

ORIGINAL

Decision 93821 DEC - 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

California Teamsters Public
Affairs Council,)

[Complainant,])

v.)

Eight Ball Line Trucking, Inc.,)

[Defendant.])

Case 10986
(Rate Reductions 73, 122,
155, 168, 169, 170, 267,
268, and 269)

(Filed May 18, 1981;
amended August 21, 1981 to
include Rate Reductions
336, 404, and 450)

Alan Edelstein, Attorney at Law, and
Jack E. Thompson, for California
Teamsters Public Affairs Council,
complainant.

David W. Child, for Eight Ball Line
Trucking, Inc., defendant.

Jess J. Butcher, for California Manufacturers
Association, and Vernon Hampton, for
Certainteed Corp., intervenors

Philip Scott Weismehl, Attorney at Law, for
the Commission staff.

O P I N I O N

Complainant California Teamsters Public Affairs Council alleges that the highway carrier rates charged by defendant Eight Ball Line Trucking, Inc. set forth in Rate Reductions (RR) 73, 122, 155, 168, 169, 170, 267, 268, 269, 336, 404, and 450 and summarized in Appendix A are unreasonable, noncompensatory, and unjustified and fail to meet the criteria established in Decision (D.) 90662. Complainant requests that the Commission cancel the assailed rates. Complainant also requests that we issue an order directed to defendant to show cause why the subject rates should not be canceled.

Complainant further alleges that the procedure and criteria used by the staff of the Commission's Transportation Division to evaluate proposed rate reductions, as shown by the files on the assailed rates, defeat by subterfuge the objectives of the Commission's motor carrier rate reregulation program, the alleged objectives being to promote fair competition while protecting the prevailing wage rates. Complainant asks the Commission to answer the following questions in this proceeding as complainant's evidence pertaining to the assailed rates adequately focuses on those questions:

- "(1) What operating and cost data must a carrier present to show the profitability of a reduced rate when such profitability depends upon the transportation of high rated traffic as a return haul?
- (2) What type of evaluation is required of a proposed reduced rate where the carrier has reduced-rated traffic in the opposite direction and the revenue from both movements is insufficient to cover the costs of those movements considered together?"

Background

Transition Tariff 2 (TT 2), in effect at all times pertinent, was established as part of the Commission's motor carrier rate reregulation program by D.90663. TT 2 fixed the minimum rates to be charged for the transportation of general commodities during a period of transition prior to full implementation of the reregulation program. D.90663 also requires highway contract carriers to file their contracts with the Commission and if the rate in the contract is less than the applicable rate in TT 2, the carrier must file written justification for the reduced rate at the same time the carrier files its contract containing the reduced rate. The decision states that justification for the reduced rate should include:

"(b) operational and cost data showing that the proposed rate will contribute to carrier profitability." (Mimeo, p. 8.)

The decision also stated as follows:

"a. Labor costs will be calculated on the basis of a prevailing wage formula applied to comparable transportation service originating in the relevant geographic zone.

"b. All other cost elements will be based upon the individual carrier's actual costs." (Mimeo. p. 11.)

The decision provided that the reduced rate, absent protest, becomes effective 30 days after filing. Commission Resolution 4713 allows the Executive Director of the Commission, before the rate becomes effective, to suspend the rate for a period up to 45 days and to vacate the suspension at any time.

Commission General Order 113-B sets forth the rules governing the filing of a Petition for Suspension and Investigation in protest against the reduced rate before the rate becomes effective and requires the petition to be filed at least 12 days before the effective date of the reduced rate to be considered by the Commission. A protest to a reduced rate filed after that time must take the form of a complaint. Highway common carriers filing tariff pages containing rate reductions below the TT 2 rate level must go through the same general rate reduction procedure.

The Commission's reregulation program is set forth fully in D.91861. In that decision we made the following statements:

"To avoid disruption of existing labor markets and to encourage competition on the basis of operational efficiency, the Commission will require that rates reflect prevailing labor costs." (Mimeo. p. 55.)

"Operational and cost justification will be more liberally interpreted under our new program than under prior Commission Section 3666 deviation procedures." (Mimeo. pp. 57-58.)

