrier and in favor of the shipper. He said this is because the carrier is presumed to be more knowledgeable about the tariff he uses and should bear the responsibility for applying it equitably. McColl admitted that each of Brooks' shipping documents carried separately typed disclaimers with emphasizing marks relative to no estimates having been given, and the shipper was given rates only. He said he disregarded those notations. He cited Items 31.1 and 33.7 of MRT 4-B as the bases for his contentions that the refunds and penalties he calculated are correct.

In other respects McColl stated that the Commission does not control the prices of packing materials. He also stated that the Commission does not regulate storage of second-hand household goods or effects, other than storage in transit as defined in Item 10 of MRT 4-B.

Gerald Patrick

Gerald Patrick (Patrick) testified that he engaged the services of Brooks in August 1978 to move from Mammoth Lakes to Laguna Beach. Mrs. Patrick sent Brooks a \$100 deposit to verify the transaction on August 16 or 17 which was two or three days prior to the move. There were some items of property not present in the home which Patrick asserts Brooks was familiar with because he had moved them for him previously. These were additional goods in an office and in mini-storage.

Patrick contended that when Brooks was at Patrick's home for the first time, Brooks gave him an oral estimate of the final charges in the amount of approximately \$1,200, with the explanation that the estimate could vary depending upon the weight of

the furniture. Patrick said he had to have some cost figure because he had to come up with cash or certified check at destination. Patrick asserted that Brooks would not provide a written estimate because he said that was against Commission regulations. Patrick asserted that when Brooks finished packing the shipment at Mammoth Lakes, Brooks said \$1,200 could be a little on the light side and that probably Patrick should have \$1,500 available for payment. Patrick said he was asked to sign the freight bill when the furniture was loaded and he was getting on a plane to leave and everything was in a state of confusion.

Mr. Patrick left the Mammoth Lakes area and Mrs. Patrick remained behind and signed the freight bill. Her signature was dated August 17, 1978, which was the date Brooks started the moving job. The witness admitted that the most prominent entries on the freight bill below the name of Brooks' company were two statements to the effect that Brooks gives no estimates of any kind whatsoever.

When Brooks arrived with the load at Laguna Beach on a Sunday afternoon, Patrick asserted Brooks informed him the charges were going to be in excess of \$2,800. Later they turned out to be approximately \$3,200. Patrick had taken out a certified check for \$1,500. In order to make up the difference Patrick borrowed \$1,500 from his new employer in Newport Beach. On December 5, 1978 Patrick wrote a letter to Brooks asking for a refund. Patrick asserted that Brooks did not refund any money and did not credit him for the \$100 deposit. Subsequently, Patrick went to his attorney who suggested that he at least try to get back the deposit and certain hourly costs which appeared

to be incorrect. Patrick said he was unaware at first that the Commission staff handled informal household goods complaints. He stated he was confused as to whether he should go directly to the Commission or to the civil courts.

Patrick agreed that Brooks had difficulty getting the truck to point of destination and got it stuck under a tree branch at one point. The witness stated that the driveway at destination is about 10 feet long leading to a carport, but that it is not on an incline. He said there was no long outside stairway, but there was a long sidewalk by the home. Patrick admitted it was necessary to dismantle the bannister railing in the house at Laguna Beach in order to move the refrigerator-freezer and other large appliances to the second floor. He also admitted that Mrs. Patrick said she would pay the added charges to have this done. The witness agreed that the information brochure (Exhibit 3) was provided to Mrs. Patrick who signed for it at point of origin (Exhibit 4). Patrick admitted giving Brooks the telephone number of a friend in Laguna Beach with instructions to call him when the truck was weighed and charges computed. Brooks entered that telephone number on the freight bill. Patrick also admitted the original unextended copy of the freight bill carried a notation in red ink with asterisks that the shipper okays four packers for shipment and materials at rates which were listed on that copy.

A. E. Huskins

The testimony of A. E. Huskins (Huskins) discloses that he moved from June Lake to Tehachapi in 1978. The shipment was picked up on November 7 and delivered on November 11. Huskins engaged Brooks after looking at an ad in the telephone directory for Bishop Moving & Storage which was listed under Atlas Van Lines.

At Huskins' request, Brooks came to his house, inspected the goods, and gave him a copy of the information brochure (Exhibit 3). When asked to give an estimate, Huskins said Brooks told him that before charges were completed he would have to finalize his mileage and there would be no possible way of arriving at an overall end-cost until the shipment had been weighed. Huskins said he was aware the Commission controlled the rates and that the shipment would have to be weighed before final charges were computed. He said that when signing the freight bills and other documents Brooks presented to him, he did not notice statements to the effect that no verbal, written, or other type of estimate given. He acknowledged, however, that the statements were typed on the freight bill in capital letters emphasized by asterisks.

Huskins admitted Brooks did not give him an estimate prior to the move but that he received an estimate in the middle of the move after the shipment had been picked up and weighed. Brooks assertedly called Huskins' accountant on November 10, after the shipment had been weighed and told him the cost would be between \$1,500 and \$1,700. The accountant suggested that Huskins get a cashier's check or money order and told him the \$200 deposit he had given Brooks would take care of the difference between \$1,500 and \$1,700. Huskins stated that he was never credited by Brooks for the \$200 deposit.

Huskins confirmed that he signed a statement authorizing shuttle service with a small vehicle and four men and from Brooks' large van at both pickup and delivery points. Huskins agreed that Brooks had called and suggested that Huskins rent a U-haul to perform the destination shuttle himself to save money, but that was not done. Huskins confirmed that the shipping document carries his okay for five men for transportation and packing

materials at rates shown. He admitted putting the amount of insurance on the shipping document and signing for it on November 7, 1978.

The shipment was delivered on November 11 with charges for additional services including shuttles at both ends. The bill came to \$2,700. He said it was his accountant who contacted the Commission by telephone concerning the bill. He did not file a complaint personally.

Margaret Adcock

Margaret Adcock (Adcock) testified she saw an advertisement for Brooks in the yellow pages and telephoned him to come over and inspect her household goods relative to a proposed move from Bishop to Lancaster. Assertedly, there were no items that were not in the home at the time Brooks looked the goods over. Brooks gave her the information brochure (Exhibit 3) or an earlier version of it. She said she pressed Brooks for an estimate of how much it was going to cost and he assertedly said between \$350 and \$450, depending upon the weight. Her daughter was present, but Adcock contended there were no employees or other parties with Brooks. The witness stated that her daughter had been living with her and that the goods were a mixture of hers and her daughter's. Her daughter had no funds so Adcock arranged and paid for the move. The final charges came to \$858. It was Friday night and Adcock had \$500 on hand. She finally found a businessman in Bishop who was able to get a check cashed and the two drove to Brooks' home and gave him all of the money about 9:00 p.m.

Subsequent to October 31, 1977 someone from the Commission staff contacted Adcock concerning a complaint she had filed. Assertedly, Koss had told the witness that the

Commission staff was bringing a charge against Brooks. Adcock heard off and on from the staff for two years. Adcock contended Koss told her she might get some refund. She said that was her purpose for testifying.

Part of Adcock's complaint was that she was overcharged on repacking boxes. She explained she had been up day and night packing dishes, pictures, and everything else. She said the movers repacked everything she had packed and also used extra boxes. Assertedly, the movers told her that it was a state law they had to repack the property. Adcock contended that the weight of the shipment was not correct because her daughter had gone to the scale and watched the weighing operation. The witness admitted signing and dating the shipping document at three different places. She said she did not read anything on it except the declared valuation of 60 cents per pound. In signing the freight bill the witness assertedly did not notice three disclaimer statements in red relative to no estimates were given and the shipper was given rates only. She confirmed that the freight bill called for a minimum of 4,500 pounds.

