

ORIGINAL

Decision No. 92631 JAN 21 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 F. J.)
Crikos Trucking, Inc., a Califor-)
nia corporation, and Kaiser Alumi-)
num and Chemical Corporation, a)
foreign corporation.)

OII No. 73
(Filed July 2, 1980)

Frank Spellman, for F. J. Crikos Trucking, Inc.,
and Thelen, Marrin, Johnson & Bridges, by
Frederic C. Nelson, Attorney at Law, Eddie E.
Daniels, and William D. Dewitt, for Kaiser
Aluminum & Chemical Corporation, respondents.
Cornelious Steward, for Minority Trucking-
Transportation Development Corporation, West,
interested party.
Elmer J. Sjostrom, Attorney at Law, and Paul
Wuerstle, for the Commission staff.

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O P I N I O N

This is an investigation on the Commission's own motion into the operations, rates, and practices of F. J. Crikos Trucking, Inc., a California corporation, to determine whether and to what extent its predecessor company, Fred J. Crikos (Crikos), dba F. J. Crikos Trucking, a sole proprietorship, performed transportation for Kaiser Aluminum and Chemical Corporation (Kaiser) without assessing and collecting the applicable minimum rates as provided by Minimum Rate

Tariff 2 (MRT 2) in violation of Sections 3664, 3667, and 3737 of the Public Utilities Code as the result of improper application of the deviation rates authorized by Decision No. 87491 and SDD 681. A hearing was held on the matter before Administrative Law Judge Pilling on August 12 and 13, 1980 at San Francisco.

Crikos, headquartered at Cotati, operated at all times pertinent as a highway contract carrier and radial highway common carrier. He had been served with appropriate minimum rate tariffs including MRT 2. He employed 14 drivers and operated 14 tractors and 33 trailers. His gross revenue for the year 1977 was \$846,218 and for the year 1978 was \$1,170,000. By Decision No. 87491 he was authorized to transport shipments for Kaiser at rates less than the minimum rates set forth in MRT 2 in the following service:

"Between: Kaiser Aluminum plants, warehouses, and storage sites in San Leandro, Newark, South San Francisco, and Permanente and those located in Los Angeles and La Mirada, and customers of Kaiser Aluminum who are located enroute between said interplant points."

* * *

"Conditions:

"(a) Service to customers enroute shall include those located along routes usually and normally traversed."

The deviation application indicated that in the operations in question, a Crikos truck would pick up a southbound shipment at a Kaiser facility in the Bay Area destined to one or more Kaiser customers and after final delivery of the shipment the truck would proceed to a Kaiser facility in Southern California and pick up a northbound shipment to one or more Kaiser customers. After final delivery of the northbound shipment the Crikos truck would proceed to a Kaiser facility in the Bay Area and repeat the operation.

A field representative for the Commission staff testified that in July, 1978, he asked Crikos what were the usual and normal routes traveled by Crikos' trucks between Kaiser facilities in the Bay Area and those in Southern California. He stated Crikos told him the trucks traveled south using Interstate Highway 5 (IH 5) in connection with Interstate Highway 580 (IH 580) and that occasionally the trucks deviated from IH 5 via California Highway 152 (Cal 152) and California Highway 99 (Cal 99). Also, the trucks sometimes used U.S. Highway 101 (US 101) all the way. Coming north the reverse of the routes were used. As a result of a staff investigation of Crikos' records the Commission issued Crikos an undercharge citation for \$4,443.76 covering 29 shipments Crikos handled for Kaiser at the deviation rate. The staff contended Crikos violated condition (a) of the deviation authorization by delivering at least a part of each of the 29 shipments to a Kaiser customer who was not along IH 580, IH 5, ✓

Cal 152, Cal 99, or US 101. Thereafter Crikos and the staff held several meetings together. The staff subsequently withdrew charges concerning 14 of the 29 shipments. This investigation involves the remaining 15 shipments, four northbound shipments and 11 southbound shipments which Crikos handled between November 1977 and March 1978.

Three of the four northbound shipments originated at La Mirada and one at Los Angeles. One La Mirada shipment had a stop in transit to unload at Stockton and two had final destinations at Antioch. The Los Angeles originated shipment had a stop to unload at Strathmore. Six southbound shipments originated at South San Francisco with final destinations at ^{Azusa}~~Azusa~~. One southbound originated at San Leandro with a stop in transit at Visalia. The remaining four southbound shipments originated at Newark with deliveries made in The City of Industry. None of the fifteen shipments were delivered either in whole or in part to a Kaiser facility. The staff contends customers located at Stockton, Antioch, Strathmore, Azusa, Visalia, and The City of Industry are not located along routes usually and normally traversed by Crikos' trucks between Kaiser's interplant points. Hence, the deviation rates did not apply to the shipments and Crikos should have charged and collected from Kaiser no less than the MRT 2 rates. The staff estimated the undercharges to total \$2,099.77.

