

JAN 6 1981

ORIGINAL

Decision No. 92593

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Frank L. Bartlett and  
Yvonne R. Bartlett,  
Complainants,

vs.

Ian A. Richardson, DBA  
Economy Lyons,  
Defendant.

Case No. 10886  
(Filed July 2, 1980)

Frank L. and Yvonne R. Bartlett, for themselves,  
complainants.

Thomas M. Loughran, Attorney at Law, for  
Ian Richardson, defendant.

Vincent MacKenzie, Attorney at Law, and Joseph C.  
Matson, for the Commission staff.

O P I N I O N

The used household goods complaint of Frank L. and Yvonne R. Bartlett versus Ian A. Richardson, dba Economy Moving & Storage, was initially referred to the Commission's Consumer Affairs Branch (CAB), in the form of an informal complaint, for resolution. The CAB, being unable to resolve this matter informally, advised and assisted complainants in the preparation and filing of a formal complaint in Case No. 10886 under the Commission's Expedited Complaint Procedure.<sup>1/</sup> Public hearing was held before Administrative Law Judge Gagnon in San Francisco on October 21, 1980, and the matter was submitted.

<sup>1/</sup> The Expedited Complaint Procedure prescribed in Rule 13.2 of the Commission's Rules of Practice and Procedure (Section 1702.1 of the Public Utilities Code) is applicable only in connection with electric, gas, water, heat, or telephone utilities. Accordingly, this complaint was advanced to formal hearing under the general complaint procedures of Rule 10 pursuant to Administrative Law Judge's Ruling, dated July 11, 1980, in Case No. 10886.

The transportation of used household goods by Economy Moving & Storage is subject to the minimum rates, rules, and regulations set forth in the Commission's Minimum Rate Tariff 4-B (MRT 4-B). For the shipment of complainants' used household goods, weighing 12,100 pounds, from Santa Clara to Grass Valley, on March 21, 1980, defendant assessed and collected from complainants total freight charges of \$1,225.16 (Exhibit 5). In doing so, complainants contend that defendant violated the tariff rules governing the probable cost of services contained in Items 31, 31.1, 33, and 33.5 of MRT 4-B. Wherefore, complainants request an order directing defendant to refund \$342.05 of the assessed freight charges plus penalty charges as determined by CAB.

Complainants' Presentation

It is complainants' testimony that on February 25, 1980 an appointment was made with the defendant carrier's estimator to make an inspection of the used household goods to be shipped to Grass Valley and provide complainants with an estimate of the probable cost of services. It is alleged that defendant's estimator was shown all articles to be shipped, including yard furniture and contents in the garage such as a full freezer, tools, welder, steel items, etc. It was agreed that a drill press located in the garage was not initially intended to be shipped. Thereafter, complainants were furnished with an estimate of the Probable Cost of Services (Exhibit 1) signed by defendant's estimator for \$785.34, based on an estimated shipment weight of 7,154 (8,000) pounds. The defendant's estimate was supported by the required Basis For Carrier's Probable Cost of Services document (Exhibit 2) for which the carrier failed to obtain the required signature of complainant(s).

A second competitive estimate of the probable cost of services (Exhibit 8) was obtained by complainants from Viking Moving & Storage (Viking) for the same shipment of used household goods. While Viking's estimate does not bear the required shipper/cARRIER signatures, the probable cost of services is computed to be \$1,095, based on an estimated weight of 11,000 pounds. Complainants contacted defendant's office regarding the apparent discrepancy between the two carrier estimates. They were advised that defendant's estimator had erred in the mileage computation and that he would bring out a corrected estimate. During the week of March 2, 1980, the estimator delivered a corrected estimate (Exhibit 3) of the probable cost of services for \$843.91, based on the original estimated weight of 8,000 pounds and a corrected distance rate of \$9.05 (in lieu of \$7.55) applicable for distances of 185 miles (in lieu of 99 miles).<sup>2/</sup> At this time defendant's estimator, upon review of the articles to be shipped, assertedly including all disputed items in the garage, confirmed his original estimate of 8,000 pounds. It assertedly was also agreed that complainants would box and move most of the kitchen items.

