

ORIGINAL

Decision No. 92596 JAN 6 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of Rolling
"K" Kartage Corporation, a
California corporation; Battenfield
Bros. Trucking; Carl S. Montan; and
Kabo-Karr Corporation of California,
a California corporation.

OII No. 68
(Filed April 2, 1980)

Lloyd Compton, for Rolling "K" Kartage
Corporation; Herbert B. Battenfield,
for Battenfield Bros. Trucking; and
Carl S. Montan, for himself; respondents.
Elmer Siostrom, Attorney at Law, and Ed Hjelt,
for the Commission staff.

C O N C L U S I O N

This is an investigation into the operations, rates, and
practices of Rolling "K" Kartage Corporation (Rolling "K"), a
California corporation, to determine:

- (1) Whether Rolling "K", the alter ego of Kabo-Karr Corporation of California (Kabo-Karr), transported property for the latter and charged \$18,044.52 less than the rate in Minimum Rate Tariff 2 and its supplements;
- (2) Whether subhaulers should have been considered prime carriers, as Rolling "K" and Kabo-Karr are the same entity;
- (3) Whether subhauler Battenfield Bros. Trucking (Battenfield) was underpaid \$11,407.44, and subhauler Carl S. Montan (Montan), \$13,931.68; and
- (4) Whether these totals should be reduced by a rental fee for use of Kabo-Karr trailers by the subhaulers at rates charged by public trailer rental agencies, thereby reducing the underpayment to \$10,005.56 on Battenfield and \$12,013.92 on Montan.

Public hearing was held before Administrative Law Judge Edward G. Fraser in Fresno on July 29, 1980. All exhibits were placed in evidence by the Commission staff. Exhibit 1 is an information sheet on respondent Rolling "K". Exhibit 2 includes the shipping documents for the transportation involved in the alleged undercharges. Exhibit 3 is the rate statement prepared by the Commission staff. Exhibit 4 deducts trailer rental from the freight charges due to subhaulers. Exhibit 5 is a stipulation signed by staff counsel and the president of Rolling "K", which agrees that: (1) all exhibits introduced are true and correct; (2) undercharges are \$18,044.52 and underpayments to subhaulers are \$11,407.44 to Battenfield and \$13,931.68 to Montan; and (3) rental charges due from the subhaulers reduce underpayments to \$10,005.56 and \$12,013.92, respectively. It was further agreed that Rolling "K" will collect the undercharges due and remit the underpayments to the subhaulers and that Rolling "K" should pay a punitive fine of \$2,500 pursuant to Section 3774 of the Public Utilities Code. Given the size of the carrier's operation and the magnitude of the violation, we believe the staff's recommendation of a \$2,500 punitive fine is reasonable.

Findings of Fact

1. Rolling "K" operates under authority of a radial highway common carrier permit and dump truck carrier permit.
2. Rolling "K" has been served copies of Minimum Rate Tariff 2, Distance Table 8, and Exceptions Rating Tariff 1. The carrier has also been served with the appropriate informal rulings.
3. Rolling "K" has a single employee who is listed as president of the corporation.
4. Rolling "K"'s terminal and office is located in Visalia, California.
5. Rolling "K"'s gross operating revenue for 1978 was \$106,937.

6. All of Rolling "K"'s equipment is leased to Kabo-Karr. Power units are furnished by the subhauler employed.

7. Kabo-Karr is the alter ego of Rolling "K" through common ownership, management, and control.

8. When Rolling "K" employed carriers Battenfield and Montan to transport the property of Kabo-Karr as subhaulers, they were actually prime carriers because of the alter ego relationship of Kabo-Karr and Rolling "K".

9. Due to their employment as subhaulers at a percentage of the minimum rate, rather than as prime carriers at the total rate, carrier Montan was underpaid \$12,013.92, and carrier Battenfield \$10,005.56, after deductions for trailer rentals from Kabo-Karr.

10. Respondent Rolling "K" has charged and collected a lesser sum for the transportation of Kabo-Karr's property than the applicable charges prescribed in Minimum Rate Tariff 2 in violation of the provisions of Minimum Rate Tariff 2, and Public Utilities Code Sections 3664, 3667, 3668, and 3737.

11. Rolling "K" should be directed to collect the undercharges from Kabo-Karr, to pay the ostensible subhaulers the amount shown in Finding 9, and to pay a punitive fine of \$2,500.

12. The punitive fine is reasonable in view of respondent's cooperation and the undercharges involved.

Conclusions of Law

1. Rolling "K" violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code.

2. Rolling "K" should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$2,500.

3. Rolling "K" should be directed to pay the other two respondents the amounts listed in Finding 9.

4. Rolling "K" should be directed to cease and desist from violating the rates and rules of the Commission.

The Commission expects that Rolling "K" will proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges and to pay its ostensible subhaulers the amounts found due them in Finding 9. The staff of the Commission will make a subsequent field investigation into such measures. If there is reason to believe that Rolling "K" or its attorney has not been diligent or has not taken all reasonable measures to collect all undercharges and to pay its ostensible subhaulers that which is due them or has not acted in good faith the Commission will reopen this proceeding for the purpose of determining whether further sanctions should be imposed. ✓

O R D E R

IT IS ORDERED that:

1. Rolling "K" Kartage Corporation shall pay a fine of \$2,500 to this Commission pursuant to Public Utilities Code Section 3774, on or before the fortieth day after the effective date of this order. Respondent carrier shall pay interest at the rate of seven percent per annum on the fine; such interest will commence on the day the payment of the fine is delinquent.

2. Respondent carrier shall take such action, including legal action, as may be necessary to collect the undercharges set forth herein, and shall pay its ostensible subhaulers the amounts set forth in Finding 9 and shall notify the Commission in writing upon the collection and payment thereof.


3. Respondent carrier shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges and to pay its ostensible subhaulers. In the event the undercharges or payments ordered to be collected and paid by paragraph 2 of this order, or any such part of undercharges or payments, remain uncollected or unpaid sixty days after the effective date of this order, respondent carrier shall file with the Commission, on the first Monday of each month after the sixty days, a report of the undercharges remaining to be collected and the payments remaining to be made, specifying the action taken to collect such undercharges or make such payments and the result of such action, until such undercharges have been collected in full and the total payments have been made or until further order of the Commission.

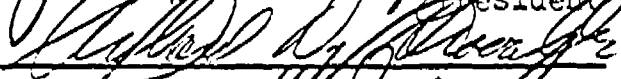
4. Respondent carrier shall cease and desist from charging and collecting compensation for the transportation of property or for any service and connection therewith in a lesser amount than the rates and charges prescribed by this Commission.

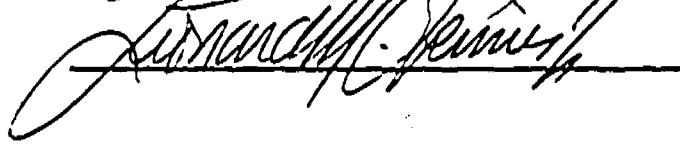
5. Respondent carrier shall cease and desist from paying to ostensible subhaulers amounts less than the minimum payment prescribed by this Commission.

The Executive Director of the Commission is directed to cause personal service of this order to be made upon respondent Rolling "K" Kartage Corporation and to cause service by mail of this order to be made upon all other respondents. The effective date of this order as to each respondent shall be thirty days after completion of service on that respondent.

Dated JAN 6 1981, at San Francisco, California.



President




Commissioners