Complainant has actively participated in the Commission's rate reregulation program since its inception to protect its members' employment by preventing unfair competition against carriers who pay Teamster contract wages to their employees. Complainant began auditing rate reduction requests as soon as TT 2 became effective. Where, through its audits, complainant perceived alleged insufficiencies in the showings made in proposed rate reduction filings, it attempted to bring them to the staff's attention through a series of informal meetings with the staff and a Commissioner. Complainant's position was that there were two serious shortcomings in the staff's procedures in accepting reduced rate filings:

1. The acceptance of obvious understatement of costs or inadequate data without a statement in a memorandum in the file showing the analyses made by the staff and compliance with the prevailing wage and other requirements of D.90663.
2. The acceptance of a few freight bills as evidence of a backhaul without any similar analysis.

Complainant was dissatisfied with the outcome of these meetings so chose this complaint proceeding as the vehicle to present its case formally to the full Commission.

The Rate Reductions Files

All the information in the subject RR files was received in evidence by reference at the request of complainant and that information used by complainant in presenting its case. The information shows that defendant has in effect 15 different contracts and one tariff item, (RR 336), each of which was filed after TT 2 became effective, naming rates less than the applicable rates in TT 2.

The contracts apply principally to transportation in the California corridor between the San Francisco Territory and the Los Angeles Basin. Each contract is for a one-way point-to-point movement of a specific commodity for a named shipper at a projected yearly tonnage. Eleven of the contract moves are for northbound hauls and 4 for southbound hauls. A copy of the cost justification submitted by defendant in support of its rate reduction found in file RR 170 is attached as Appendix B and is typical of the format of the cost justifications found in all the other files.^{1/} Each cost justification showed that the one-way contract haul would be performed in connection with a relatively higher rated haul performed in the reverse direction under defendant's highway common carrier authority. Thus presented, each round-trip move showed a profit. None of the reduced rates was cost-justified solely on its own merits. The files in RR 73, 155, 170, and 450 show that no evidence was submitted by defendant that it had a higher rated haul in the reverse direction other than its insertion of a reverse haul revenue figure in the cost justification and the name of the commodity it expected to move, though freight bills covering most of those backhauls are found in other RR files.

The other contract files show defendant presented the following number of freight bills to substantiate that it would have backhauls:

^{1/} The file in RR 122 shows that defendant, at the request of the staff, submitted more detailed cost figures than those shown in defendant's cost justification but that the detailed figures were submitted after the reduced rate became effective and showed defendant's costs to be less than shown in the cost justification.

| | | |
|--------|---|------------------|
| RR 122 | - | 3 freight bills |
| RR 168 | - | 3 freight bills |
| RR 169 | - | 3 freight bills |
| RR 267 | - | 9 freight bills |
| RR 268 | - | 9 freight bills |
| RR 269 | - | 11 freight bills |
| RR 404 | - | 1 freight bill |

Defendant presented the same freight bill (19214) in both RR 336 and 267 as backhaul evidence. In RR 267, filed February 27, 1981, defendant presented freight bills dated February 13, 1980, April 16, 1980, and May 12, 1980 as backhaul evidence.

Each contract RR file contained a memorandum of review which consisted of penciled computations and notations made by the staff member who reviewed the filing.^{2/} The memoranda showed that the staff member caught many apparent errors made in the cost justifications, such as use of incorrect prevailing wage rates, failure to include indirect expenses, and use of incorrect mileages, and recosted the round-trip moves using the correct figures. All recomputations made by the staff using the corrected figures showed a profit for the round-trip operations. The lowest round-trip profit shown was in RR 450: \$88.73. Where the cost justification showed two figures for the return-haul revenue, as in RR 170 (Appendix B), the staff reviewer used the average of the two figures as the theoretical return-haul revenue in figuring the profitability of the haul. Some of the notes and figures on the recomputation sheets are difficult to decipher without an explanation by the staff person who made them.

^{2/} The staff witness testified that the memoranda of review were part of the Commission's official RR files but that they had been mistakenly removed from the files by another staff member and so were not available for inspection when a representative of complainant examined the RR files sometime before the hearing. They were subsequently put back in the files shortly before the hearing.