Felice Skov

Felice Skov (Skov) engaged Brooks to move her goods from Mammoth Lakes to storage at Bishop on the weekend of October 14 and 15, 1978. Skov was being forced out of a rented house that weekend directly by the Health Department and indirectly by her landlord who would not fix a sewer which was causing raw sewage to run through the house. She explained she did not know then where the goods eventually would be going, but that they would be going to storage first.

Skov said she found an advertisement for Brooks in the yellow pages under Atlas Van Lines. Assertedly, the ad said Brooks would give free estimates. Brooks and his helper came to her residence on October 12 between 6:00 and 7:00 p.m. when it was very dark. She said that the initial purpose of that visit was for Brooks to ascertain the amount of packing boxes and to inspect the items to be packed throughout the house, including clothing, dishes, and other items. Brooks made a written record of the requirements for the job. Brooks was quoted as saying he would move the goods to Bishop and store them for a month for \$2,000. Skov said she relied on that estimate and if she had known what the actual charges for moving and storage were going to be, she would not have hired Brooks. Assertedly, Brooks did not quote a rate and made no reference to rate quotations.

When Brooks and four helpers arrived on Saturday, October 14, it took some time to get the large truck down into the driveway because trees and other objects were in the way. Skov stated that after Brooks started the moving job, he had her sign non-negotiable warehouse receipt and contract for lot No. G-1088. She said about an hour later he handed her an information brochure (Exhibit 3) and she signed the receipt for it (Exhibit 11). She said she was generally familiar with the contents of the brochure although she did not recall everything in it. She confirmed that Brooks had one of his helpers, William Baxter, following him around by his side all of the time of the move.

Brooks also had Skov sign a shipping document. Among other things, that document authorized Saturday and Sunday packing and loading at shipper's request (plus materials); provided in

red letters that there would be a 50 percent charge for overtime before 8 a.m. and after 5 p.m.; that shipper ordered \$40,000 insurance; and that Brooks had been engaged to sweep out the house. She noticed that the shipping document did have a notation to the effect that no estimates of any kind were given. She assumed, however, that since she had received a \$2,000 estimate, that was what it was going to be. Skov stated that Brooks had his four people practically standing at attention for a period of about an hour to witness the explanation, discussion, and signing of the shipping documents. Her two sons also were witnesses.

It was not until the end of the first day of the actual moving operation that Skov instructed Brooks to include all of the firewood and approximately 100 hanging live plants in the shipment. The witness recalled authorizing Brooks to transport, store, and redeliver the firewood, remove the hanging plants from hooks, care for them, and redeliver them to a future residence. The witness contended there were not more than four cords of wood that she, her children, and one of their neighbors had cut for the winter. Skov recalled Brooks using only one large truck and a panel van. As the move progressed to Monday, Skov again asked Brooks how much it would cost and he was quoted as saying it would be \$2,000, give or take a little. The witness stated that there was no discussion at Mammoth Lakes of the cost of transporting the household goods, wood, and plants from storage at Bishop to another residence.

Skov said she called Brooks upon several occasions while the goods were in storage and asked him to send a written bill so she could borrow the money or do whatever else necessary to get the furniture out within a month's time. Brooks assertedly told her

that if she did not make payment on the goods in storage, they would be auctioned off and she would have to make payments of some kind. Assertedly, Brooks called her several times and each time they spoke the price, including storage, went up until it reached \$4,600.^{2/}

On November 13, 1978 Skov signed a receipt for delivery of her household goods, firewood, and plants from storage in Bishop to her new residence at 454 Wildrose Lane, Bishop. She also was given another information brochure and signed another receipt for it. Skov stated that Brooks made her sign the documents before he would open the doors to the truck and unload one piece of property. She agreed that the second shipping document for the authorized move also provided for \$40,000 of insurance; stated two times that no probable cost of service was given (emphasized with "X's", parentheses, underlining, asterisks, and circling on the original); and her signature appeared three times. At the new residence Brooks also presented Skov with the original warehouse receipt which she signed acknowledging receipt of all articles listed in good order, and that the inventory truly represented all articles stored by her. There were no notations under the heading "remarks".

Brooks had four helpers on the unloading operation. Skov had Brooks unload and place the goods in a neighbor's garage. She said the things were piled on top of each other until the garage was filled wall to wall. She said that under these

^{2/} The record does not show what portion of these charges were for storage, including warehouse handling in and out. Except for certain storage in transit, the Commission does not exercise jurisdiction over storage of secondhand household goods or effects (Public Utilities Code Section 239(b)).

conditions she could not see the goods to determine if there was any damaged or missing items. She contended some items were broken, including some badly damaged plants, and a terrarium. She also claimed some things were missing. Assertedly, she complained to Brooks at the time, but nothing came of it. Skov also contends that Brooks did not credit her with a \$60 deposit that she gave him.

Five months after Brooks delivered the goods to Skov's new residence she filed a claim with him by certified mail No. 7525215, postmarked March 28, 1979. The amount of the claim was \$8,602. She said the claim was for overcharges, loss and damage, hardship, and lost time.^{3/} She said a representative of Firemen's Fund Insurance Company was sent to her home and took pictures of the damaged items.

Charges for delivery of the household goods, firewood, and plants from storage to the new residence came to \$706.20. This added to the charges for packing, loading, transporting, insurance, accessorial services, etc., on the inbound move, plus storage, brought the total for the two shipments to \$5,346.12.

Evidence of Brooks

Brooks introduced evidence through five employees and former employees who had worked on the six shipments involved. He also testified on his own behalf and introduced Exhibits 3, 4, and 7 through 13. Brooks' evidence was designed to show, among other things, that numerous statements made during testimony of staff and shipper witnesses were incorrect; that no violations of MRT 4-B had been committed; and that he did not engage in any unlawful operations and practices as a household goods carrier.

^{3/} The Commission does not adjudicate claims for loss and damage, hardship, and lost time. Such matters are within the jurisdiction of the civil courts.

Kimberly Tutt

Kimberly Tutt (Tutt) has been employed by Brooks for about 2½ years. She acts as secretary and also prepares shipping documents. During her employment she has typed in all of the basic information on almost all of the bills of lading (unextended copies of freight bills). Everything is completed prior to each move, except entries in the column for extensions. About 10 copies are made for each shipment. She starts with services requested based on information furnished by shippers on the telephone and adds the number of packers and loaders and the van to be used. Distance or hourly rates, as the case may be, are obtained from MRT 4-B and also typed in. She has been instructed to always type in at two places the language relative to no verbal or written estimates made or given, and shipper given rates only. She always types in the word "none" following the statement "probable cost of service, if any". She explained that Brooks has instructed her to emphasize those statements with asterisks, circles, and underlining. The only exceptions to Brooks' policy of not giving estimates have been in the cases of a very limited number of moves for corporations which have insisted that written estimates be given. Tutt said the reason Brooks does not generally give written estimates is that they take a lot of extra time and labor, and most shippers do not want to go through the expense.

Tutt quotes rates by the hour or by weight when requested by prospective shippers. Assertedly, Brooks does the same. She has been instructed not to estimate charges or time or weight factors. She stated that the shippers often confuse rate quotations with estimates, and will take the rate furnished and extend it themselves and consider that as an estimate. Tutt stated that Brooks has instructed her to tell people requesting

an estimate that an estimate cannot be given. She said Brooks repeatedly instructs her: "Don't give estimates to anyone, it's against the law to give any kind of verbal estimate at all." She said Brooks tells all employees the same thing. She said that upon numerous occasions she has heard Brooks tell customers on the telephone that it is illegal to give a verbal estimate and that he will not and cannot give a verbal estimate. She said she has never known Brooks to deviate from that policy.

Tutt sometimes accompanies Brooks to work on the actual moving jobs. When she goes out on the moves she makes out the inventory which involves writing down the household items as Brooks calls them out and notes exceptions, such as whether there is a scratch or mark. She explained procedures Brooks goes through with the shipper prior to every move relative to explanation, discussion, signing, and handing out of the shipping documents. These are the unextended copy of the freight bill, inventory, information brochure (Exhibit 3), and the receipt therefor. She is always asked to witness these procedures.

