

Decision No. 93148 JUN 2 1981

ORIGINAL

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 )  
Western Drywall Transport, Inc., )  
a California corporation dba )  
Western Direct Transport, and )  
individuals, partnerships and )  
corporations listed in Attachment A.)  
Respondents. )

OII No. 78  
(Filed July 29, 1980)

O P I N I O N

This is an investigation instituted on the Commission's own motion into the operations, rates, charges, and practices of Western Drywall Transport, Inc. (Western), a California corporation, doing business as Western Direct Transport. The Order Instituting Investigation (OII) listed ten detailed questions which were to be resolved in this proceeding.

The ten separate issues can be summarized as follows:

1. Whether Western was the alter ego of U.W.S. Materials and Supply Company (U.W.S.) for the purposes of applying minimum rates.
2. Whether Western engaged other carriers to transport the property of U.W.S. or U.W.S. suppliers at rates less than minimum.
3. If the answer to 1 and 2 above are affirmative, then what was the amount of the undercharges?
4. If the answer to 1 and 2 above are affirmative, then what corrective action should the Commission order?

Prior to any hearing in this matter, Western and the Commission staff entered into a stipulation of facts. From that stipulation we adopt the following as our findings of fact in this proceeding.

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Findings of Fact

1. On various dates in 1979 the staff of the Public Utilities Commission conducted an investigation into the operations, rates, and practices of Western.

2. Western, a California corporation, was engaged in the business of transporting property over the public highways in the State for compensation having been issued radial highway common carrier, highway contract carrier, and dump truck carrier permits, all amended as of January 4, 1979, and such permits contain restrictions stating that "whenever permittee engages other carriers for the transportation of property of Western or UWS Materials and Supply Co. (UWS), subsidiaries or affiliates thereof, or customers or suppliers or affiliates, permittee shall not pay such carriers less than the 100 per cent of the applicable minimum rates and charges established by the Commission for the transportation actually performed by such carriers."

3. Respondent Western arranged for the respondent subhaulers to perform services in the form of transportation of property of U.W.S., its subsidiaries, affiliates, customers, and suppliers at rates less than the 100 percent of the applicable minimum rates provided in Minimum Rate Tariff 2 (MRT 2) and supplements thereto.

4. The investigation showed that Western was then the alter ego of U.W.S. through common ownership, management, and control and that by reason of that alter-ego relationship and the restriction upon its operating authority, Western violated Sections 3664, 3667, and 3737 of the Public Utilities Code resulting in underpayments of the de facto prime carriers named in Attachment A of OII 78.

5. The calculations set forth in a document entitled, "summary of certain shipping data contained in the records of Western Drywall Transport, Inc., dba Western Direct Transport, for transportation performed for UWS Materials and Supply Co., and its

suppliers; National Gypsum, Domtar Gypsum America, Inc., and the Flintkote Co., and by other carriers engaged by Western Drywall Transport, Inc., dba Western Direct Transport," reflecting the underpayments in the amount of \$9,459.75 due the subhaulers are true and correct.

6. Western's pro forma balance sheet and income statement for first six months of 1980 shows an operating loss of \$41,891.17.

Conclusions of Law

1. Western violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code in performing transportation for U.W.S. resulting in underpayments to respondent subhaulers in the amount of \$9,459.75.

2. Western should be ordered to remit the amount specified in Conclusion 1 to respondent subhaulers.

3. Western should pay a fine of \$1,500 levied pursuant to Section 3774 of the Public Utilities Code.

4. Western should be ordered to cease and desist from any and all operations and practices of the nature found herein to be in violation of the Public Utilities Code.

Western is placed on notice that failure to comply with the following order on the schedule provided may result in the reopening of this proceeding to levy additional punitive fines.

O R D E R

IT IS ORDERED that:

1. Western Drywall Transport, Inc. (Western) shall pay the sum of \$9,459.75 to respondent subhaulers as agreed in the stipulation entered into with the staff of the Commission as follows:

Frank Noceti	\$2,313.66
George C. Masterson	2,089.32
Patrick Amarant	1,535.51
Anthony Borges	1,699.51
William Snyder	1,314.89
Ricardo Mascarenas	506.36

2. The amount specified in Ordering Paragraph 1 may be paid on a uniform monthly schedule beginning thirty days after the effective date of this order. The final payments must be made no later than twenty-four months after the effective date of this order.

3. Western shall pay a fine of \$1,500 to this Commission pursuant to Public Utilities Code Section 3774 in twelve equal monthly installments beginning forty-five days after the effective date of this order.

4. Western shall file a report the first of each month beginning one hundred twenty days after the effective date of this order specifying the underpayments remitted and balances owing to respondent subhaulers.

5. Should Western be unable to locate a designated subhauler to make payment, Western shall establish and open a trust account with a bank of its choice and each month shall promptly deposit therein such scheduled payments.

6. Western shall cease and desist any practices resulting in underpayments to respondent subhaulers.

The Executive Director of this Commission shall cause personal service of this order to be made upon respondent Western and cause service by mail of this order to be made upon all other respondents. The effective date of this order shall be thirty days after completion of service on Western.

Dated JUN 2 1981, at San Francisco, California.

John G. Byrne President  
Philip M. Kistler  
Samuel W. Jones  
Victor Calvo  
Commissioners

Commissioner Priscilla C. Grew, being necessarily absent, did not participate in the disposition of this proceeding.