RR 336 is a tariff amendment which reduced defendant's tariff truckload efficiency mileage rates for hauls of roofing materials between 42 specified point pairs. Four of the point pairs are also covered by reduced-rate contracts on roofing materials (RR 169 and 267). The memorandum of review notes that the tariff amendment sets forth specific conditions not contained in the reduced-rate contracts. Three freight bills (two southbound and one northbound) were presented as evidence of backhauls.

Complainant's Position

Complainant stated that its greatest concern in the matter of rate reductions is that the carrier seeking to reduce its rate may be intending to employ subhaulers--who presumably work for less than the prevailing wage--to actually haul the freight and would thus be at a huge cost advantage over carriers who employ union help in competing for the traffic. It points out that very few of the RR files set forth any operational data from which it can be determined how the carrier is going to transport the traffic. It contends that where the profitability of a reduced-rated haul depends on the carrier integrating the haul with other traffic, the carrier must show in its RR filing how the integration will be accomplished. Without such proof no one knows whether the proposed operation is possible or even feasible or that the costs presented by the carrier will be the costs it will incur in its actual round-trip operation. Furthermore, if defendant chose to make back-to-back hauls of the commodities on which it has reduced the rates, its operations would result in a loss.

In the matter of defendant's cost justifications, complainant contends that the costs are understated and without adequate supporting data. It argues that a carrier which does not operate its own equipment and which does not employ drivers at prevailing wages (i.e. a carrier which engages owner-operator

subhaulers) could show, on paper, profitability at almost any reduced rate. Such reduced rate could be shown to be profitable under cost data showing reasonable prevailing wages, equipment costs, and running costs when the revenues from the reduced-rated traffic are combined with the revenues of highly rated traffic. Complainant criticizes the staff for not probing deeper into the costs and operations of defendant and other carriers seeking rate reductions to ensure that their proposals are valid and are not subterfuges to evade the objectives of the Commission's reregulation program during the transition period.

Defendant's Position

Defendant did not present any evidence or testimony at the hearing. However, the files in RR 73, 122, 155, 168, 169, 170 and 267 contain a written statement by defendant that: (1) The proposed reduced rates in each of those files, while less than the applicable rates in TT 2, are higher than the rates defendant had been charging the subject shippers before the advent of TT 2; (2) defendant was a prime carrier of the subject commodities for the involved shippers; and (3) defendant had great expertise in the profitable handling of the subject products. At the hearing defendant argued that its costs presented in its cost justifications were honest and that it satisfied all the staff's requirements to obtain the rate reductions. No evidence was presented that defendant used or intended to use subhaulers in its operations though defendant admitted in its final argument that it used a subhauler in its tanker operations. None of the reduced rates apply to defendant's tanker operations.

The Staff's Position

The staff witness for the Commission's Tariff and License Branch testified that it was the policy of his branch to accept a single freight bill as evidence of a backhaul in a rate reduction filing where the cost justification was based on a round-trip

movement. He stated that his staff left it to managerial discretion as to how the carrier transports the traffic. Concerning the requirement that the proposed reduced rate be on file 30 days before it can become effective, he testified that if the proposed rate is suspended, and then the suspension is vacated, the number of days the rate is in suspension is not figured in the 30-day period. The 30-day period commences on the day when the filing is stamped as being received, which may be later than the day on which the filing is actually received. If, for example, the rate is suspended 17 days after the filing is stamped "received," and then the suspension is subsequently vacated, the rate becomes automatically effective 13 days after the suspension is vacated. If a protested rate has been suspended, and then the suspension is vacated, the staff has no procedure set up to notify the protestant that the suspension was vacated.

The staff argues that it has acted in accordance with the spirit of the reregulation program, has made reviews that are adequate to ascertain what the carriers' intentions are, what the carriers' operating costs will be, and that when there have been problems brought to its attention of lack of data or other things, the staff has undertaken the necessary steps to gather more information if it felt that it was necessary. The staff also contends that complainant has not met its burden of proof in showing that the assailed rates are unreasonable or do not contribute to carrier profitability.

