

Decision No. 43943

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,
rates and practices of Frank B.)
Showalter, doing business as)
California Van & Storage Company.)

Case No. 5159

Harold J. McCarthy for the Field Division
Eugene Harrah for respondent

O P I N I O N

The order instituting investigation herein recites that respondent, holder of Radial Highway Common Carrier Permit No. 27-1244 and City Carrier Permit No. 27-1245, appears to have failed, during the months of January and March, 1949, to record complete information on freight bills and shipping documents as prescribed by Highway Carriers' Tariff Nos. 2 and 4, and orders an investigation to determine: (1) whether respondent has violated Section 10, 12(a) and 13-5/8 of the Highway Carriers' Act; (2) whether respondent's operating authority should be cancelled, revoked or suspended; (3) whether respondent should be ordered to collect undercharges from its shippers; (4) whether respondent should be ordered to cease and desist from issuing incomplete shipping documents and from collecting less than minimum rates.

The order was served upon respondent on January 6, 1950, and a public hearing held in Monterey on January 20, 1950, before Commissioner Potter and Examiner Gillard. The matter has been submitted and is now ready for decision.

Respondent has been engaged in the moving business for 5 years. He presently operates with 7 pieces of equipment and 4

employees. Eighty-five per cent of his business is intercity transportation of which ninety-eight per cent is used household goods. Respondent was served with Highway Carriers' Tariffs No. 2 and 4, City Carriers' Tariff No. 3 and Distance Table No. 3 on March 31, 1948.

During January and March 1949, respondent carried 60 intercity shipments. Shipping documents representing twenty-two of these were summarized on Exhibit No. 1 which was introduced into evidence pursuant to stipulation that the information therein contained is correct. This exhibit shows eight types of omissions. Three of these - failure to show rate assessed, size of equipment used and point of destination - occurred but once each. Failure to secure confirmation of shipping instructions happened four times, while failure to state released value of property occurred thrice. In nine instances the documents failed to describe the commodity as "used", while in seven cases the commodity was not described as "new". In these seven latter cases, charges were assessed on a per hour basis, whereas they should have been assessed in cents per 100 pounds under Highway Carriers' Tariff No. 2.

The record shows and respondent admits that there were substantial deficiencies in the shipping documents involved. We find from the evidence that respondent herein during the calendar months of January and March, 1949, failed to keep shipping documents as prescribed by the Commission in Highway Carriers' Tariffs No. 2 and 4, as more particularly set forth herein, and by so doing violated Sections 10 and 13-5/8 of the Highway Carriers' Act.

By way of mitigation respondent testified that until the Field Division representative called in April, 1949, he was not

aware that these mistakes were being made, and immediately adopted new forms and gave his clerk new instructions to meet the situation; that he had lost his experienced rate clerk in December, 1948, and was unable to secure a trained replacement; that he was unable to give the new clerk close supervision because of an extremely large and time consuming contract with the Navy; and that none of the violations were intentional.

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. 27-1244 held by Frank B. Showalter, doing business as California Van & Storage Company, 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. Z. Anderson
Justus F. Cravner
Dean H. Hancock
Harold P. Hull
Herbert P. Potter
COMMISSIONERS