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Crikos testified that when he told the staff representative the routes he used to and from Los Angeles he was not aware that the

representative had reference to the routing he used for Kaiser shipments. He stated that he interpreted the deviation to permit him to charge the deviation rate on shipments for Kaiser moving between the Metropolitan Los Angeles Area and the Metropolitan San Francisco Bay Area and any point in between or contiguous thereto. He stated that in his overall operations his trucks traverse many different highways.

The witness for Kaiser who acted for that company in assisting Crikos in obtaining the deviation authority testified that he understood the deviation to apply to interplant moves for Kaiser and moves from a Kaiser facility to customers intermediate to the Kaiser facilities. He stated that Azusa and The City of Industry were areas to which he hoped to ship under the deviation when the original application was filed. However, he agrees that Stockton is not intermediate to any Kaiser facilities. He stated that he had several conferences with a staff member who assured him that the deviation included service to areas contiguous to the Los Angeles and San Francisco areas.

The Director of the Minority Trucking-Transportation Development Corp., West, a nonprofit national organization which acts as a spokesman for minority truckers, appeared and testified in support of Crikos' position.

Discussion

The deviation authority does not define "normal routes", nor is there an accepted industry interpretation or meaning of that term. We believe that a broad interpretation of that term is appropriate in view of our failure to specify its meaning in the deviation authority. Therefore, we interpret condition (a) of the deviation authorization as not precluding the application of the deviation rate where Crikos' trucks move off their principal routes of travel to deliver freight to Kaiser customers. US 101, IH 5, Cal 99 and connecting highways such as IH 580 and Cal 152, the only practical routes between the Bay Area and the Los Angeles Area, afford no means of direct access to customers' property for delivering freight. Using these limited access highways for a major portion of north-south travel would preclude the rendition of service under the deviation authorization if condition (a) was interpreted as the staff contends. In trucking operations it is normal for trucks to traverse a major highway and make short side trips to pick up or deliver freight. We would not expect Crikos' trucks normally and usually to operate between the Bay Area and the Los Angeles Area over a network of secondary highways through points where Kaiser has customers or prospective customers just to satisfy condition (a) where limited access highways are available for a great proportion of the through trip.

In granting certificates to highway common carriers to operate over prescribed routes we have regularly included authority to serve points within 25 miles of the prescribed routes. Each of the six points served, which the staff alleges breached condition (a), is within approximately 20 airline miles of one of Crikos' normal and usual routes or a Kaiser facility. These side trips do not appear to us to be abnormally distant. We therefore find, contrary to the staff contention, that Crikos did not improperly apply the deviation rates as authorized by Decision No. 87491 and SDD 681.

Findings of Fact

1. At all times pertinent Crikos was authorized to transport shipments under his permit authority at less than the applicable minimum rates in MRT 2 between certain Kaiser facilities in the Bay Area and those in the Los Angeles area and Kaiser customers located en route between said facilities, subject to the condition that service to customers en route shall "include those located along routes usually and normally traversed".

2. Between November 1977 and March 1978 Crikos transported 15 shipments (four northbound shipments and 11 southbound shipments) for Kaiser to its customers for which Crikos charged Kaiser the deviation rate.

3. One northbound shipment had a stop in transit to unload at Stockton and one had a stop in transit to unload at Strathmore. The remaining two northbound shipments each had a final destination at Antioch.

4. Six southbound shipments each had a final destination at Azusa. Another southbound shipment had a stop in transit to unload at Visalia. The remaining four southbound shipments required deliveries at The City of Industry.

5. In serving Kaiser under the deviation Crikos' normal and usual north-south route was IH 5, Cal 99, and US 101 and connecting highways such as IH 580 and Cal 152, each of which is a limited access highway.

6. The points of Antioch, Stockton, Visalia, Strathmore, Azusa and The City of Industry are each located no more than approximately 20 airline miles from one of the normal and usual routes set out in Finding 5 or a Kaiser facility.

7. Condition (a) of the deviation authorization does not preclude Crikos from charging the deviation rate when making a side trip for a reasonable distance from its usual and normal route to deliver a shipment to a Kaiser customer.

8. The points of Antioch, Stockton, Visalia, Strathmore, Azusa and The City of Industry are within a reasonable distance from one of Crikos's usual and normal routes or a Kaiser facility.

9. The deviation authorization was not improperly applied to any of the 15 subject shipments.

Conclusions of Law

1. Crikos did not violate Section 3664, 3667, or 3737 of the Public Utilities Code in handling any of the subject 15 shipments for Kaiser.

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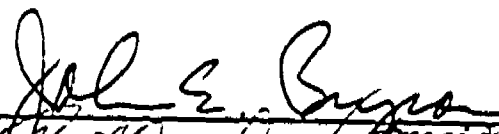
2. The order instituting investigation should be discontinued.

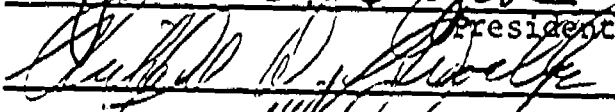
O R D E R


IT IS ORDERED that Order Instituting Investigation
No. 73 is discontinued.

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

Dated JAN 21 1981 at San Francisco, California.



President




Commissioners