Discussion - The Reduced Rates

We agree with the staff that complainant has not met its burden of showing that the rates are unreasonable or do not contribute to carrier profitability. Complainant's posture was to introduce into evidence defendant's cost justifications found in the RR files and then attempt to refute them because they were not as complete a showing as we required in prior Section 3666 proceedings. Complainant contended that defendant understated its costs and omitted other costs, but

complainant presented no evidence of what those actual costs were. And while complainant may have shown from the figures in the RR files that a back-to-back haul of reduced-rated commodities would result in an operating loss for defendant, complainant presented no evidence that defendant was actually engaging in such practices. Defendant's cost justifications, even when recomputed by a member of the staff to correct errors, show on their face that the reduced-rated hauls when performed in connection with other intended operations contribute to carrier profitability, and complainant has not presented any cost data to show otherwise.

Discussion - Staff Evaluation Methods

We approve in general the staff's methods and criteria it employed in evaluating the rate reduction filings as being consonant with the aim of our reregulation program during the transition period, the aim being to move from Commission-made rates to carrier-made competitive rates (D.91861, Mimeo p. 55.). At the end of the transition period, our reregulation program calls for abolishing TT 2 and for contract carriers to set their own rates without the need to present any initial justification (D.91861, Mimeo p. 61.). We have stated in moving toward this end, that during the transition period operational and cost justifications will be more liberally interpreted than under prior Commission Section 3666 deviation procedures. During the transition period the Commission is, in essence, returning to the carriers their ability to effectively exercise their discretion and judgment in setting the level of their rates and the manner in which they will operate under those rates while sharply reducing the Commission's previously almost total dominance in those discretionary and judgmental decisions. The staff in this case allowed reduced rates to become effective on a showing by defendant that the profitability of each reduced rate depended upon the transportation of highly rated

traffic as a return haul and, in most instances, accepted a few freight bills as evidence of the backhauls. Complainant contends that the staff, before allowing the rates to become effective, should have required the defendant to present sufficient operational evidence to prove the possibility of the proposed round-trip moves. To uphold complainant's contention would be to preserve the status quo of previous Section 3666 procedures and to have the staff and Commission continue to dominate the carrier's discretionary and judgmental decisions. What complainant contends runs counter to the aim of the reregulation program and the purpose of the transition period.

Complainant charges that the procedure and criteria used by the staff to evaluate proposed rate reductions defeats by subterfuge the alleged objectives of the reregulation program, the alleged objectives being to promote fair competition between carriers while protecting the prevailing wage rates. We disagree. The RR files in this case show that no carrier protested the proposed rate reductions. Under those circumstances we would not expect the staff to raise the theoretical issue of unfair competition and require defendant to present evidence to show that its proposals did not result in unfair competition. The RR files in this case also reveal that the staff audited each cost justification and recomputed them to include the correct prevailing wage rates, the correct mileages, and the correct expense items and found the proposed round-trip move still resulted in a profit for defendant.

Furthermore, no evidence was presented in this case which showed that defendant used his reduced rate filings as a subterfuge to defeat the objects of the reregulation program, i.e., that he actually used subhaulers in his reduced-rate operations or that he hauled reduced-rated commodities back-to-back. Complainant, having raised the specter of subterfuge has failed to give it any body.

Complainant requests that we describe the operation data and type of evaluation which should be required in certain proposed rate reduction situations. Much of what complainant requests has been accomplished in orders issued in OIR 4 and OII 53. In OIR 4 we adopted a new general order governing the filing of tariffs of common carriers and contracts of contract carriers during the transition period of the Commission's motor carrier rate reregulation program. Appendix C to General Order 147 sets forth in detail the type of data and format for presentation of those data required to be included in rate reduction justification statements. In the order in OII 53, we adopted a highway carrier's prevailing wage report for general commodities. We explained the bases for the wage levels adopted, including survey methods used, when to use prevailing wages, and how total wage costs were developed. Part of the later development is the determination of annual hours worked, the factor used to payroll costs other than hourly wage rates. Many of the asserted problems of analyzing carrier rate justification statements will be substantially reduced or eliminated as a result of the latest order issued in OIR 4.

Findings of Fact

1. Defendant from time to time filed 15 yearly contracts and one tariff amendment naming rates less than those required to be charged by the governing tariff TT 2.
2. The contracts and tariff amendment applied principally to transportation in the California corridor between the San Francisco Territory and the Los Angeles Basin.
3. None of the proposed reduced rates was cost-justified solely on its own merits.
4. Each cost justification presented by defendant to show that the proposed reduced rate would contribute to carrier profitability showed that defendant intended to integrate the reduced-rated hauls

with high-rated backhauls using its own employees and equipment for the round trip and, thus presented, showed a profit for each round trip.