On March 21, 1980 equipment and personnel from Economy Moving & Storage arrived at complainants' Santa Clara residence to pack and load their used household goods for shipment to Grass Valley. It is explained that one of defendant's movers stated that complainants' articles to be shipped appeared to weigh more than the carrier's estimate of 8,000 pounds. Since complainants were now ready to leave, the movers packed and loaded all articles to be shipped. Before doing so, however, defendant's driver

---

<sup>2/</sup> The \$843.91 estimate of the probable cost of services reflects a transportation charge of \$724.00, a fuel surcharge of \$19.91, and an accessorial valuation charge of \$100.00.

issued an Addendum Order for Services (Exhibit 4) to assertedly cover an additional estimated 4,000 pounds of articles to be shipped not reflected in defendant's corrected estimate of the probable cost of services (Exhibits 3 and 4). While the Addendum Order was not signed by the carrier or its representative, Frank Bartlett did put his signature on it, although apparently not in the presence of his wife, Yvonne Bartlett, and without her prior knowledge. Mr. Bartlett explained that he signed the Addendum Order in question midst the stress and confusion existing on moving day and apparently did not intend to imply by such action that, except for a drill press, the articles listed in the Addendum Order were not previously shown to defendant's estimator as articles to be shipped for subsequent inclusion in the basis for the carrier's probable cost of services estimate.

Complainants' shipment of used household goods was delivered to their new Grass Valley address by Economy Moving & Storage on March 22, 1980. At this time the defendant carrier presented for payment its freight charges of \$1,225.16, based on a net shipment weight of 12,100 pounds (Exhibit 5). The assessed charges exceed defendant's corrected estimate of the probable cost of services by \$381 and the actual net weight of this shipment exceeds defendant's prior estimated weight by 4,100 pounds. It is this differential between the estimated and actual assessed weight and charges that constitutes the basis for the subject complaint.

#### Defendant's Presentation

Except for the estimator's failure to specifically list complainants' articles not to be shipped on the Table of Measurements, which constitutes an essential factor in the basis for carrier's

probable cost of services estimate, Economy Moving & Storage denies complainants' overall alleged violations of MRT 4-B. It is the defendant carrier's contention that all articles that were initially intended to be shipped are reflected in the probable cost of services document and that any additional articles that were shipped were subsequently added by complainants as reflected by the Addendum Order for service (Exhibit 4) and evidenced by Mr. Bartlett's signature.

It is defendant's testimony that all of the articles intended to be shipped were transported, with complainants' receiving good expedited service, under generally favorable conditions, for which the resulting assessed freight charges are fully justified. Under the circumstances, defendant urges denial of the sought refund and CAB's proposed related penalty charges.

Staff Presentation

The staff's appearance in this complaint proceeding was for the limited purpose of assisting complainants in the presentation of their case as members of the otherwise usually unrepresented general shipping public of used household goods. To this end, the staff takes no specific position in this matter. It is suggested, however, that should complainants' sought relief prevail, defendant would be subject to the tariff penalty charges resulting under the governing provisions named in Item 33.7 of MRT 4-B.

The staff introduced two information exhibits to assist the Commission and the parties. In Exhibit 6 the staff has shown the MRT 4-B rates and charges applicable to complainants' shipment of used household goods from Santa Clara to Grass Valley based on data employed by defendant in the determination of the assessed charges. Other than for a minor rate correction, resulting in \$11.81

overcharge in assessed charges, staff Exhibit 6 reflects the position of defendant in this proceeding. In Exhibit 7 the staff has shown the MRT 4-B adjusted rates and charges that result under the alleged tariff violations. A total refund, amounting to \$341.55 is indicated, together with a MRT 4-B penalty assessment of \$253.19 to be paid to the Commission (Appendix A).

Discussion

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

It is to be noted that the Commission is required by legislative mandate, which is set forth in Section 5245 of the

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

The oral testimony of both complainants and defendant carrier is highly sensitive and controversial as to what, in fact, was the understanding of the parties concerning the actual articles originally intended to be shipped when the carrier's estimate of the probable cost for services was first prepared. However, when such contested testimony is evaluated in conjunction with the factual data contained in the several shipping documents issued by the carrier as evidence of the used household goods shipment in question, it becomes evident that the subject complaint could have been avoided or resolved, in the first instance, had the defendant carrier taken the following obvious precautionary/corrective courses of action:

1. Defendant should have required at least one of the complainants to sign the Basis for Carrier's Probable Cost of Services estimate (Exhibit 2) as a precondition of its validity pursuant to Item 32 of MRT 4-B.