Brooks assertedly has all of his helpers stand around in a close circle as witnesses during the signing of the documents procedure. Sometimes the shipper has witnesses too. After the explanation, Brooks solicits questions from the shipper concerning the services required, rates, insurance, etc. Among other things he emphasizes are the typed statements relative to no estimates of any kind being given. After the explanation and discussion are completed, Brooks pulls the signed unextended copy of the freight bill, holds it up for all to see, and asks everyone to look at it. She said each time Brooks makes substantially the following statement: "I am holding this up. Now you see me handing this unextended copy to whoever the shipper may be."

Then he takes out the receipt for the information brochure and hands it to the shipper. Tutt said these procedures take time. She said sometimes shippers lose their documents so one purpose of Brooks' employees being there and witnessing the explanation, discussion, signing, and handing out of the shipping documents is so they can say they did see him go through those procedures and that the shipper did get the documents.

Tutt worked on both of the Skov shipments from the beginning to the end. She had made out the two freight bills at the office. She filled out the inventory sheets on the job at Mammoth Lakes. Brooks and Tutt tagged the items of household goods with the storage code No. G-1088. She witnessed the signing of the shipping documents at origin, helped pack and load, and traveled with the load back to Bishop in one of the three trucks which was driven by Brooks. At Skov's new residence at Bishop, Tutt checked inventory, helped unload, and again witnessed the signing of shipping documents.

Tutt stated that the usual signing of the documents procedures for the Skov shipment was conducted at origin before six witnesses, in addition to Skov and Brooks. The entire procedure took from 45 minutes to one hour. Tutt said witnesses, other than Brooks' employees, also examined the papers as they were being handed back and forth between Brooks and Skov. Skov had the freight bill before her for at least 45 minutes reading and going over it. Tutt said Skov asked more questions about various items on the freight bill than most shippers do, including questions about all of the rates typed in which included hourly rates for the move, rates for packing, and rates for other services. Skov assertedly asked if the \$16.30 an hour for packing was for one individual or for all of the packers. Brooks explained to

her that it was \$16.30 per man per hour. Tutt stated that the most important items are insurance, rates for various services, and making certain the shipper understands them. She testified that Brooks asked Skov if she wanted to take out insurance and Skov asked how much it would be. The witness said Brooks explained that the insurance would be based upon how much the household goods were worth, that Skov would have to write in her own hand how much insurance she wanted to take out, and that she must sign specifically for the insurance. Tutt said Brooks talked with Skov a long time about the insurance rates and Skov spent a lot of time deliberating on how much insurance she wanted to take out, and other matters. Tutt said Skov had ample opportunity to examine the papers before she signed the freight bill in three places. Tutt said Brooks did not pressure Skov into signing anything. Tutt stated she heard no verbal estimates of any kind given to Skov and that Skov did not mention anything about an estimate.

Tutt testified that it took three trucks to haul Skov's household goods from Mammoth Lakes to storage. One was a tractor-trailer combination 65 feet long which was completely filled with household goods. The second was a GMC tractor trailer combination 40 feet long which was filled mostly with firewood. The third truck was a step van approximately 25 feet long which was filled with the remainder of the firewood. The firewood was handloaded with one mover tossing pieces to another who stacked it to the tops of the vehicles using a six-foot ladder. Tutt participated in this work and asserted it took a long time. The witness stated that the firewood was exceptionally heavy because it was cut green. She characterized the amount as "an awful lot of wood". She rode down to Bishop with Brooks in the GMC 40-foot

semitrailer. She said it was so heavily loaded it swayed back and forth at 30 mph and was difficult to keep going slow enough to control. A number of stops had to be made (two on the Sherman Grade) because the brakes caught fire.

Tutt stated that the live plants were placed in storage in Brooks' house to protect them from the cold. She, Brooks, and another helper (William Baxter) drilled holes in the ceiling of Brooks' house to hang the plants so they could be cared for. Brooks paid her and the other helper to assist him in watering and caring for them. It was her opinion that there were somewhat less than 100 plants. She says that a few of them wilted during delivery in the cold weather but that none were damaged beyond repair. Tutt testified that the delivery receipt, dated November 13, 1978, contains the statement: "I have received all of my goods, they are in good condition." She said Skov's signature appears only a fraction of an inch away from that statement.

Tutt confirmed she heard the testimony of William Baxter, below, and was in agreement with the portion relative to the two Skov shipments.

William Baxter

William Baxter (Baxter) has been employed by Brooks for about two years. He was engaged from beginning to end with the two Skov shipments and with both the Huskins and Patrick shipments. Among other things, Baxter had been one of the workers who stood by and witnessed the explanation, discussion, and signing of the shipping documents at the origins of each of these shipments.

Baxter, re: Skov Shipments

Baxter physically participated in the two Skov shipments by loading, packing, transporting, storage, redelivery from storage, and unloading. Some of his testimony, including that concerning the signing of documents and particular portions of the shipping documents, was substantially duplicative of and confirmed testimony given by Tutt. Those portions of Baxter's testimony will not be summarized.

Baxter stated that he and Brooks were working on another job in Mammoth when Skov's son came on a bicycle and asked that they come by her residence and talk to her. When they arrived at the end of the day, Skov assertedly inquired relative to moving her household goods to storage in Bishop. Skov showed the two men the residence and identified the things she wanted packed. Baxter said they were there strictly to look over what type of move it would be, how much furniture and other household goods she had, and what sort of packing and packing materials would be required. Brooks made notations on paper of the materials they would have to bring back from Bishop to pack.

Baxter stated he and Brooks were almost within an arm's reach of each other from the time they walked in the front door to the time they departed from Skov's residence, and he was able to hear every word spoken by Brooks and Skov. He said that at no time during the entire conversation did Skov ask anything about rates or was there any mention of the total overall cost of the move or any oral or written estimate given. Baxter stated that altogether they were not at the Skov residence the first night more than 20 or 30 minutes because it was dark when they arrived and they were in a hurry to get back home to Bishop after working all day.

Baxter explained that when he, Brooks, Tutt, and another helper subsequently arrived at Mammoth to do the packing they had extreme difficulty getting the van into the driveway because the house was down a steep hill and there were automobiles and trees in the way. It was necessary for Baxter to use a ladder and a power chain saw to cut limbs off trees in order to get the large van through. The large van was required in order to carry storage vaults (large containers) so the goods could be packed in them and placed in storage without the necessity of rehandling two or three times. Subsequently, it was necessary to bring another large van. Eventually a step van also was brought up from Bishop.

Baxter said the sewage backing up into the bathroom and hallway was an unmentionable mess two or three inches deep. He said Skov explained she was not worried about the cost of the move because she had no intention of paying the bill herself. He said she felt she would have adequate cause to sue her landlord and get him to pay for the move since the sewer problem was his fault, that it was his fault she had to move at all, and that it was his fault she had to get out of there in such a hurry. He said Brooks told her that since the move was going to fall on Saturday and Sunday, he would have to charge her overtime.

Baxter said Skov had a couple of Persian-type rugs she was concerned about and he believed that was the main reason she wanted to put down \$40,000 insurance. Brooks asked Baxter to read a number of statements from the two unextended freight bills which Skov signed. These statements demonstrate, among other things, that for the outbound shipment Skov authorized four packers and loaders, agreed that overtime would be paid for Saturday and Sunday and before 8 a.m. and after 5 p.m., and agreed

that storage would be \$29.50 per 300 cubic foot storage vault per month. Baxter said Skov was given her shipping documents right away, which was before any of the furniture moving took place.

