

Decision No. 24897.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Investigation)
on the Commission's own motion into)
the accounting methods and practices, ()
annual reports, rates, rules, regula-)
tions, practices, contracts, opera-)
tions, etc., of HARRY S. PAYNE, oper-)
ating, under the name and style of ()
PACIFIC MOTOR EXPRESS, a common car-)
rier trucking service between points)
in the State of California.)
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Case No. 3219.

ORIGINAL

Harry S. Payne, in propria persona.

STEVENOT, COMMISSIONER.

O P I N I O N

Order to show cause herein was issued by this Commission on March 14, 1932, directing the respondent Harry S. Payne to appear and show cause why his operating rights for the transportation of property should not be revoked for alleged violation of General Order No. 84 relating to the collection and transmission of C.O.D. moneys in connection with his operations, particularly, and such other rates, rules, regulations, practices, contracts, etc., in connection with his operations.

Harry S. Payne, respondent herein, operates freight service by truck under certificate from this Commission, between Los Angeles and various points, particularly to Corona and points intermediate to Elsinore, by two routes.

Public hearings herein were held at Los Angeles on May 18 and 26, the matter was duly submitted and is now ready for decision.

The inquiry at the hearings and all the testimony related only to the violation of General Order No.84, which order provides

in part as follows:

"IT IS HEREBY ORDERED that each 'automotive transportation company' as defined in the Auto Stage and Truck Transportation Act, and each 'passenger stage corporation' as defined in the Public Utilities Act, handling C.O.D. shipments shall, immediately upon collection of any and all moneys, and in no event later than ten (10) days after delivery to the consignee, unless consignor instructs otherwise, remit to the consignor all moneys collected by it on such shipment."

Mr. Theodore Stein, an auditor attached to the Commission's staff, testified as to an examination he made of respondent's books and accounts on March 5, 1932, covering the period between January 1, 1931, and March 1, 1932, of C.O.D. accounts. Tabulations of his investigation were introduced in evidence and marked Exhibits Nos. 2 and 3. In the first exhibit, the accounts show that during the period of the fourteen months indicated respondent collected from shippers, for their benefit, C.O.D. amounts aggregating \$13,488.09. The exhibit shows, of this total sum \$3,595.25, or 26.65%, was paid to the proper beneficiaries within ten days after its receipt by respondent; that \$4,796.05, or 35.56%, was paid after ten (10) days and less than one month; that \$3,742.38, or 27.45%, was paid after one month and before six months. On the date of examination, Mr. Stein's tabulation disclosed that respondent still owed \$1,352.91, or 10.03%, of all his collections, to consignors whom he should have paid, under the rule, within the ten-day period.

Exhibit No. 3 is an analysis of the same business by shippers, indicating that respondent herein had retained large amounts due consignors, and that apparently the unpaid obligations for such business ran between \$1,000 and \$1,500 at all times during the entire period.

Respondent admitted in general, the accuracy of the exhibits and only questioned two items involving \$16.20, which he said were not due from him to anyone. Eliminating these items, the amount found to be due to consignors, under the rule, beyond the limit fixed in the General Order, exceeded \$1,300.00. Respondent, in his testimony, did not assert that any shipper at any time had given him authority to retain collections in excess of the ten day period.

At the final hearing, respondent stated that all of the obligations have been paid; that no new ones existed, that he had altered his bookkeeping methods and had established a separate bank account for C.O.D. moneys where all collections would be placed and all remittances drawn against within the period fixed by the rule. He stated that now remittances were made within two to three days after the receipt of the money.

In connection with his bookkeeping, it was disclosed that respondent had heretofore deposited all collections in his cash account and had issued his usual checks against that account; that his bookkeeper promptly drew the checks, charged them to the cash account and turned the checks over to respondent for signature; that it was respondent's practice to send the checks so drawn at a later date, if at all. The palpable purpose of such bookkeeping was to make a record for examination by auditors of the Commission which would prima facie show that all such accounts had been promptly remitted as required by General Order No. 84. The fact appears, however, that such was not the case, and that the checks so credited on the books as amounts paid were not really paid, sometimes for weeks, sometimes for months, and sometimes not at all.

To typify the general laxity shown by respondent in handling this character of business, Tudor Potteries, Inc., of Los Angeles, made shipments C.O.D. aggregating \$481.51 during 1931. Of this amount \$217.33 represented shipments to Robert Parks of Corona, between September 1 and September 12, inclusive, all of which charges were borne and paid by Mr. Parks upon receipt of the shipment. Of this amount, respondent paid on February 15, 1932, \$69.93. The balance, \$147.40, was not paid by respondent to Tudor Potteries, Inc., until March 5, 1932, and then only after repeated demands upon respondent and complaint to this Commission by the consignor.

Many other accounts were handled in a similar manner, and the result of such handling on the part of respondent was that he had in his cash account during the entire period, in excess of \$1,000 of consignors' money.

The General Order adopted by the Commission was intended to protect shippers from dilatory carriers in the matter of remittances of money collected. Each carrier who assumes the obligation of collecting charges on shipments is performing a transportation service for which he is authorized by this Commission to charge rates according to the amount of the collection. It is the duty of every carrier, when he receives a shipment for C.O.D. delivery, either to return the money or the shipment to the consignor, unless he is provided with other instructions in writing from the consignor.

Violation of General Order No. 84 cannot be countenanced by this Commission, because in each instance the carrier becomes an agent and trustee for the benefit of both the consignor and consignee and the benefits of such service must be unerring and prompt.

In the instant proceeding, we find that the conduct and methods of respondent merit the most serious condemnation. That respondent indulged in practices, as he said, he knew others were following, is no excuse. However, respondent did readily recognize the serious departure from ethical methods which were found in his records, and promptly paid all the indebtedness and now gives assurance that in the future neither this Commission nor any consignor can have cause for complaint of lack of obedience to General Order No. 84.

Respondent heretofore has not been the object of any serious complaint as to his service, rates or dealings, in the ten years in which he has been a certificated carrier. It is our belief that more will be gained by not revoking his certificate, because of the fact that he is long established, and thoroughly familiar with the needs of the public he has been serving. I repose some confidence in his promise to live up to the strict letter of his duty in the future. In view of this I recommend that the proceeding herein be dismissed, with the admonition, however, that respondent's C.O.D. business will be subject to check at intervals, to reassure the Commission that respondent's promises are being kept and for the further purpose of placing him, as well as all other carriers, on notice that infractions of this order in the future will be regarded as sufficient cause to revoke operating rights.

O R D E R

IT IS HEREBY ORDERED that the order herein directed against Harry S. Payne, operating under the name of Pacific Motor Express and citing him to show cause why his certificate

should not be revoked for violation of General Order No. 84,
be, and the same hereby is, dismissed.

The foregoing Opinion and order are hereby approved
and ordered filed as the Opinion and Order of the Railroad
Commission of the State of California.

Dated at San Francisco, California, this 20th day
of June, 1932.

C. S. Scudder
Leon Whitely
W. P. Cunniff
W. B. Harris
Fred G. Stewart
Commissioners.