5. The staff reviewed each RR filing and checked defendant's cost justification and where the staff found defendant had not used the correct prevailing wage rates, or the correct mileages, or had omitted a category of cost in the cost justification, the staff recomputed the cost justification using the correct or omitted figures.

6. In each instance where the staff recomputed defendant's cost justification the recomputation showed a profit for the round trip.

7. Defendant, in most instances, presented with its RR filings a few freight bills showing it had moved high-rated traffic as it indicated it intended to do in its cost justifications.

8. None of the RR filings was formally protested prior to the time the reduced rates became effective.

9. In a few instances the staff requested and received additional information from defendant about its cost justifications.

10. While a few of the RR filings were suspended for a time, the staff allowed all the RR filings to eventually become effective.

11. Using defendant's cost figures found in its cost justifications, complainant showed that if defendant hauled some of its reduced-rated traffic in back-to-back hauls, the round trip would result in a monetary loss for defendant.

12. Complainant presented no evidence to show that defendant conducted operations in connection with its reduced-rated traffic in a manner other than as defendant proposed in its RR filings.

13. No evidence was presented that defendant used its owner-operators or subhaulers in connection with its reduced-rated hauls or proposed backhauls.

14. The evidence does not show that defendant's costs were other than as represented by defendant in its cost justifications or adjusted by the staff and allowing for the use of the prevailing wage rates in lieu of defendant's actual wage rates.

15. Defendant has been the principal carrier for the shippers involved in nine of the contracts for many years.

16. Defendant has expertise in determining the profitability of the traffic transported for the shippers referred to in Finding 15.

17. None of defendant's cost justifications were a subterfuge.

18. None of the representations made by defendant in connection with its RR filings were a subterfuge.

19. The staff did not act improperly or incompetently in handling the RR filings, except in removing for a sustained period of time the memorandum of review sheets from the RR files without leaving a note in the files indicating the person to see in order to obtain access to the sheets.

20. The correct prevailing wage rates were imputed by the staff in its recomputations where incorrect prevailing wage rates were used in defendant's cost justifications.

21. No unfair competition was shown to have been engendered as the result of the institution of the reduced rates.

22. The staff procedure and criteria employed in its handling of the RR filings does not defeat by subterfuge the objectives of the reregulation program.

23. Because of the orders issued in OIR 4 and OII 53, there is no need to order changes in the staff's procedure or criteria used in the processing of RR filings, except that the staff should be directed to keep RR files intact and not remove data from RR files.

Conclusions of Law

1. The assailed rates have not been shown to be unreasonable.
2. The staff's procedure and criteria used in processing RR filings has not been shown to be inefficient or inadequate.

3. The complaint and petition for an order to show cause should be dismissed.

4. Complainant's request that the Commission issue instructions to the staff concerning the procedure and criteria to be used in processing rate reduction filings is substantially accomplished by orders issued in OIR 4 and OII 53.

5. The staff should be directed to keep RR files intact and not remove data from those files.

O R D E R

IT IS ORDERED that:

1. The Commission staff members having custody of Rate Reduction (RR) files are directed to keep those files intact and not to separate any portions of those files, including data containing the staff's analysis of the rate justification statements submitted by the proponent(s) of the rate reduction(s).

2. Other than relief granted in Ordering Paragraph 1, no other relief requested by complainant will be granted in Case 10986, and Case 10986 is dismissed.

This order becomes effective 30 days from today.