Baxter contended Skov was totally aware what rates she was going to be charged because she was familiar with the rates on the shipping document and knew there would be overtime. He said Skov was not influenced or encouraged in any way or pushed into signing any of the documents. He said that if anyone was in a hurry to get the paperwork completed, it was Skov and not the movers. He said when Brooks asked if she understood the documents, she replied, "Just get on with it, get the work done", or something of that nature. He said that it was Skov's own subsequent decision to ship her plants and her firewood. With respect to Skov's statement that Brooks did very little packing, Baxter said there was a very large amount of packing done on that job by Brooks' workers.

Baxter stated that Skov left toward the end of the loading at Mammoth and asked them to sweep up the house and try to make it look as nice as possible when they left. Baxter did this work including cleaning up the sewage. The workers also dismantled appliance hookups, serviced and loaded them, and disconnected water lines.

Baxter read from the second shipping document for the move from storage to final destination the same categories of information he did from the first one. Among other things, the second document shows that Skov authorized four men and a van for delivery out. The inventory identified the storage vaults by number, and included a list of the goods packed and loaded in them at Mammoth Lakes. It shows, among other things, there were three vaults for firewood, and many plants.

Baxter said Brooks furnished Skov with a clipboard and the inventory to check the goods as they were being unloaded into a two- or three-car garage. The firewood was placed outside. He testified that Skov stood by the ramp board with a lady friend as the goods were unloaded and checked each item off as workers called the numbers out to her. Upon occasion she would follow the workers into the garage as they were carrying certain pieces to tell the workers where she wanted the articles placed. The witness testified he did not remember Skov stopping any of the workers while they were unloading and pointing out any items that she felt had been damaged in any way. He said the only thing he noticed was a few of the plants had wilted, but for the most part they were in good order. Baxter said Skov appeared to be worried that she had not checked off some of the items so the workers had to show her that they were in the garage. After showing her where the items were located that she had missed checking off, Skov assertedly was satisfied that all of her goods were delivered. He said she made no complaint of any loss or damage either verbally or in writing to anyone. He said that Skov signed that all goods were received and delivered on November 13, 1978 in good order, which is a provision on the shipping document. He said that there was no place to hook up appliances and there was no request that they be hooked up.

Baxter explained that the garage, which was nearly filled, was actually part of someone else's home and there were other parties residing there. It was his opinion that people, including children, had access to that building during the next five months before Skov moved to Santa Rosa. The witness stated that he did not witness any negligence on anyone's part about caring for any of Skov's goods, including the live plants. He

said everything within reason was done to care for the goods, including the plants, which he helped care for as they hung in Brooks' house.

Baxter, re: Huskins Shipment

Baxter participated in the entire Huskins move from June Lake to Tehachapi, including packing, loading, transporting, delivering, unloading, and unpacking at destination. He testified that Huskins told the movers before they took the job there were difficult conditions both at the pickup and at the delivery points, and there would be difficult problems getting a large van through the Tehachapi Mountains with the steep grades and sharp turns. Huskins told them they could not get the large van into his residence at Tehachapi.

Baxter stated that when they arrived at June Lake on November 7, 1978, they had to park the large van on the main roadway because there was a long dirt road leading to the house with many low-hanging trees that made it impossible for the large van to get in. He said they also brought a panel van and equipped it with chains to shuttle the furniture between the house and the large van. When they got to the June Lake house Brooks asked the three helpers to stand by while Mr. Huskins read and signed the unextended copy of the shipping document. Baxter read from the shipping document the usual disclaimers about no estimates being given and confirmed that these statements were emphasized by asterisks, circles, and underlinings. Baxter said he personally could not have signed the documents without having noticed these marks and statements.

Baxter stated that Brooks did not fail to give Huskins a copy of the unextended shipping document at the time it was signed. He saw Huskins receive the information brochure

(Exhibit 3) and sign the receipt for it (Exhibit 12). He said Brooks told Huskins Brooks would have to take the load to Bishop and weigh it before he could give him a price. He stated that the rate of \$16.30 an hour for extra labor appeared on the shipping document and was charged by Brooks. He said he has gone out on many jobs where that rate was charged. With respect to the amount of insurance, Baxter stated that Huskins printed the amount in on the shipping document. Huskins authorized shuttle service both at origin and destination by signing the shipping document before they started to work. The shipping document shows that the shipper authorized four men and a van and shuttle service necessary for both pickup and delivery.

Baxter said the four movers worked late into the night packing items which Mr. and Mrs. Huskins instructed them to pack. The goods were shuttled to the large van and loaded into it. Huskins was advised before the movers left June Lake they would have to rent a truck of some nature or take a smaller truck with them and shuttle the goods in to the Tehachapi residence in the same manner they took them out at June Lake. He said he remembered the movers trying to figure out whether it would be cheaper to take Brooks' panel truck to Tehachapi or rent a U-haul near the destination point. He said he did not know if Huskins was ever quoted a rate for shuttle service.

Two trucks were driven to Tehachapi. Insofar as the smaller (shuttle) truck was concerned Brooks assertedly charged Huskins only for the shuttle time but not for the time of travel. He said they shuttled numerous loads from the large truck to the Tehachapi home in a snowstorm.

Baxter pointed out he had been present when Huskins signed the shipping document on November 7, 1978, and that by the 10th the move had been completed. He said it would have been impossible for anyone to give Huskins an estimate on the 10th because the truck was actually back in Bishop and the entire move had been completed. He said an estimate is something that is given someone relative to something that is to be done in the future. He agreed that Brooks could have told him what the bill was going to be after the shipment was weighed and the charges were computed.

Baxter stated that at point of destination Huskins had \$2,637.60 available, partly in a cashier's check and partly in cash. Baxter further testified that to the best of his knowledge, Huskins paid the entire \$2,637.60 as shown on the bill of lading.

Baxter, re: Patrick Shipment

Baxter was familiar with and participated with Brooks and two other helpers in the inventorying, labeling, packing, loading, weighing, transporting, unloading, unpacking, putting away, and providing accessorial services in connection with the Patrick shipment from Mammoth Lakes to Laguna Beach.

Baxter explained that Brooks anticipated a full day of packing because he knew what was involved, having moved the Patricks on two prior occasions. On the first day of the move, which was August 17, 1978, Brooks and Baxter took the step van full of packing materials to the Patrick residence. Brooks went over the shipping documents with Mrs. Patrick in the absence of her husband. All of the usual matters were discussed, including

insurance, and Mrs. Patrick signed the shipping document. Brooks pulled the unextended copy for her after it had been signed and also one copy for his office. The usual notations in red ink around the typed and printed statement relative to the fact that Brooks gives no estimates of any kind whatsoever appeared on the shipping document. The mandatory receipt (Exhibit 4) for the information brochure (Exhibit 3) was obtained and bears the signature of Pamela Patrick. The inventory sheet also bears the signature of Pamela Patrick.

Baxter testified that throughout the entire move, from point of origin to point of destination, he and Brooks were hardly out of each other's sight at any time and even had lunch together at the Safeway market in Mammoth. He did not see how Brooks could have given Patrick an oral estimate without Baxter's knowing it.

Baxter said Patrick had a good-sized shipment. The four movers packed for a total of 7½ hours on the first day, and packing was completed the first part of the morning of the second day (August 18). Baxter stated that Mr. Patrick's contention that Brooks said \$1,200 may be a little on the light side after packing was finished was not possible. Baxter remembers Mrs. Patrick stating on the evening of August 18, 1978 that she was leaving to pick up her husband, who was arriving from outside of the area. She returned with Mr. Patrick between 45 minutes and an hour later (between 6 p.m. and 7 p.m.) when there were only a few pieces left to be loaded. About 45 minutes after that Baxter and Brooks closed the van and left with the shipment on board.

Baxter stated that during the two days of packing and loading Mrs. Patrick did not complain about anything or indicate that she was unhappy in any way with any portion of the move up to that point. When Mr. Patrick arrived after the loading job was completed, he assertedly made no complaint either. Baxter testified that Mr. Patrick said little or nothing to the workers and did not discuss charges or estimates with him or anyone else to the best of his knowledge.

