

ORIGINAL

Decision No. 42057

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
on the Commission's own motion into)
the operations, rates, charges,)
contracts, accounts, rules, regula-) Case No. 5081
tions and practices, or any of them,)
of LARRY CHAMBERLAIN, doing business)
as Chamberlain Trucking Service.)

Marquam C. George for respondent.

Hal F. Wiggins for Transportation Department, Public Utilities
Commission of the State of California.

O P I N I O N

The purpose of this proceeding--an investigation instituted
on the Commission's own motion--is to determine

- (1) whether, in the handling of C. O. D. (collect on delivery) shipments, Larry Chamberlain, doing business as Chamberlain Trucking Service, hereinafter called respondent, may be operating, or since October 21, 1948, may have operated, in violation of the provisions of Decision No. 42057, dated September 21, 1948, in Case No. 4808, and General Order No. 84-B, and without having complied with the minimum rates, rules and regulations prescribed by the Commission governing the handling of said shipments, in violation of Section 15 5/8 of the Highway Carriers' Act;
- (2) whether respondent should be ordered to cease and desist from any such violations; and
- (3) whether the permits to operate as a highway carrier, or any of them, held by respondent should be cancelled, revoked or suspended.

Hearings were held before Examiner Bradshaw at Sacramento and San Francisco. A brief was filed on behalf of respondent, to which counsel for the Commission's transportation department replied.

Respondent possesses permits to operate as a radial highway common carrier and highway contract carrier, as defined in

the Highway Carriers' Act, and as a city carrier, as defined in the City Carriers' Act. According to the testimony, these permits were issued on June 3, 1946, and are still in effect. Persons or corporations engaged in operations under permits of this nature will be referred to in this opinion as permitted carriers.

In prescribing minimum charges for collecting and remitting amounts collected on C. O. D. shipments by permitted carriers, the Commission established a rule requiring the carriers to remit to consignors all moneys collected on such shipments promptly upon collection and in no event later than 10 days after delivery of shipments to consignees, unless the consignor instructs otherwise in writing.

By Decision No. 42057 in Case No. 4808, the Commission adopted its General Order No. 84-B, effective November 15, 1948. The 10-day rule for remitting collections theretofore published in the minimum rate tariffs was incorporated in the general order. This order further provided that each permitted carrier, and certain others, electing to handle C. O. D. shipments shall provide and file a good and sufficient bond, in such form as specified therein, in the sum of not less than \$2,000. It was ordered that no carriers of the classes covered by the general order shall handle any C. O. D. shipment unless and until a bond as therein provided for has been filed with the Commission. In its opinion which formed a part of the decision, the Commission stated that should there be special cases in which relief from the general bonding requirements is deemed appropriate interested parties may bring them to the Commission's attention.

By various other decisions, the rules and regulations governing the handling of C. O. D. shipments as published in the Commission's minimum rate tariffs were amended effective November 15, 1948, to include the requirements of General Order No. 84-B.

A representative of the Commission's field division offered in evidence two exhibits containing data concerning all C. O. D. shipments transported by respondent during October 1948, and for the period from December 1, 1948, to and including June 10, 1949. The information was prepared following interviews with respondent and examinations of his records.

According to one of the exhibits, respondent transported a shipment from Oakland to Orland involving a C. O. D. amounting to \$529.15 which was delivered and the C. O. D. collected from the consignee on October 26, 1948, but the amount thereof was not remitted to the consignor until February 7, 1949, a period of 104 days. The consignor's manager testified that no written instructions had been given respondent to remit the C. O. D. in any manner other than as provided in the tariff and that several efforts were made during November and December, 1948, to secure the remittance from respondent.

It further appears from the testimony of this witness and another representative of the consignor that in response to respondent's request that he be allowed until January 15, 1949 to make payment, the consignor's manager somewhat reluctantly agreed to such an extension of time; that respondent's check was received on January 17, 1949, but subsequently returned by the bank with the notation "refer to maker"; and that after assistance of the Commission's field division had been sought a certified check for

the amount involved was received by the consignor on February 7, 1949.

The C. O. D. shipments transported by respondent between December 1, 1949, and June 10, 1949, the exhibits indicate, were 19 in number and involved the collection from consignees and remission to consignors of \$2,423.66. With the exception of three instances, the amounts were remitted within the required 10-day period. In the other cases remittances were held between 20 and 28 days. The amounts involved aggregated \$192.42.

An employee in charge of the Commission's division of permits and fees testified that, according to the official records of the Commission, respondent has not filed (a) a C. O. D. bond as required by General Order No. 84-B or (b) an application seeking relief from the bonding provisions of the order. This witness also asserted that respondent in his applications for the permits to operate which were granted on June 3, 1946 represented that he does not handle C. O. D. shipments.

Respondent testified that he is familiar with the provisions of General Order No. 84-B and that commencing in January, 1949, he made three attempts to obtain a C. O. D. bond, but in each instance his application was denied because of not having sufficient assets. He claimed that the revenue received from handling of C. O. D. shipments is not lucrative; that he has not solicited such business; that he has only handled C. O. D. shipments for "old customers" in order to retain their traffic; and that he has subsequently discontinued handling C. O. D. shipments entirely. Respondent admitted that a C. O. D. bond or an application for exemption from the provisions of General Order No. 84-B was never

filed. The reason given for not discontinuing the handling of C. O. D. shipments at earlier date was that he was continuing his efforts to secure a bond. No explanation was given by respondent with respect to the delay in remitting the C. O. D. moneys collected in connection with the shipment which moved from Oakland to Orland and in the other three instances in which the 10-day rule was not complied with.

The president of a brokerage firm engaged in handling various types of insurance and surety bonds gave testimony concerning his efforts to obtain a surety bond for respondent. According to this witness, a national surety company was unwilling to issue such a bond, because (a) respondent's expenses were too great, (b) most of his equipment was mortgaged to the limit, (c) the monthly payments on the equipment ran into a considerable amount, and (d) some sources from whom respondent borrowed money reported that he was in arrears in making certain payments.

In his brief, respondent's counsel urges that this proceeding be dismissed. The circumstance that with the exception of four instances C. O. D. moneys were remitted promptly is stressed. It is claimed that according to the evidence the consignor of the shipment which moved from Oakland to Orland granted respondent an extension of time in which to remit the C. O. D. collection. With respect to the other three cases in which the 10-day rule was not complied with, the brief refers to the fact that the amounts due were remitted prior to the commencement of this proceeding and apparently without any complaint on the part of the consignors.

According to counsel, it appears to be obvious from the facts of record that the money was not used to meet the carrier's

expenses. He asserts that, although the letter of the law may not have been strictly observed, the spirit has been to comply with the general order.

Respondent further contends that, being unable to find any specific legislative authority conferring upon the Commission jurisdiction to require C. O. D. bonds, the bonding provisions of General Order No. 84-B are unconstitutional. The brief also cites Decision No. 43202 in Case No. 5082, involving the practices of Redding-Eureka Freight Lines, apparently because the operative rights of that carrier were not revoked or suspended, notwithstanding that C. O. D. moneys had been used for unauthorized purposes. The order in that proceeding, however, was a preliminary one and is subject to modification after further hearing.

In reply, counsel for the Commission's transportation department calls attention to the continuous handling by respondent of C. O. D. shipments in violation of our decisions, rules and regulations both before and after the date of the opening hearing. He refers to the fact that respondent was not obligated to accept such shipments. The failure to seek relief from the bonding requirements of General Order No. 84-B or to offer an explanation for having failed to remit collections within the required 10-day period are stressed. The violations being protracted and having occurred with a full knowledge on respondent's part of his obligations indicate, according to counsel, a defiance of Commission authority and the mandate of the law.

That respondent in the handling of C. O. D. shipments violated decisions, orders, rules and regulations of the Commission is not disputed. Although it is contended that an extension of

time was given within which to remit the amount collected on the Oakland-Orland shipment, respondent nevertheless did not comply with the 10-day rule. As the record shows, the consignor agreed that the payment might be postponed more than two months after the date of shipment and at a time when the remittance was 55 days overdue.

In considering the evidence in this proceeding concerning respondent's failure to remit C. O. D. moneys promptly, the absence of an indication that extenuating circumstances may have controlled his conduct cannot be overlooked. Moreover, the acceptance of C. O. D. shipments without first having filed a surety bond was not justified by the fact that an effort was being made to obtain a bond such as required by General Order No. 84-B.

The regulations promulgated under the Highway Carriers' Act are designed for the benefit of the shipping public and carriers alike. Such regulations insofar as they relate to the handling of C. O. D. shipments were prescribed after full investigation and careful consideration. It is, therefore, important that strict compliance with these regulations be required of all carriers which are subject thereto.

In our opinion, the assertion that the bonding provisions of General Order No. 84-B are unconstitutional is without merit. These provisions have a direct bearing upon the value of the service rendered by carriers to shippers and consignees. Section 10 of the Highway Carriers' Act, not only confers upon the Commission jurisdiction to establish rates for the transportation of property and for accessorial services performed by highway carriers, but requires that it make such rules and regulations as may be necessary to the application and enforcement of the rates authorized and approved.

under the provisions of the Act.

We find that in handling each of 20 C.O.D. shipments referred to in the record herein respondent violated Section 15-5/8 of the Highway Carriers' Act in that he failed to observe orders of the Commission by accepting the shipments without having at any time on file a C.O.D. bond, as required by General Order No. 84-B, and in several instances by not seasonably remitting C.O.D. moneys. In view of all of the circumstances as revealed by the record, an order will be entered suspending respondent's permits to operate as a radial highway common carrier and highway contract carrier for a period of 10 days. Similar action will not be taken with respect to his city carrier permit for the reason that no violations of the City Carriers' Act or of any regulation thereunder have been brought to our attention. However, the order will provide for the amendment of each of respondent's permits so as to exclude authority to transport C.O.D. shipments.

O R D E R

Public hearings having been had in the above-entitled proceeding, evidence having been received and duly considered, the Commission now being fully advised and basing its order upon the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED:

(1) That Radial Highway Common Carrier Permit No. 1-4745 and Highway Contract Carrier Permit No. 1-4746, heretofore granted to Larry Chamberlain, doing business as Chamberlain Trucking Service, be and they are hereby suspended for a period 10 days from and after the effective date of this Order.

(2) That the permits described in the preceding paragraph

of this order and City Carrier Permit No. 1-4747, heretofore granted Larry Chamberlain, doing business as Chamberlain Trucking Service, be and they are hereby amended by adding thereto the following condition:

Said carrier shall not transport C. O. D. shipments, nor shall he handle any C. O. D. moneys.

The Secretary is directed to cause a certified copy of this decision to be personally served upon respondent, Larry Chamberlain.

The effective date of this order shall be 20 days after the date of such service.

Dated at San Francisco, California, this 15th day of November, 1949.

R. E. [Signature]
Justice F. Garner

[Signature]
[Signature]
Commissioners