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ORIGINAL

Decision 931.08 MAY 19 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
 motion into the operations, rates,)
 charges, and practices of RICH DOSS,)
 INC., a California corporation,)
 formerly RICH DOSS TRUCKING, an)
 individual; INLAND LUMBER CO., a)
 California corporation; RICK BEILFUSS)
 and GARY HANSEN, a partnership, doing)
 business as COMPASS LUMBER PRODUCTS;)
 GUY LAVERTY, JR., an individual, doing)
 business as SUNOL FOREST PRODUCTS;)
 KELLEHER LUMBER CO., a California)
 corporation; and CAL-WAII MOLDING)
 COMPANY, a California corporation.)

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 (Filed May 8, 1979)

SUPPLEMENTAL OPINIONStatement of Facts

By Decision (D.) 91824 dated May 20, 1980, after an investigation instigated on its own motion, and after hearing, the Commission found that Rich Doss, Inc. (Doss) had furnished transportation services in part free of charge, or in part at less than the lawfully prescribed minimum rates, resulting in undercharges totaling \$19,332.80, all in violation of PU Code §§ 3664, 3667, and 3737. By that decision, inter alia, Doss was directed to pay an undercharge fine of \$19,332.80 and a punitive fine of \$5,000. Of these fines, \$13,162.10 (attributable to free loads) and \$5,000 (the punitive fine) were to be paid in monthly installments of \$1,000 beginning July 26, 1980. The remaining \$6,170.70 undercharge fine was to be paid within 15 days of collection from the shippers.

Doss paid the \$6,170.70 on July 24, 1980 together with the initial \$1,000 monthly payment. Subsequently, each \$1,000 monthly payment has been made substantially on time; the last being received March 31, 1981. Therefore Doss has paid \$9,000, leaving a balance that date of \$9,162.10 still to be paid in monthly installments.

On March 27, 1981, pleading adverse economic conditions currently being experienced in his trucking operations which assertedly have resulted in a serious cash flow problem, Doss wrote our Executive Director requesting a reduction in the amount of the monthly payment to \$400 per month. After investigation, the Transportation Division staff did not feel that a reduction in the monthly fine payment was warranted, and recommends against it.

Discussion

In response to a request from our staff, Doss provided a copy of its financial statement consisting of a balance sheet,^{1/} and a statement of revenues collected and expenses paid. The latter contrasts the month of March 1981 with the 6-month period ending March 31, 1981. It shows a substantial net income for the 6-month period, but a deficit for March. Doss told the staff representative that the substantial net income shown had been spent paying off the principal due on notes for past equipment purchases. The carrier's records also showed that a substantial amount was unpaid to subhaulers for March 1981 transportation services received. Doss claimed that he was experiencing difficulties collecting from some accounts which had apparently gone out of business. Analysis of the records confirm existence of a current cash flow problem.

^{1/} The balance sheet reflects the carrier's condition on a cash basis rather than on an accrual basis.

Further analysis of the statement reveals that officers' salaries paid for the month of March included \$1,000 per week paid to Richard Doss, individual. In addition, the carrier pays Richard Doss, individual, \$2,000 a month as rent for use of the carrier's terminal, under terms of a lease agreement. ✓

It is the position of staff that inasmuch as Richard Doss is the chief operation officer of Doss, the corporation, he is in a position to control the carrier's finances, and that he should accept less salary and a smaller monthly rent so that the carrier would be in a position to continue to make the full \$1,000 per month payments. We do not entirely agree with our staff.

We are well aware that when a corporation is used by an individual to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or iniquitable purpose, we may disregard the corporate entity and treat the acts as if they were done by the individual (i.e. "pierce the corporate veil"). But these are not the circumstances here. There is no fraud, no attempt to circumvent a statute and there is no attempt to evade a corporate responsibility.^{2/} Doss merely is seeking an extension of time.

In the instant matter we are impressed favorably by the fact that this carrier has promptly and fully met each payment through March 1981 when it was due. We also take note of the fact that after making the March installment Doss immediately came to the

^{2/} The Doss operation annually grosses in excess of \$2 million and pays over \$1 million to subhaulers. In this day, a salary of \$52,000 a year is not incommensurate with the responsibilities and demands that accompany management of such an enterprise in so competitive a field. Nor is Richard Doss, individual, any the less entitled to receive the full rent called for in the lease covering the truck terminal property. There has been no suggestion that such a rental is exorbitant or the lease imprudent.

