

Decision No. 42553**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operation, rates ) Case No. 4996  
and practices of NUNES TRUCK SERVICE, INC.)Boris H. Jakusta, for the Field Division, Public Utilities  
Commission.Louie Nunes and H. D. Stephenson, for Nunes Truck Service, Inc.O P I N I O N

The order instituting this investigation on the Commission's own motion charges Nunes Truck Service, Inc., of Fresno, with violation of the Highway Carriers' Act in connection with the transportation of 24 shipments of general commodities between various points in the State for less than the prescribed minimum rates. Revocation or suspension of respondent's intrastate operating authority is sought. The case was submitted at a public hearing at Fresno on February 8, 1949, before Examiner Gregory.

The shipments in question moved on 18 days between July 1 and August 21, 1948, from 12 points of origin to 13 points of destination, located between Fullerton on the south and the San Francisco Bay area and Stockton on the north. Commodities transported included: cheese, fruit juices, cotton piece goods, rabbits, pulpboard, pipe fittings, alfalfa meal, wheat, salt, cocoanut meal, meat products and dried beet pulp, in lots ranging from 85 to 42,606 pounds. With the exception of one movement of sacked wheat destined for export, all shipments were handled in intrastate commerce under respondent's radial highway common carrier permit. No contract carrier operations are involved. Two of the 24 shipments, one of salt from Newark to Tulare and the other of cocoanut meal from Oakland to Porterville,

were delivered under circumstances justifying the use of lower common carrier rates and hence need not be further considered.

Deviations from minimum rate orders with respect to the remaining 21 shipments fall into four classes: (1) direct undercharges resulting from application of improper rates; (2) undercharges resulting from the use of improper classification ratings; (3) undercharges accruing by reason of non-observance of minimum weights; (4) improper billing practices. An example of an undercharge incurred by using the wrong rate was shown in connection with a shipment of 5,980 pounds of cheese from Los Angeles to San Francisco, at 68 cents per 100 pounds. The applicable rate, according to Supplement No. 6 of Highway Carriers' Tariff No. 2, then in effect, was 75 cents per 100 pounds. The evidence indicates that the carrier's rate clerk failed to take into account the 10 per cent increase in rates provided by Supplement No. 6 in billing the charges. This individual, who, according to the carrier's president, was responsible for most of the errors alleged to have been made during the period covered by the investigation, is no longer employed by the company.

Other examples of improper rating, combined with faulty billing practices, occurred in connection with several shipments of fruit juices from points outside the Los Angeles Territory, as defined in the tariff, to points in the San Francisco Territory. The freight bills used as a basis for this investigation showed the points of origin and destination correctly but failed to show that a separate charge had been paid by the consignor for the preliminary movement from point of origin to the carrier's Los Angeles dock. The consignees were charged the Los Angeles-San Francisco rate on the mistaken assumption that the points of origin were included

within the Los Angeles Territory.<sup>(1)</sup>

Three shipments of pulpboard moving between Los Angeles and Emeryville resulted in undercharges due to the fact that the carrier applied a rail rate subject to a 50,000 pound minimum weight to the actual weight of the shipments, in each case shown by the freight bills to have been less than 50,000 pounds. In explanation, the carrier's president testified that the quantities tendered by the consignor on each occasion exceeded the capacity of the truck, thus requiring successive loads to complete the movement. Each load was separately billed, although the total weight of the multiple loads, he stated, exceeded the 50,000 pound minimum weight.

Undercharges resulting from use of improper classification ratings do not require special comment. These, as well as the other errors described above, were largely due to misinterpretation of tariff provisions by the carrier's rate clerk, according to the testimony of the company's president. In all, the undercharges developed from freight bills included in the Field Division's exhibit, with the three exceptions noted above, amounted to \$118.48. In 16 out of the 21 shipments, the undercharge was less than \$5.00 per shipment.

During the period from July 1 to August 23, 1948, within which the 21 shipments moved, respondent issued 1,846 individual freight bills and received a gross revenue of approximately \$68,000. The Commission's records indicate that during the first nine months of 1948 the carrier enjoyed a gross revenue from intrastate business amounting to approximately \$325,000.

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(1) In addition, one of these shipments was billed at the minimum charge, instead of at the applicable rate for 100 pounds on shipments exceeding 150 miles.

We find from the evidence that Nunes Truck Service, Inc., respondent herein, between July 1 and August 21, 1948, both dates inclusive, transported the shipments of property described in the order instituting investigation herein, with the exception of the three shipments designated by freight bills numbered 1104, 1119 and 1194, at rates and charges less than the applicable minimum rates and charges prescribed by the Commission in Highway Carriers' Tariff No. 2 and supplements thereto in effect at the time, and by so doing violated Sections 10, 12(c) and 13-5/8 of the Highway Carriers' Act.

It is true that, compared to this carrier's over-all business, the undercharges developed on the record are not great. They appear to have resulted more from careless supervision of rating and billing procedures than from any wilful intent to violate the statute. Although this particular corporate respondent has held permits only since January 1, 1948, its president, Louie Nunes, has been engaged in for-hire trucking, under the Commission's jurisdiction, since 1935. He is therefore presumably aware of the necessity for strict observance of tariff rates.

Respondent possesses interstate operating authority as well as permits to engage in business as a highway contract carrier and a radial highway common carrier. As stated above, no contract carrier operations are involved in this case. We believe that the circumstances warrant suspension of respondent's radial permit for a period of five days. In addition, respondent is directed to collect all undercharges resulting from the transportation described in the order instituting investigation herein, excepting that performed under freight bills numbered 1104, 1119 and 1194, and also excepting that in which the full applicable charges have already

been collected, and to report to the Commission in detail, not later than 90 days from the effective date of this order, when such collections have been effected.

Respondent is placed on notice that, during the period of suspension of its permit, it may not transport property for compensation over the public highways of this state, either directly or by means of any subterfuge or device, as a radial highway common carrier, as defined in Section 1(h) of the Highway Carriers' Act.

O R D E R

Public hearing having been held in the above-entitled and numbered proceeding, evidence having been received, the matter having been submitted for decision, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS HEREBY ORDERED that Radial Highway Common Carrier Permit No. 10-5031, held by Nunes Truck Service, Inc., be and it is suspended for a period of five (5) days, commencing at 12:01 a.m., on the 20th day after the date of service of this order upon respondent and terminating at 12 midnight of the fourth day thereafter.

The effective date of this order shall be the 20th day after the date upon which a certified copy thereof shall have been personally served upon respondent.

Dated at San Francisco, California, this 23<sup>rd</sup> day of February, 1949.

[Signature]  
Justice J. Cravener  
[Signature]  
Harold T. Hull  
[Signature]  
COMMISSIONERS