The movers assertedly had extreme difficulty getting up to Patrick's new residence at destination in Laguna Beach. Baxter said they had to take a few alternate streets from the ones that Patrick had mapped out because of low trees and narrow turns which would not permit the large van to get through. He said they finally had to leave the truck parked in the middle of the street with blocks under the tires and go down to a restaurant to look for help. They next backed the truck down to the restaurant and left it parked there. Further progress could not be made because of parked cars and sharp corners. They picked up two touring English boys to help them unload and unpack the shipment.

After breakfast Brooks made several attempts to contact Patrick at his new residence and have him come down but was unsuccessful. A neighbor near where the truck was parked drove Brooks up the mountain and made contact with Mr. Patrick while Baxter waited in the van. Shortly after that, Mr. Patrick came down to the van to help the movers find a new route. On the final route the van had to be backed around one sharp corner on a steep grade to get into the jobsite because they could not pull in forward.

Baxter stated that there were between 10 and 15 steps between landings on a walkway going up the side of the driveway and along the side of the house. He said the first landing was reached by three steps, then there was another landing, and then came two larger flights with landings. He said Patrick's statement that the driveway is approximately 10 feet long leading to a carport and that it is not on an incline was incorrect. With respect to Patrick's testimony that there were only a couple of steps leading up to the house, Baxter stated that there were three or four stairs at the first landing, ten to twelve steps on two more landings, and then twelve to fifteen steps after that. He said as soon as the house was entered, there was a spiral staircase with 12 to 15 stairs going up to the second floor which posed many problems with heavy items.

Baxter stated there was one large refrigerator-freezer that Mrs. Patrick wanted upstairs and the only way that it could be taken there was to take the railing and bannisters off the spiral staircase. This also meant removing the carpet as the bannister footings were under the carpet. Baxter said Mrs. Patrick was given the alternative of having the movers leave the large refrigerator-freezer downstairs so she could have some of her friends help her get it upstairs, but she chose to have the movers take the large items upstairs so the job would be all done when her husband came home.

Brooks called Baxter and the other two men as witnesses to confirm that Mrs. Patrick had requested and was authorizing the services of tearing the bannister railings off and removing the carpeting and doing the other work which was beyond the normal moving procedures. Baxter said Mrs. Patrick was told by Brooks

that the four movers were standing by as witnesses to her authorization. Baxter said Brooks told her he would not give her an estimate, and the charge would be based upon rates per man per hour which he quoted her. Baxter asserted that Mrs. Patrick understood everything Brooks told her relative to this extra work. He said Brooks went over that matter thoroughly with her and she authorized that work in writing. Baxter said the spiral staircase went up so quickly the four movers had to get under the refrigerator-freezer and lift it bodily up to the next landing.

Baxter explained that Mr. Patrick was not there during the second day of the unloading operation. After the move was completed, they had to wait between one and two hours for Mr. Patrick to return from work so that he could pay for the added services that Mrs. Patrick had requested and authorized. No charge was made for the men and equipment while waiting for Mr. Patrick to return.

Baxter stated that Mr. Patrick was not pleased about the charges for the added work of removing and replacing the bannister railings and carpeting and questioned the authority for the charges. Baxter was of the opinion this was because Mr. Patrick had not been there to see what was done. He testified that when Mrs. Patrick was brought into the presence of Mr. Patrick and the four witnesses, she admitted that she had authorized the additional services. Assertedly, Mr. Patrick calmed down after his wife explained it was an extremely difficult and time-consuming job to take the bannister apart and get the large heavy items up to the second story. After that Mr. Patrick agreed to pay the added charges.

Baxter recalled Brooks saying he did not want to accept Patrick's personal check for the extra labor of getting the refrigerator-freezer to the second floor, but after a lengthy conversation Brooks reluctantly accepted Patrick's personal check for the balance of the payment due. He said Brooks had Mr. Patrick affirm that he would not stop payment, and that he would see it would be honored. He said Mr. Patrick went to work the last day of the move and was not present until the job was completed.

With respect to Patrick's statement that Brooks said he could not give a written estimate because it was prohibited by Commission regulations, Baxter stated he never heard Brooks say that he would not give Patrick or anyone else a written estimate. Baxter stated that during the two years he has been with Brooks, he has heard him tell prospective customers on the telephone he would not give a verbal estimate and that charges would be based on the weight of the shipment times the distance traveled, or in the case of a local move what the rate is per hour. The witness stated that Brooks has told him and tells every employee not to ever give a verbal estimate to anyone, that it is against the law, and not to discuss price on the telephone. He testified the employees have been instructed to explain to shippers that it is against the law to give a verbal estimate, and to give shippers only a rate quotation.

Baxter said there had been numerous cases he was familiar with where shippers claimed they received a verbal estimate where in fact they had been given a rate quotation. He explained when a shipper has been given the rate in cents per 100 pounds and the length of haul, and the shipper determines that he has a given amount of weight, he can come up with a

figure. He said, however, that when the goods are moved they sometimes weigh considerably more than the shipper estimates and he may confuse the rate quotation, properly given, for an oral estimate of charges. Baxter stated that customers do have to know ahead of time how much money they should have on hand when the goods arrive. He said that on distance moves Brooks' employees usually tell customers they will have to wait until the shipment is weighed. Baxter stated that when the movers arrive at an origin residence they cannot tell the shipper what the charges will be because they have no way of knowing.

Baxter stated that after the move was all over, both Mr. Patrick and Mrs. Patrick commended the movers for a job well done, particularly for returning the carpeting and bannisters to their original positions. Assertedly, they said they were very pleased with the whole move because nothing was broken and there was no damage.

Fred Yarcho

Fred Yarcho (Yarcho) is a former employee of Brooks. He testified concerning the Sierra Datsun-Mahler shipment from Bishop to Los Osos, and the Adcock shipment from Bishop to Lancaster.

Yarcho, re: Sierra Datsun-Mahler Shipment

Yarcho participated in the entire function of the Sierra Datsun-Mahler move, including packing, loading, inventorying, labeling, transporting, unloading, and unpacking at destination. This was the move subject to a written estimate (probable cost of services) transported for and paid by Sierra Datsun. The primary issue is extra charges for unpacking.

Yarcho and Brooks each spent 3-3/4 hours (7½ hours) unpacking certain dish barrels, china, and other fragile items, removing mattresses from their cartons, assembling and setting up beds, unpacking mirrors, paintings, pictures, and other related fragile items, including lamps and lampshades. This work was not listed on the written estimate. It was performed at the request of Mrs. Mahler who was informed by Brooks there would be an additional charge billed to Sierra Datsun for payment. Yarcho said a formal written addendum order for services was not issued to the Mahlers, just a written note that there would be additional work that was not on the estimate. The witness said Brooks tore off a piece of packing paper and had Mrs. Mahler sign for the total of 7½ hours of labor provided for unpacking. Yarcho stated that Mrs. Mahler inspected the items as they were placed against the wall. Some of the breakable items were placed on the counter in the kitchen from which point Mrs. Mahler placed them in a cabinet.

The witness stated that the letter in Exhibit 2 dated August 25, 1977 from John J. Moore of Sierra Datsun to the Commission in Los Angeles, contains untrue statements relative to Mrs. Mahler's not authorizing the unpacking and that no unpacking was done. The witness stated that Mrs. Mahler did say she would pay for the additional time for the unpacking of the shipment. He said the Mahlers were pleased with the move and had no complaints and filed no complaints.

Yarcho, re: Adcock Shipment

Yarcho worked on the Adcock shipment from beginning to end. At origin he was assisted by Brooks and another employee. He stated that when he and Brooks arrived on October 21, 1977, Brooks had Adcock go through the usual shipping document signing

procedures, including declaring insurance. She signed the receipt for the information brochure (Exhibit 3) and Brooks initialed it. He confirmed that the shipping document contained the usual information about rates and services and the statements about no estimates given. A copy of the shipping document, signed by Adcock and Brooks, was handed to Adcock before the move started. A second unextended copy was also pulled and retained by Brooks for the purpose of having a record of the understanding between the customer and Brooks. Yarcho made the inventory (two documents) and signed it. It represented goods that were tagged, labeled, numbered, inventoried, packed, and loaded on the truck.