2. When alerted by complainants that its initial estimate of the probable cost of services (Exhibit 1) might be underestimated or otherwise defective, defendant issued a second revised estimate which merely affirmed prior estimated weight of shipment and made technical correction in mileage computation and assessed rate. At this point in time carrier had all necessary information to exercise reasonable caution to ensure that:
  - a. Revised estimate clearly indicated it covered only a partial shipment.
  - b. The Table of Measurements (Exhibit 2) clearly indicated that all articles for which no specific measurement or estimated weight were computed, were not to be taken. (Item 33 of MRT 4-B.)
  - c. Alternatively, carrier could have included the contested articles in the list of items to be shipped when the corrected estimate was issued.
3. If, in fact, issuance of an Addendum Order for Services was in accordance with Item 33.5 of MRT 4-B, the document should have been signed by defendant carrier as well as by one or both of complainants.
4. The Confirmation of Shipping Instructions, Agreement for Services, Rate Quotation Document and/or Freight Bill (Exhibit 5) should also contain defendant carrier's or his agent's signature as well as complainants' per Items 130 and 145 of MRT 4-B.



Defendant made substantial tariff information available to complainants, including the "Important Notice To Shippers Of Used Household Goods" booklet (Exhibit 9). The question may arise, therefore, why complainants did not specifically question the apparent omission of certain articles, assertedly intended to be shipped, from defendant's estimate of the probable cost of services (Exhibits 1, 2, and 3). However, it is the defendant carrier to whom we must look, in the first instance, to fully understand, implement, and apply the governing tariff provisions prescribed in MRT 4-B.

As previously noted, had the defendant carrier taken one or more precautionary courses of action to ensure that its estimate of the complainants' probable cost of services was properly documented, in conformity with the governing rules of MRT 4-B, its assessed charges would have been protected. However, having failed to do so, defendant stands in violation of the governing tariff rules named in Items 31, 31.1, 32, 33, and 33.5 of MRT 4-B as alleged by complainants, together with related tariff rules named in Items 32 and 130 of the tariff. Accordingly, defendant should be ordered to make partial refund of its assessed freight charges to complainants as provided in Item 33.7 of MRT 4-B as determined by the Commission staff (Exhibit 7) and summarized in Appendix A hereof.

We take official notice here of the overall good historical MRT 4-B compliance record of Economy Moving & Storage. In addition, from the subjective and conflicting nature of the testimony, there persists some doubt that defendant's understanding of the actual articles originally intended to be shipped was totally wrong. Under the circumstances, we shall not apply the penalties otherwise

applicable under the governing provisions of Item 33.7 of MRT 4-B in this particular instance.

Findings of Fact

1. The transportation of complainants' used household goods from Santa Clara to Grass Valley by defendant, Economy Moving & Storage, is subject to the minimum rates, rules, and regulations named in the Commission's MRT 4-B.

2. For the transportation covered by the instant complaint, filed in Case No. 10886, defendant carrier failed to prepare and/or issue shipping documents that were in conformity with the governing tariff rules contained in Items 31, 31.1, 32, 33, 33.5, 130, and 145 of MRT 4-B.

3. The defendant's underestimate of the probable cost of services as requested by complainants exceeds the tolerances specified in Items 31.1 and 33.7 of MRT 4-B.

4. The correct rates and charges, together with the resulting refund and penalty amounts applicable to the transportation in issue, are computed in staff Exhibit 7 and are set forth in Appendix A hereof.

5. The defendant carrier's assessed charges of \$1,225.16 exceed the maximum charges of \$883.61 authorized pursuant to Item 31.1 of MRT 4-B by \$341.55 which amount should be refunded to complainants.

6. Since there exists a reasonable doubt whether defendant's understanding of the actual articles originally intended to be shipped was totally wrong, the underestimating penalty charges, in the amount of \$253.19, otherwise applicable under the provisions of Item 33.7 of MRT 4-B, should not be applied.

Conclusions of Law

1. Defendant violated Items 31, 31.1, 32, 33, 33.5, 130, and 145 of MRT 4-B and Sections 5139, 5193, and 5245 of the Public Utilities Code.

2. Defendant carrier should be directed by the ensuing order to refund \$341.55 of its assessed freight charges, without interest, to complainants. The order should also include a waiver of penalty charges for underestimating due to mitigating extenuating circumstances beyond the direct control of defendant.

