

ORIGINAL

Decision 93875 DEC 15 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 Jack Brownlee, Sr., doing)
business as B&B Trucking, and Angel's)
Do It Yourself Centers, a foreign)
corporation.)

OII 82
(Filed October 8, 1980)

Jack Brownlee, Sr., for himself, respondent.
Alberto Guerrero, Attorney at Law, and Edwin H.
Hjelt, for the Commission staff.

O P I N I O N

This is an investigation into the trucking operations of Jack Brownlee, Sr., to determine whether he violated Public Utilities (PU) Code §§ 3664, 3667, 3668, and 3737 while transporting lumber and roofing material for Angel's Do It Yourself Centers (Angel's) from March 1, 1979 through December 10, 1979 and whether Angel's obtained the transportation of property at less than the charges prescribed in Minimum Rate Tariff 2 by use of a subterfuge in violation of PU Code § 3669.

A hearing was held before Administrative Law Judge Fraser in Fresno on August 27, 1981. Brownlee and the Commission staff presented evidence. Counsel for Angel's had reviewed the evidence with a staff representative, but no one appeared for the shipper at the hearing. The matter was submitted on the date of hearing.

During the period under investigation Brownlee operated out of a terminal in Dixon as a certificated highway common carrier, a highway contract carrier, and a heavy specialized carrier. He

employed eight drivers and one mechanic and operated eight flatbed units. Total gross business for the four quarters ending with the first quarter of 1981 was \$525,259 (Exhibit 1).

Staff's Evidence

An investigator for the Transportation Division (staff) testified that he visited Brownlee's Dixon terminal several times from December 1979 through March 1980. Brownlee's records covering 69 shipments transported from March 1 through December 10, 1979 were reviewed and photostated. Copies of checks endorsed by Brownlee were obtained from Angel's. The commodities shipped were roofing material and lumber less than 24 feet in length. Shipments were transported from Whittier and Pomona to Modesto, Fresno, Stockton, San Jose, Campbell, San Lorenzo, and points near Los Angeles. The investigator testified that Brownlee had no weight certificates, and shipment weights were not recorded on the freight bills. The witness stated that he told Brownlee in December to weigh five loads which were substantially identical to those transported during the period under investigation. Brownlee provided this information on January 31, 1980 and the supporting documents were used to estimate the weight of the 69 shipments under investigation. Brownlee and an employee of Angel's confirmed that the five truckloads weighed were indicative of the weight of the 69 shipments previously transported. The witness asked Brownlee how the shipments were rated. He first classified the operation as a subhaul and then stated it was an oral rental agreement. After each haul, Angel's would send Brownlee two checks, one headed "truck rental" and the other "driver wage". Truck rental checks average from \$270 to \$340 per load, although two were for \$75. The payment for truck rental was based on the distance the load was transported. The payment for the driver

averaged from \$70 to \$90 per trip, although two payments are \$50. Angel's director of traffic advised the staff witness that they had no control over the trucks or the driver and simply paid Brownlee for the service. Exhibits 2, 3, 4, and 5 were placed in evidence. They are composed of the photostats of the documents covering the transportation performed in the 69 counts under investigation.

A staff rate expert testified that he assembled the data presented by the staff investigator and, based on the information received, applied distance (truck) rates. He considered rail rates, but found that they either did not cover the transportation performed or were higher than the truck rates. He placed Exhibit 6 in evidence and testified that undercharges on the 69 counts total \$24,556.68.

Brownlee's testimony was brief. He stated that the shipper's representative originated the method of payment and convinced him that it was a legal contract. The representative, who has since been fired by Angel's, also told him that the contract removed the transportation from regulation by this Commission. He stated that it was a substantial account and this contributed to his failure to discuss the method of payment with someone who was familiar with transportation rates. He stated that he filed bankruptcy as B & B Trucking in January (1981) and is now driving one truck as a subhauler.

Staff counsel recommended a punitive fine of \$2,400, payable in installments.

Discussion

Brownlee cooperated with staff investigators and counsel during the investigation and trial. He has recently filed in bankruptcy and is now employed as a subhauler. Unlawful operation cannot be condoned, but reduction of the fine to \$1,000 is justified, in view of Brownlee's cooperation and financial position.

Findings of Fact

1. During the period under investigation, Brownlee engaged in the business of transporting property for compensation upon the public highways as a certificated highway common carrier, a highway contract carrier, and a heavy specialized carrier.

2. Brownlee was served with all applicable minimum rate tariffs and the distance tables, together with all their supplements and additions.

3. During the period from March 1, 1979 through December 10, 1979 while engaged in the business of transporting property for compensation for Angel's, Brownlee charged less than the lawfully prescribed minimum rates on the 69 counts described in Exhibits 2 through 6, resulting in undercharges totaling \$24,556.68.

4. Brownlee cooperated with the staff during the investigation and hearing.

Conclusions of Law

1. Brownlee violated PU Code §§ 3664, 3667, 3668, and 3737.

2. Angel's violated PU Code § 3669.

3. Brownlee should pay a fine under PU Code § 3800 in the amount of \$24,556.68 and, in addition, should pay a fine under § 3774 in the amount of \$1,000, payable \$250 on or before the 40th day, \$250 on or before the 70th day, \$250 on or before the 100th day, and \$250 on or before the 130th day after the effective date of this order.

4. Brownlee should be ordered to collect from respondent Angel's the difference between the charges collected and the proper charges in the aggregate sum of \$24,556.68 under PU Code § 3800.

5. Brownlee should be directed to cease and desist from violating the rates and rules of the Commission.

6. No other penalties or sanctions are warranted.

Respondent should promptly take all reasonable actions to collect the undercharges. If necessary, he should file timely complaints according to PU Code § 3671. The staff will investigate respondent's compliance. If it believes that Jack Brownlee, Sr. or his attorney has not acted in good faith, the Commission will reopen this proceeding to determine whether to impose sanctions.

O R D E R

IT IS ORDERED that Jack Brownlee, Sr., shall:

1. Pay a fine of \$1,000, payable \$250 on or before the 40th day, \$250 on or before the 70th day, \$250 on or before the 100th day, and \$250 on or before the 130th day after the effective date of this order, to this Commission under PU Code § 3774.
2. Pay 7% annual interest on the fine, beginning when any payment is delinquent.
3. Pay a fine to this Commission under PU Code § 3800 of \$24,556.68 on or before the 40th day after the effective date of this order.
4. Take such action, as may be necessary to collect the undercharges set forth in Finding 3, including timely legal action under PU Code § 3671.
5. Notify the Commission in writing upon collection.
6. Promptly take all reasonable steps to collect the undercharges.
7. File with the Commission on the first Monday of each month a report of any undercharges

remaining uncollected 60 days after the effective date of this order, specifying the action taken to collect them and the result of such action, until they have been collected in full, or until further order of the Commission. Failure to file any such monthly report within 15 days after the due date shall result in the automatic suspension of the operating authority until the report is filed.

- 8. Not charge or collect less than minimum rates set by the Commission.

The Executive Director shall have this order personally served upon respondent Jack Brownlee, Sr., and served by mail upon respondent Angel's Do It Yourself Centers.

The order shall become effective for each respondent 30 days after order is served.

Dated DEC 15 1981, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. CRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
Commissioners

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

Joseph E. Bodovitz
Joseph E. Bodovitz, Executive Director