Adcock was the shipper and paid for the move from Bishop to Lancaster, although the goods being shipped belonged to her daughter who was the party moving. Upon the direction of Adcock some of the goods were moved and others were left in the mobile home.

Yarcho stated that during the initial contact, Brooks discussed the packing with Adcock and told her and her daughter the glassware, china, lampshades, paintings, mirrors, and other fragile items could not be accepted without being adequately packed and protected. Assertedly, Adcock put a number of those items in boxes without tops and they stuck up so the boxes could not be stacked or packed. Yarcho testified that Adcock was present for a good period of the time while he and Brooks were packing the goods, and that she said it was okay to repack the fragile items. He said she was told there would be additional charges for repacking. He contended at no time during the packing did she stop the work, say she did not authorize it, say she did not want it done, or indicate she was unhappy about anything.

Adcock signed the shipping documents at destination on October 22, 1977 showing she had received the shipment in good order. Yarcho said Brooks had given him and other employees implicit instructions over the two-year period he was employed full time to quote rates but not to give estimates of charges. He said he was familiar with Brooks' practice of not giving anyone any kind of an estimate, written, oral, or otherwise. He said the Sierra Datsun-Mahler shipment was the only exception during his employment. He said neither he nor Brooks gave Adcock an oral estimate of \$300, \$400, \$500, or any other amount. In several instances it appeared to him that Adcock had a misunderstanding regarding the rates and the actual charges. He said that very often the shipper, when given a rate quotation, will confuse that with a verbal estimate, and that very well could have been the case with Mrs. Adcock.

Randal Ramsey

Randal Ramsey (Ramsey) participated in the delivery and unloading of the second Skov shipment and in the entire Huskins move from beginning to end. Ramsey was in the courtroom only part of the time during the three days of hearing at Bishop and did not hear all of the testimony of Brooks' other witnesses. He testified in response to subpoena.

Ramsey's testimony concerning signing of shipping documents, checking of inventory, delivery, and unloading of the second Skov shipment, as well as the entire Huskins' shipment, was very nearly the same in common areas as Baxter's testimony and need not be summarized here.

Sandra Ingersoll

Sandra Ingersoll worked at Mammoth during the first day of the Skov shipment and witnessed the signing of the shipping documents. She had been in the courtroom and had heard the testimony of all of the other witnesses Brooks had called and was prepared to adopt the testimony of Baxter relative to the first day of the Skov move. On cross-examination she stated she never heard Brooks give Skov a verbal estimate.

Brooks

The testimony of Brooks confirmed testimony given by his current and former employees. He testified he never gave an oral estimate to any of the five shippers involved. To avoid any complications or misunderstanding about the weights of shipments he requests all of his shippers to accompany him to the scale. He said some of them do not want to accompany him and some cannot. He acquires a certified scale ticket showing the gross, net, and tare weight of the shipment. Charges are computed from the net weight and the applicable rate which are either phoned back to the shipper or furnished later. He said sometimes he has shipments sitting on his trucks a week before they are transported. In other cases he has them going to storage for two or three months. Usually in two or three days he contacts the shipper and tells him what the costs have become up to that point, so that when he arrives at destination the shipper will have cash or a certified check available.

Brooks stated that he was present when Mrs. Adcock signed the shipping documents for her shipment and he did not give her a verbal estimate of any kind whatsoever. He said Adcock accompanied him to the scales. After weighing the shipment Brooks ascertained the charges that had accrued up to that

point and gave them to her. He said that when she left the scales she knew she was supposed to have \$800 and some odd dollars at destination. He said he did not know why Adcock had \$500 available at destination unless that was all the money she had.

Brooks stated that he never gave Mr. Patrick a verbal estimate of any kind but only quoted rates in cents per 100 pounds for weights and the distance from Mammoth Lakes to Laguna Beach. He said Mrs. Patrick had 20 to 30 minutes to examine and study the shipping documents and become fully aware of what they contained. Brooks stated that she signed them voluntarily after discussing them with him and declaring her insurance. He said Mr. Patrick was not even present at the time the documents were signed and he did not show up until the evening of the second day. Assertedly, he had no discussions with Mr. Patrick from the time of arrival of the truck at origin until the truck departed. Brooks stated that he never told Mr. Patrick that \$1,500 would be the amount of money that might be appropriate to have on hand when the shipment arrived.

With respect to the \$100 deposit, which was not credited, Brooks said he decided that when Patrick paid the bill that he would have him pay for the move less the deposit. However, Brooks admitted during cross-examination that the freight bill does not show that the \$100 deposit was subtracted from the final charges. After the shipment had been weighed, he returned to the office and completed extending the bill of lading for the transportation charges, packing, and other items. He called Mr. Patrick, who was living on a boat near destination, and told him what the charges would be up to that point (before encountering conditions at destination). The amount of those charges was the amount shown on the bill of lading.

Brooks said Mrs. Patrick did request and authorize the added services at destination relative to moving the large refrigerator-freezer upstairs in the presence of himself, Baxter, and the two English gentlemen who helped unload.

Brooks stated that Huskins was quoted the mileage from the Carson Peak Inn at June Lake to the Old West Ranch in the Tehachapi Mountains, and that he was given the rates for that mileage and the packing rate, both verbally and in writing. He explained that after he weighed Huskins' goods he called him and told him the charges up to that point were \$2,637.60, plus shuttle charges. He did not consider that an estimate.

Brooks stated that he never gave Skov a verbal estimate of any kind whatsoever. He said with respect to Skov's statement that she got a verbal estimate on November 10, 1978 in the amount of \$2,000 was impossible because he had never met Skov or had any contact with her whatsoever until approximately two days later. He said Skov made an incorrect statement when she said she telephoned him prior to the move. He contended his first contact with Skov was when her son came to a neighbor's residence where he was working and said his mother wanted him to come over. Brooks stated that Skov did not file a complaint of any kind with him regarding the move and did not mention filing any claim that a verbal estimate was given until a month later when she was contacted by Koss of the staff. It is Brooks' opinion that as a result of this contact Skov was encouraged to file a claim.

Brooks testified that Atlas Van Lines formerly advertised for him in the telephone yellow pages. He says they took out the ad and dictated the structure of the ad and the wording. He said the ad includes a phrase "free estimates given", but that is their wording. Atlas paid half of the cost of the ad

and charged Brooks for half. He explained he cannot place or remove the ad because it contains their logo and their wording. Assertedly, they have complete control and are the only people that can remove it. Brooks has discontinued his relationship with Atlas, but he said the telephone books come out once a year and the ad is not going to be removed until the telephone book comes out again.

Brooks confirmed that he always has his helpers gather quietly around the shipper to be witnesses during the explanation, discussion, and signing of shipping documents.

It was Brooks' opinion that the four shipper witnesses were motivated to testify by the prospect of receiving large refunds. He pointed out there were a number of instances where his witnesses had testified that the shipper witnesses had made incorrect statements. He said the shipping documents themselves should prove that the accusations and charges outlined by the staff are false, unfounded, and completely unnecessary.

Discussion

We will turn first to the Sierra Datsun-Mahler shipment from Bishop to Los Osos in 1977. That move was subject to a written estimate (probable cost of services). Brooks underestimated the weight by 440 pounds. At destination, Mrs. Mahler allegedly authorized Brooks to unpack the shipment, a service not covered by the written estimate. Brooks did not have an addendum order for services form with him. He claims that he used a piece of packing paper to obtain Mrs. Mahler's signature authorizing the unpacking. Staff counsel asked Brooks to produce the document for the record. Brooks agreed to submit it as an exhibit but did not do so. In any event, that would not qualify under MRT 4-B as an addendum order for services.