Commission with its request that thereafter the monthly installment amount be lowered and the period extended. The carrier did not wait to act until the next payment was due. It is no secret today that business conditions are in considerable disarray, that many companies are slow in paying their obligations, and that the bankruptcy rate is up. Here the staff report concedes that this carrier has currently a cash flow problem, and the report states "any idea as to how long such a condition will last is pure speculation."^{3/}

Just as no purpose is served by levying a fine beyond the ability of a highway carrier to pay (Cascade Refrigerator Lines, Inc. (1963) 62 CPUC 42), equally no purpose would be served in driving a highway carrier encountering financial problems up against a financial wall by insisting upon full installment payments beyond the current ability of the carrier to pay.

We think under these circumstances that an extension of time with its concomitant lessened monthly payment would be appropriate. But this does not mean that we feel that Richard Doss, individual, should not be expected to share some of the austerity the situation demands. He bears a heavy portion of responsibility for the situation even though he is spared the legal obligation. As we observed in D.91824:

"The violations involved in this short three-month period were numerous and sufficiently repetitious to raise serious questions regarding the adequacy of the exculpatory explanations offered."

^{3/} Doss states that currently an average of 10 loads per day are being hauled compared to 40 truckloads at this time last year.

Consequently we imposed a punitive fine. There was an underlying issue of willfulness. Only individuals can exercise will. Therefore when Richard Doss, speaking for the carrier, asks that we stretch out the payment schedule on the corporation's fine, we, concerned over undue stretching out of that schedule, believe he should participate personally too. However, we also believe that it would be unrealistic, if not somewhat unfair and unduly burdensome, to expect that too much of the burden be suddenly switched to him personally. Family budgets are even less resilient than corporation budgets, and Doss has a family to support.

Accordingly, in the interest of keeping not only this carrier, but also its principal officer, economically viable, and with prior good faith efforts in mind, we will reduce the monthly payments from \$1,000 per month to \$600 per month. In consideration of the urgent need for this relief, the change in the amount of the monthly payments should be made effective immediately upon the signing of the order accompanying this opinion.

Findings of Fact

1. As of March 31, 1981, the balance remaining unpaid on the punitive fine ordered in D.91824 applicable to Doss was \$9,162.10.
2. Through March 31, 1981, Doss has evidenced good faith by making the \$1,000 monthly installment payments required by D.91824 in timely fashion.
3. As of March 31, 1981, Doss has encountered a cash flow problem which impairs its ability to continue to make payment in full on the \$1,000 monthly installment payments when due each month.

4. Accordingly, as of March 31, 1981, Doss has requested that the period for paying the balance of the fine be extended by means of a lowering of the monthly installment payment to \$400 per month.

5. No purpose would be served by insisting upon continued payment in full each month of installments on a punitive fine when to do so can reasonably be expected to impair or cripple the financial integrity of a highway carrier during a period of time when that carrier is encountering a severe cash flow problem.

6. It would not be unreasonable or unjust to expect that the principal officer of a closely held highway carrier corporation share some salary detriment during a temporary period when the financial integrity of that carrier is threatened by economic difficulties accompanied by a necessity to pay installments on a punitive fine imposed by this Commission for past wrongdoing in which that officer participated.

7. In the interest of keeping a highway carrier, as well as its principal officer, economically viable, it is reasonable to reduce the amount of monthly installments on a punitive fine provided doing so does not unduly extend the fine payment period.

Conclusion of Law

The monthly installment applicable to payment of the punitive fine ordered in D.91824 dated May 20, 1980 to be paid by Doss should be reduced from \$1,000 to \$600 per month for the balance of the payments due.

SUPPLEMENTAL ORDER

IT IS ORDERED that Ordering Paragraph 1 of D.91824 dated May 20, 1980 is amended to provide that the balance of the monthly installments provided for therein of \$1,000 per month be reduced to \$600 per month.

This order is effective today.

Dated MAY 19 1981, at San Francisco, California.

John E. Conner President
Michael D. Breda
Thomas W. King
Victor Calvo
Pauline C. Chew Commissioners