Dated DEC 1 1961, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. CRAVELLE
LEONARD M. GRIMES, JR.
VICTOR GALVO
DORIS L. C. GREW
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

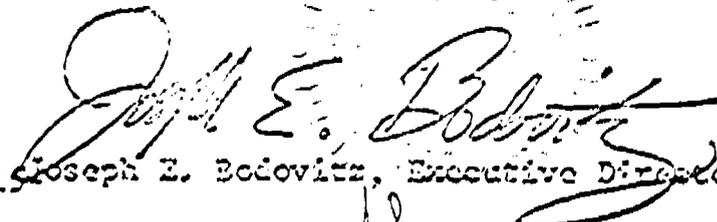

-1- Joseph E. Bodovitz, Executive Director

Exhibit 2Summary of Provisions of Rate Reductions

| <u>Filed</u> | <u>RR No.</u> | <u>Shipper</u> |
|---------------------------------|---------------|---|
| 9/17/80 | 73 | Certain-Teed Corp., Richmond to Commerce Roofing .90 cwt. 50,000 lb. min. wt. |
| 10/17/80 | 122 | Certain-Teed Corp., Richmond to Commerce Roofing .90 cwt. 50,000 lb. min. wt. |
| 11/17/80 | 155 | Certain-Teed Corp. (Richmond) - Corona to Richmond Roofing Granules 110 cwt. 50,000 lb. min. wt. |
| 11/24/80 | 168 | Bird & Son (Martinez) - Corona to Martinez Roofing Granules 110 cwt. 50,000 lb. min. wt. |
| 11/24/80 | 169 | Ford Wholesale (Oak) - Bakersfield to Oakland Roofing .80 cwt. 50,000 lb. min. wt. |
| 11/24/80 | 170 | Bird and Son (Martinez) Wilmington to Martinez Roofing .90 cwt. min. 50,000 lbs. |
| 2/27/81 | 267 | Ford Wholesale (Oakland) a. Roofing - Bakersfield to San Jose .83 cwt. 50,000 lbs. b. Roofing - Richmond to San Jose .46 cwt. 50,000 lbs. c. Roofing - Los Angeles to San Jose \$475 max. 50,000 lbs. |
| 2/27/81 Suspended 3/17/81 | 268 | Gibson Homans (Richmond) a. Asphalt (in pkgs.) - Richmond to Los Angeles \$475 max. 50,000 lbs. b. Filler - Lucerne Valley to Richmond \$475 max. 50,000 lbs. |
| 2/27/81 Suspended 3/17/81 | 269 | Juice Pak, Inc. (Brisbane) a. Concentrated O.J. - Los Angeles to San Francisco \$475 max. 50,000 lbs. |
| Vacated 3/25/81 | | b. Concentrated O.J. - Bakersfield to San Francisco \$375 max. 50,000 lbs. |
| 4/10/81 | 336 | Tariff amendment naming rates on roofing between 42 point pairs. |

Exhibit 2

Summary of Provisions of Rate Reductions

| <u>Filed</u> | <u>RR No.</u> | <u>Shipper</u> |
|--------------|---------------|--|
| 5/26/81 | 404 | GREFCO, INC. (Ontario) Wallboard - Ontario to Sacramento \$500 max. 50,000 lbs. |
| 6/22/81 | 450 | E. Martinoni Empty glass bottles - Los Angeles to San Francisco \$500 min. 36,000 lbs. |

(End of Appendix A)

Cost JustificationEight Ball Line Trucking, Inc.Operating Ratio:

| | |
|---------------------------|--------------|
| Inbound Destination | Martinez, CA |
| Revenue Mileage | 412 |
| Contract Rate Revenue* | \$450 |
| Return Haul Revenue** | 631 - 875 |
| Total Revenue | 1081 - 1325 |
| Actual Round Trip Mileage | 824 |

Operating Expense:

Labor:

| | |
|--|-----------------|
| Mileage @ \$.27525 | 113.40 |
| Mileage @ \$.28025 | 115.46 |
| Loading and Unloading Expense @ \$11.42 hr. | 45.68 |
| Taxes and Benefits @ 38.4% of Gross Wage | 108.06 |
| Fuel and Oil @ .223/mi. | 183.75 |
| Repair and Maintenance Tires @ \$.125/mi. | 103.00 |
| Insurance @ 4% of Revenue | 43.24 - 53.00 |
| Equipment Fixed Cost @ \$.125/mi. | 103.00 |
| Total Operating Expense | 815.59 - 825.35 |
| Indirect Expense @ \$.149 | 124.21 |
| FUC Taxes | 4.56 |
| Total Expense | 944.36 - 954.12 |
| Operating Ratio | 87.0 - 72.0 |

*Roofing and Roofing Paper

**Metal Bldg., Petroleum Coke, to L.A. Basin & Fontana

(End of Appendix B)