The amount paid by Sierra Datsun was \$1,868.57. That did not include any compensation for the 7-~~4~~ man-hours of unpacking performed by Brooks and Yarcho. Presumably, Brooks paid Yarcho, and correspondence shows he tried several times to collect \$117.75 for unpacking, but collected nothing.

We agree with staff that Brooks owes Sierra Datsun a refund of \$127.54; however, we do not agree that Brooks owes the Commission a penalty of \$607.43. We take exception to two of the calculations used to arrive at the minimum rate and charge upon which the penalty was based.

In calculating the MRT 4-B minimum charge, the staff included the unpacking charge of \$117.75 which Brooks was not able to collect even after diligent efforts to do so. To apply the overcharge provisions of MRT 4-B to amounts a carrier was unable to collect produces unreasonable results. It would mean the more services a household good carrier performs for which he could collect nothing, the greater the penalty. Furthermore, MRT 4-B prohibits the collection of that amount because it was not included in an addendum order for services. The amount of \$117.75, which was not collected, will be deleted.

The staff calculated the minimum charge for appliance service at \$25, which was the same charge Brooks made. MRT 4-B contains no accessorial charge for appliance service which can consist of plumbing, electrical, mechanical, or combinations of such work. Although it may be argued that a reasonable charge should be made for any service performed beyond the scope of the tariff to prevent a rebate of the tariff rates to the shipper, there is no basis for including a non-tariff charge in computations of MRT 4-B minimum charges for purposes of calculating penalties. That item also will be deleted.

The total minimum charge for purposes of computing the penalty for the Sierra Datsun-Mahler move is \$2,205.71. The resulting penalty is calculated by subtracting the maximum total charge computed by the staff of \$1,741.03 from \$2,205.71, or \$464.68.

We now turn to the remaining five shipments where there were no written estimates. The initial issue in the OII is whether Brooks issued verbal probable costs of services to prospective shippers. Some of the circumstances and conditions at the loading and unloading points of these shipments, some of the accessorial services performed, and some of the other transportation circumstances are the most unusual ever brought to our attention through an investigation of this nature.

MRT 4-B provides that an estimate (probable cost of services) must be in writing. However, household goods carriers are not required to issue such documents and often do not. Carriers may make a charge for preparing a written estimate which is a time-consuming process. It, therefore, is understandable why shippers may decline to authorize that one be issued.

There are numerous conflicting statements in the testimony of the carrier and shipper witnesses. The evidentiary record supports a finding that only one of the shippers, Adcock, received a verbal estimate before the move commenced. The record further shows that the remaining three shippers, Huskins, Patrick, and Skov, did not receive estimates of any kind before they agreed to engage Brooks to move their goods, although quotations of probable charges were given to them during the move.

Several of the shippers were confused as to what constitutes a verbal estimate in violation of the prohibition on page 5 of the information brochure (Exhibit 3) and provisions of MRT 4-B. The record shows, in connection with shipments that moved at rates in cents per 100 pounds, that Brooks weighed them and extended the charges from the weights and rates. Brooks then quoted charges to at least three of the shippers. This practice is in conformity with paragraph (e) of Item 120 of MRT 4-B which reads as follows:

"When requested by shipper to do, carrier will notify shipper by telegraph or telephone (as requested) of weight and/or charges upon ascertainment of same. Actual cost of such telegraphic or telephonic notification shall be collected from the shipper."

Such quotations of charges are not estimates. They are statements of fact as to what the charges have amounted to up to the time the shipments were completely loaded on carrier's equipment. Conditions encountered at points of destination can, of course, cause additional charges. Huskins, who eventually was charged more for added services, apparently had placed substantial reliance on the charges quoted when his shipment was weighed.

There was also some dispute as to whether it is a violation of MRT 4-B for a carrier to verbally estimate charges for the shipper after both have agreed that a transportation service will be rendered. Witnesses McColl, Baxter, and Brooks testified, in effect, that an estimate is not something given in the middle of a move, but something given someone beforehand. We agree. The prohibition in Exhibit 3, relative to oral estimates, pertains to oral estimates given to prospective shippers and not after they have agreed to become actual shippers.

After careful review of the record, we conclude that Skov did not receive an estimate of any kind before her move began, despite her testimony to the contrary. As a result, refunds or penalties are inappropriate for Skov or Huskins, who admitted that a quotation was given to him in the midst of his move after the goods had been weighed by Brooks.

As for Patrick, it is clear from his testimony that he tendered a \$100 deposit to Brooks before Brooks allegedly gave him an estimate of the moving charges. Patrick had been moved before by Brooks and had decided to hire him before any verbal quotations were given.

The prohibition against oral estimates was adopted by the Commission as part of its estimating rules established after lengthy investigations into the subject of deliberate under-estimating as a competitive practice. In D. 81838 (1973) at

75 CPUC 70, we stated:

"The Assembly has requested that the Commission issue an order by March 15, 1973, containing rules designed to eliminate the practice of deliberate underestimating by household goods carriers as a competitive practice." (Emphasis supplied.)

In D. 81656 (1973) at 75 CPUC 279:

"This proceeding is directed to the adoption of rules that will prevent underestimating as a competitive practice, and will provide to shippers all the information they require concerning their residential moves."

* * *

"Underestimating can be used as a practice to secure business, for the reason that the shipper usually employs the carrier that furnishes the lowest estimate." (Emphasis supplied.)

Once a carrier has been selected by a shipper, he no longer is engaged in competition with other carriers to obtain this shipper's business. It was not our intention that after the carrier and shipper have both signed the shipping document specifying the services to be performed at designated rates they could not thereafter discuss probable prices.

The contracting shipper may need an estimate of the charges so that he may determine how much money he will have to obtain to pay the charges upon delivery. He also may need to know whether he can afford to add more property to the shipment. He may also need to know the probable cost in the event he cannot afford to move all of his goods, requiring him to sell some, give some away, or haul some himself.

If the prohibition against verbal estimates were to apply after a shipper and carrier have entered into a contract

for carriage, it would mean the carrier could only quote rates and distance. If the shipper were moving at weight rates, the carrier could not help him with price until the shipment was weighed. The shipper may or may not find it convenient to wait for the carrier to get the load to a scale and report back the charges based on the weight, a process that may take a number of days. The carrier, of course, could suggest that the shipper figure the charges out himself using his own estimate of weight and the quoted rate. On a local hourly move, the carrier could do even less. He could not quote charges until the last item was placed in the destination residence and all of the bill extensions were made from the time factors. It was not intended that shippers who have actually contracted for services with a carrier be so inconvenienced. After a shipper has contracted for service, the best way he can acquire a general idea of what the charges may be is to ask the carrier from time to time as the job progresses. MRT 4-3 does not prohibit carriers from giving verbal estimates to shippers with whom they have already contracted for carriage.

Since we have found that Brooks did issue a verbal estimate to Adcock before her move began, we must now determine whether such a verbal estimate should be given the same effect under MRT 4-3 as a written estimate.

A verbal estimate clearly is a violation of the tariff provisions (Exhibit 3). MRT 4-3 states that all estimates shall be in writing. If a written estimate is issued by a household goods carrier, and the carrier subsequently assesses a final charge in excess of the estimate, the refund and penalty provisions of MRT 4-3 clearly are applicable. The staff contends, however, that refunds and penalties also are appropriate if a carrier's final charges exceed a verbal estimate given to a prospective shipper.

We agree with the staff for the following reason. If we should decline to apply the refund and penalty provisions of MRT 4-B to verbal estimates, we would be condoning the very practice the tariff rules are intended to prevent, i.e., verbal estimating. A household goods carrier would have no reason to provide a written estimate if, instead, he could issue a verbal estimate and thereby avoid the refund and penalty provisions of MRT 4-B. We emphasize that the issuance of a verbal estimate is a violation of MRT 4-B. If carriers are not held to verbal estimates, we would be allowing carriers to benefit from unlawful conduct at the expense of the very shippers for whose protection our estimating rules were adopted.

