

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution CE 12-92
Transportation Division

R E S O L U T I O N

(RESOLUTION REVOKING THE OPERATING)
(AUTHORITY OF BRAKE MEIER TRUCKLOAD, INC.)
(FOR FAILURE TO COMPLY WITH)
(DECISION NO. 92-03-076)

WHEREAS: On August 8, 1990, Decision No. 90-08-019 was issued ordering:

1. That Brake Meier Truckload, Inc. (Brake Meier) shall pay a fine of \$4,000 to the Public Utilities Commission;

2. That Marubeni American Corporation shall pay a fine of \$2,000 to the Public Utilities Commission;

3. That Glenn Tatsuo Shimizu shall pay a fine of \$4,425 to the Public Utilities Commission;

4. That Herbert O. Gipson shall pay a fine of \$1,525 to the Public Utilities Commission;

5. That Brake Meier shall be responsible for pursuing and collecting the amounts due from Marubeni, Shimizu and Gipson if they do not pay their fines directly to the Commission;

6. That the investigation is terminated.

That attached to this order was a Stipulation for Settlement signed by all parties dated May 16, 1990.

WHEREAS, Brake Meier failed to pay the punitive fine as set forth in Ordering Paragraph 1 of said decision and as a result, staff requested an Order Reopening Investigation on August 8, 1990.

WHEREAS, an Order Reopening Investigation and Order to Show Cause was issued, resulting in Decision No. 91-09-039 (9/6/91) which ordered that a hearing be held where the respondent would appear and show cause why his authorities should not be revoked.

WHEREAS, a Prehearing Conference was set for December 13, 1991 to informally resolve the case. The sole purpose of the reopening was to consider action against the carrier, Brake Meier, for failure to pay its \$4,000.00 fine. The other respondents had complied with Decision No. 90-08-019. On December 4, 1991, Mr. Carpenter, the Vice President of Brake Meier, called the Transportation Division of the Commission, requesting that it be allowed to pay the fine in installments, contingent upon the sale of some Brake Meier property.

WHEREAS, a "Stipulation for Settlement Petition to Modify Decision No. 90-08-019" was sent to Mr. Carpenter for approval and signature. The points stipulated were: (1) Brake Meier agree to pay the fine in 13 installments of \$300 and one of \$100. The first payment would be due 30 days after the Commission issued the final order approving and adopting the terms; (2) Staff agree to the terms of the Stipulation; (3) The parties enter into the agreement freely and voluntarily; (4) The terms would be binding when approved by the Commission.

WHEREAS, Brake Meier did not appear at the time and place set for the prehearing conference (December 13, 1991). A Stipulation was mailed to Mr. Carpenter of Brake Meier.

WHEREAS, a letter, dated January 14, 1992, from the Commission's Transportation Division, was sent to Mr. Carpenter stating that it had received no response concerning the Stipulation. It advised that if there was no response by January 28, 1992, the Commission would assume the Brake Meier had changed its position and staff would request the Commission to set the matter for hearing and reopen the proceeding.

WHEREAS, On February 4, 1992 the staff of Transportation Division contacted Mr. Carpenter who stated he was sending the signed stipulation that day, but the Commission received it two weeks later.

WHEREAS, on February 18, 1992 the "Stipulation for Settlement Petition to Modify D. 90-08-019" was signed by Howard Carpenter, Jr. for Brake Meier and by Lawrence Q. Garcia for the Commission. It stipulated that: (1) Brake Meier agree to pay \$4,000 pursuant to Section 1070 of the Public Utilities Code in 14 consecutive monthly installments. The first payment to be due 30 days after the Commission's final order approving adoption of the Stipulation; (2) The Transportation Division staff agree to the terms of the Stipulation and recommended that the proceeding be terminated; (3) The parties enter into the agreement freely and voluntarily.

WHEREAS, on March 31, 1992, Decision No. 92-03-076 was issued by the Commission which ordered: (1) Brake Meier to pay the fine as set forth in the Stipulation. The first payment to be due 30 days after the date of the Order (which would be April 30, 1992). (2) Upon payment in full of the \$4,000, Brake Meier shall not be subject to any further sanctions or fines arising from transportation performed to and including the date of the Stipulation and Brake Meier shall only have to pay the amount agreed to in the Stipulation. (3) If any installment is more than 10 days late, the Transportation Division is authorized and directed to place a resolution before the Commission suspending Brake Meier's operating authority. If a second installment is more than 10 days late, the Transportation Division is authorized and directed to place a resolution before the Commission revoking Brake Meier's operating authorities.

WHEREAS, the carrier has failed to communicate with the Commission or to make any payments to the Commission as directed by Decision No. 92-03-076 (3/31/92), that the first payment was due April 30, 1992, and the second payment was due May 30, 1992. That no payments have been received, and in accordance with said Order;

THEREFORE, It is Ordered that:

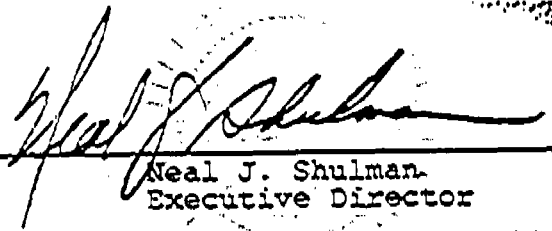
1. The operating authorities of Brake Meier are revoked.
2. If the carrier files a request for hearing within 30 days from the issuance of this order, the hearing will stay the revocation, but the carrier's operating authorities will be suspended pending the outcome of the hearing. The carrier may not operate.

3. During the hearing, the burden of proof will be on the carrier to show cause why the revocation should not take place. /

The Executive Director is directed to mail a certified copy of this Resolution to Brake Meier Truckload, Inc.

This Resolution is effective today.

I hereby certify that the foregoing Resolution was duly introduced, passed and adopted by a regular meeting of the Public Utilities Commission of the State of California, held on July 22, 1992. The following Commissioners approved it.



Neal J. Shulman
Executive Director

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners