

ORIGINAL

Decision No. 43938

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,)
rates and practices of ROBERTS OF) Case No. 5138
SAN FRANCISCO (City Transfer and)
Storage Company).)

Harold J. McCarthy, for Field Division.
Frank Loughran, for respondent.

O P I N I O N

This investigation on the Commission's own motion, instituted October 11, 1949, is for the purpose of determining whether Roberts of San Francisco, a corporation doing business as City Transfer and Storage Company, has violated the provisions of Sections 10, 12(a) and 13-5/8 of the Highway Carriers' Act, because of failure to keep records as prescribed by the Commission, or for failure to assess or collect not less than prescribed minimum rates. Other purposes of the investigation, stated in the order served upon respondent, are to determine whether the carrier's operative authority should be cancelled, revoked, or suspended; whether respondent should be ordered to collect undercharges from shippers; and whether respondent should be ordered to cease and desist from failing to issue proper shipping documents and from failing to assess and collect not less than the prescribed minimum rates.

The case was submitted at a public hearing held January 4, 1950, at San Francisco, before Examiner Gregory.

The record shows that respondent, formerly a copartnership but incorporated shortly before its present owners acquired the business in 1947, operates under radial highway common carrier and

city carrier permits issued by this Commission on January 2, 1947, and is engaged in transporting and storing used household goods and used office equipment. A considerable amount of theatrical moving is also performed. The carrier maintains a warehouse and terminal at 430 Main Street, in San Francisco, operates a fleet of 17 trucks and employs 15 drivers and helpers, two salesmen, one dispatcher, an office manager, a secretary and an accountant. During 1949 respondent grossed approximately \$210,000 from its business. About 85% of its transportation activity is intracity and the balance is conducted between cities.

The charges contained in the investigatory order, as elaborated by evidence at the hearing, relate to deficiencies in shipping documents covering 26 intercity movements in the months of October and December, 1948. No undercharges resulting from assessment of less than the prescribed minimum rates were shown to have been incurred in connection with these movements.

The summary of shipping documents introduced in evidence by the Commission's staff indicates numerous deviations from prescribed billing practices. Chief among these were: failure to describe fully the commodity transported; failure to execute confirmations of shipping instructions and rate quotations; billing, at hourly rates, certain shipments subject to mileage rates; assessment of bridge tolls on shipments subject to mileage rates. Respondent stipulated that the rate statement in evidence correctly reflected the information contained on the freight bills.

The evidence further shows that on January 28, 1947, a member of the Commission's Field Division interviewed Robert S. Reis, one of the new owners, and called his attention to the provisions of the Commission's Decision No. 39613, issued November 4, 1946, in Cases Nos. 4730, 4246 and 4434. (46 CRC 803.) That decision

established revised practices to be observed by carriers of used household goods and related property in connection with rate quotations and estimates of charges, commissions, long-distance moving, insurance, dual operations and other matters. The Commission's investigator did not check the carrier's records on that occasion.

On January 26, 1949, the same investigator called upon the carrier and interviewed Richie C. Smith, an executive who had joined the company in July, 1948, after having purchased the interest of one Bush, a former associate of Reis in the ownership of the business. On that occasion, the Commission's representative made the tabulation of shipments which formed the basis of the summary placed in evidence. Again, on February 1, 1949, the investigator questioned Reis concerning some of the shipping documents issued by the carrier. According to the testimony of the Commission's investigator, the carrier's officials were cooperative at all times.

It was stipulated at the hearing that respondent was served with a copy of Highway Carriers' Tariff No. 4, City Carriers' Tariff No. 3 and Distance Table No. 3 on or about May 13, 1948. No further calls were made upon respondent by Commission personnel between February 1, 1949, and December 2, 1949, the date upon which a certified copy of the investigatory order was served, nor does it appear that the carrier was ever advised informally, or otherwise, prior to the service of the order, that its practices were being questioned by the Commission.

Reis and Bush, both ex-service men, had had no transportation experience prior to taking over the business. They left the details of billing and record keeping in the hands of office employees while they themselves attended to solicitation. About 25% of the transportation performed consists of the movement of used

household goods and the rest involves moving used office equipment and theatrical effects. Reis testified he did not know that the firm was "out of line" until served with the investigatory order. He admitted, however, that the investigation of his records early in 1949 indicated to him that something might be amiss, and shortly thereafter he adopted a more complete form of shipping document and also briefed his employees on the subject of compliance with the Commission's orders.

We find from the evidence that respondent, during the months of October and December, 1948, failed to keep shipping documents as prescribed by the Commission in Highway Carriers' Tariff No. 4, as more particularly set forth in the order instituting investigation herein, and by so doing violated Sections 10 and 13-5/8 of the Highway Carriers' Act.

By way of extenuation, respondent pointed out that, despite the admitted freight bill deficiencies, the minimum rates on the shipments in question were protected. The Commission's rate expert stated, however, that while no undercharges had been developed from his study of the information furnished by the Field Division, as recorded by him on the exhibit, there was not sufficient information on the freight bills, in all instances, to rate the shipments.

The defects shown to exist herein in connection with respondent's billing practices occurred in 1948. There is no evidence that the deficiencies continue to exist, or have not been corrected since respondent adopted a more complete form of shipping document and instructed his employees with regard to compliance with the Commission's orders.

While respondent's infractions of the Commission's rules and regulations appear to be serious enough to justify a short suspension of its radial permit, we have concluded, on the basis of the

entire record, that outright suspension should not be invoked at this time. Instead, respondent should be given an opportunity to demonstrate that it will comply with applicable statutes and with outstanding orders of the Commission. Accordingly, the order to follow, although imposing a five-day suspension of the radial permit, will also provide that such suspension be stayed for approximately eight months, unless the Commission, within that period, reopens the proceeding and, after notice to respondent and an opportunity to be heard, for good cause deems imposition of the suspension appropriate. Otherwise, the proceeding will automatically terminate at the end of the eight-month period.

O R D E R

Public hearing having been held in the above entitled and numbered proceeding, 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 ORDERED:

(1) That Radial Highway Common Carrier Permit No. 38-4476, held by Roberts of San Francisco, doing business as City Transfer and Storage Company, respondent herein, be and it is hereby suspended for a period of five (5) consecutive days; provided, however, that such suspension shall not become effective unless and until, on or before December 15, 1950, the Commission shall have reopened this proceeding for receipt of further evidence, and thereafter, upon notice to respondent and an opportunity to be heard, shall otherwise order.

(2) The Secretary is hereby directed to cause personal service of a certified copy of this decision to be made upon respondent, and this decision shall become effective upon the twentieth day after the date of such service.

Dated at San Francisco, California, this 14th
day of March, 1950.

R. E. Dondanville

Justus F. Baumer

August L. Lucca

Harold P. Kula

Fremeth Pottor

COMMISSIONERS