We have previously noted that:

"MRT 4-B governs the transportation of a most sensitive nature in that most shippers are family "households" with very little or no experience dealing with complex transportation rules and regulations." In re MRT 4-B, 84 CPUC 206, 211 (1978).

Shippers tend to rely upon the household goods carrier's expertise and judgment when signing freight bills and other documentation that a carrier such as Brooks is more familiar with. Although Adcock did sign various documents with the statement that no estimate had been given, it is evident from her testimony that she relied on Brooks' integrity and had minimal understanding of the documents she signed. Her testimony was credible and we find after scrutiny of the various witnesses' testimony that Brooks did issue a verbal estimate to Adcock. Accordingly, a refund of \$397.74 to Adcock, as computed by the staff, and a penalty of \$354.34 will be ordered hereafter.

Findings of Fact

1. The staff conducted an investigation in 1979 into certain of Brooks' operations.
2. Brooks is engaged in business as a household goods carrier, and was so engaged during the period covered by the staff investigation.

3. Gross revenue received by Brooks in 1978 from transportation of secondhand household goods and effects was \$17,177. This amounted to a monthly average gross revenue of about \$1,430.

4. In Exhibits 2 and 6, staff contends Brooks engaged in certain unlawful practices as a household goods carrier in connection with shipments transported subject to freight bills identified by the following numbers and years: 2032 (1977); 2076 (1977); 2139 (1978); 2158 and 2168 (1978); and 2166 (1978).

5. Refunds and penalties are appropriate only in connection with shipping documents Nos. 2032 and 2076 (Sierra Datsun-Mahler and Adcock).

6. Brooks had firsthand knowledge of at least one or more phases of each of the six shipments involved. He participated in the preparation of shipping documents, helped with packing and loading, drove the truck, and helped with unloading and completion of documentation, including explaining and discussing the shipping documents with shippers prior to obtaining their signatures.

7. Each witness called by Brooks was either an employee, or a former employee, who had worked on one or more of the six shipments involved, and who had witnessed the explanation, discussion, and signing of shipping documents.

8. The information brochure (Exhibit 3) and MRT 4-B provide that an estimate of household goods moving charges (probable cost of services) must be in writing, and that an oral estimate is a violation of tariff provisions.

9. Household goods carriers are not required to give prospective shippers written estimates of charges.

10. When a written estimate of charges is given for a household goods shipment, it must conform to requirements of MRT 4-B.

11. Brooks gave a written estimate to Sierra Datsun in connection with the shipment identified by shipping document No. 2032.

12. Exhibit 2, Part 1, shows that Sierra Datsun paid Bishop Moving & Storage Co. \$1,868.57 for Invoice No. 2032, which payment was by a check dated August 1, 1977.

13. Exhibits 2 and 6 show that Brooks violated provisions of MRT 4-B in connection with freight bill No. 2032 by charging Sierra Datsun more than the amount on his written estimate, plus the allowable tolerance.

14. There was no addendum order for service issued for 7-~~8~~ man-hours of unpacking performed in connection with shipment No. 2032 and Brooks collected nothing for that service.

15. The staff calculations in Exhibit 6, relative to overcharge and refund for shipment No. 2032, are correct. Brooks should be required to refund Sierra Datsun \$127.54, as recommended by the staff.

16. Staff calculations in Exhibit 6, relative to penalty for shipment No. 2032, are not correct. Brooks should be required to pay the Commission a penalty of \$464.68 for overcharging Sierra Datsun in violation of the estimating provisions of MRT 4-B.

17. The unextended copies of shipping documents issued by Brooks contained rates for services requested. They did not contain estimates of charges, shipment weights, or time factors.

18. Prior to performing service, and in the presence of his employees as witnesses, Brooks explained and discussed each unextended shipping document with the shipper. Brooks and each shipper signed the respective documents and Brooks gave each shipper a copy and kept one for his records.

19. Once a shipper has signed the unextended copy of the shipping document showing, among other things, rates for services to be performed, it becomes a contract for carriage and thereafter it is not a violation of MRT 4-B for the carrier to estimate charges for the shipper.

20. The record does not show that Brooks gave verbal estimates of charges, shipment weights, or time factors before the moves of Patrick, Huskins, or Skov, were commenced.

21. The record does not show that Brooks (1) failed to issue the information brochure (Exhibit 3) to any shipper prior to commencement of the move; (2) failed to obtain the required receipt for each brochure; (3) failed to properly issue confirmation of shipping instructions and rate quotation documents in advance of shipment; (4) misrepresented the scope of services through advertisement; (5) failed to present the freight bill to the shipper within the time period allowed by MRT 4-B; or (6) assessed charges higher than maximum (except in connection with shipment No. 2032).

22. The Commission requires household goods carriers to maintain cargo insurance in connection with transportation of household goods (Public Utilities Code, Division 2, Article 3). Transportation loss and damage claim procedures have been provided in Item 34 of MRT 4-B. The Commission does not adjudicate loss and damage claims. Such matters are within the jurisdiction of the civil courts.

23. Except for certain storage in transit, the Commission does not exercise jurisdiction over storage of secondhand household goods or effects (Public Utilities Code, Section 239 (b)).

24. Except in connection with shipments Nos. 2032 and 2076, the record does not show Brooks violated MRT 4-B or otherwise engaged in unlawful operations and practices as a household goods carrier.

25. Brooks gave a verbal estimate of \$350-\$450 in connection with a shipment identified as Invoice No. 2076.

26. Exhibit 6, Part 12, shows that a refund of \$397.74 should be paid to shipper Adcock and a penalty of \$354.34 to the Commission.

27. The staff calculations in Exhibit 6, Part 2, relative to shipment No. 2076, are correct. Brooks should be required to pay \$397.74 to shipper Adcock and \$354.34 to the Commission.

28. Shippers Patrick, Huskins, and Skov paid deposits to Brooks which were not included on their freight bills or otherwise credited against their final charges.

29. Patrick paid a \$100 deposit which was not subtracted from the final charges. Brooks should be required to refund \$100 to Patrick.

30. Huskins paid a \$200 deposit to Brooks which was not subtracted from the final charges. Brooks should be required to refund \$200 to Huskins.

31. Skov paid a \$60 deposit to Brooks which was not subtracted from the final charges. Brooks should be required to refund \$60 to Skov.

Conclusions of Law

1. Glenn Brooks violated Sections 5139, 5196, and 5245, of the Public Utilities Code, by collecting an amount greater than the rates in Minimum Rate Tariff 4-B for transportation of shipments Nos. 2032 and 2076 for Sierra Datsun and Adcock.

2. Glenn Brooks should be directed to pay to Sierra Datsun the refund of \$127.54 and to Adcock the refund of \$397.74, as set forth in Finding 15 and Finding 27.

3. Glenn Brooks should be directed to pay a fine to the Commission of \$819.02, as set forth in Finding 16 and Finding 27.

4. Glenn Brooks should be directed to refund deposits paid by shippers in the amount of \$360, as set forth in Finding 29, Finding 30, and Finding 31.

5. In all other respects, the record does not show that Glenn Brooks violated MRT 4-B or otherwise engaged in unlawful operations and practices as a household goods carrier.

O R D E R

IT IS ORDERED that Glenn D. Brooks, dba Bishop Moving and Storage, shall pay the refunds and penalties set forth in Findings 15, 16, 27, 29, 30, and 31 within forty days after the effective date of this order and shall notify the Commission in writing upon the completion of such payments.

The Executive Director shall cause personal service of this order to be made upon respondent, Glenn Brooks, and the effective date of this order shall be thirty days after the completion of such service.

Dated NOV 18 1980, at San Francisco, California.

John E. Byrne

President

Vernon L. Sturgeon

Richard D. Kroll

Clayton T. Padgett

Donald W. Jones

Commissioner