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

4. The Commission expects that defendant will proceed promptly, diligently, and in good faith to pay the refund to complainants.

O R D E R

IT IS ORDERED that:



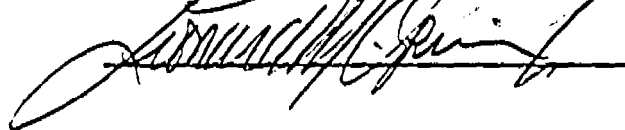
1. Ian A. Richardson, dba Economy Moving & Storage, shall pay a refund of freight charges in the amount of \$341.55 to complainants, Frank L. and Yvonne R. Bartlett, as more specifically set forth in Appendix A hereof within forty days after the effective date of this order and shall notify the Commission in writing upon the completion of such payment.

2. Extenuating circumstances surrounding the transportation in issue mitigate against the assessment of an otherwise applicable underestimating penalty charge of \$253.19 which is hereby waived.

3. Defendant shall cease and desist from not fully implementing the rules and regulations of Minimum Rate Tariff 4-B governing the carrier's procedures for estimating the probable cost of used household goods shipments.

The Executive Director of the Commission shall cause personal service of this order to be made upon Ian A. Richardson, and the effective date of this order shall be thirty days after the completion of such service.

Dated JAN 6 1981, at San Francisco, California.

  
\_\_\_\_\_  
President  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
\_\_\_\_\_  
Commissioners

ECONOMY MOVING & STORAGECARRIER'S NAME

NO. OF FREIGHT BILL N/S  
 DATE OF FREIGHT BILL 3-21-80  
 NAME OF CONSIGNOR Mr. & Mrs. Frank Bartlett  
 POINT OF ORIGIN 3469 St. Mary's Place, Santa Clara CA 95061  
 NAME OF CONSIGNEE Mr. & Mrs. Frank Bartlett  
 POINT OF DESTINATION 10254 Harvest Way, Grass Valley  
 CONSTRUCTIVE MILES 185

RATE AND CHARGE ASSESSED

<u>COMMODITY</u>	<u>WEIGHT - IN POUNDS</u>	<u>RATE IN CENTS PER 100 POUNDS</u>	<u>CHARGE</u>
------------------	-------------------------------	---	---------------

Used Household Goods

MINIMUM RATE AND CHARGE

Shipment Weight:	12,100	(1) 905	\$1,095.05
Surcharge:		(2) 2-3/4%	30.11
Valuation: \$20,000		(3)	100.00
		Total:	\$1,225.16

(5) MAXIMUM RATE AND CHARGE2-25-80 (3-3-80) Probable Cost of Service

1022 Cubic Feet at 7 lbs. per Cubic Foot	7,154 as 8,000	(1) 905	\$ 724.00
Surcharge:		(2) 2-3/4%	19.91
Valuation: \$20,000		(3)	100.00
			\$ 843.91

Allowable Percentage above Probable Cost of Service		(4) 2 1/2%	21.10
			\$ 865.01

3-21-80 Addendum Order of Service:

1- Drill Press	200	(1) 905	\$ 18.10
Surcharge		(2) 2-3/4%	.50
			\$ 18.60

Total Probable Cost of Service: Plus Addendum:			\$ 883.61
--	--	--	-----------

(6) Refund to Debtor (\$1225.16 - \$883.61): \$341.55

(7) Penalty: (\$1225.16 - \$971.97): \$253.19

ECONOMY MOVING & STORAGE

Reference Marks

- (1) Minimum Rate for 185 constructive miles, Item 320 of MRT 4-B.
- (2) Surcharge per Supplement 42 (2-3/4% of Item 320), MRT 4-B.
- (3) Transportation valuation charge, Item 80(f), MRT 4-B, \$.50 per each \$100.00.
- (4) Allowance charge by carrier above Probable Cost of Service (2 1/2% or \$15.00), Item 31.1, MRT 4-B.
- (5) If allegation correct, that all items shown on Addendum except Drill Press, should have been part of original corrected basis for Probable Cost of Service, rating would be as shown.
- (6) MRT 4-B, Item 31.1 (a).
- (7) MRT 4-B, Item 33.7, 2. Penalty (\$1225.16 - ((\$883.61 plus \$65.36)) \$971.97) = \$253.19.