

ORIGINAL

Decision No. 43963

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,)
rates, and practices of DAVID LEVI,)
MARY LEVI, SOL KAUFMAN and THEODORE) Case No. 5130
E. WEINER, doing business as Levi')
Iron & Metal Co.)

C. E. Cate and Crossland & Crossland, by Robert S. Crossland, for respondents.
Hal F. Wiggins, for Transportation Department, Public Utilities Commission of the State of California.

O P I N I O N

This proceeding is an investigation instituted on the Commission's own motion into the operations, rates and practices of David Levi, Mary Levi, Sol Kaufman and Theodore E. Weiner, doing business as Levi's Iron & Metal Co., hereinafter called respondents. The purposes of the investigation are to determine

- (1) whether respondents have violated or are violating provisions of the Highway Carriers' Act in assessing or collecting charges less than those prescribed by the Commission as minima;
- (2) whether the operating authority of respondents as a radial highway common carrier should be cancelled, revoked or suspended;
- (3) whether respondents should be ordered to collect from shippers any or all undercharges for shipments transported by them; and
- (4) whether respondents should be ordered to cease and desist from assessing and collecting less than the minimum rates and charges prescribed by the Commission for transportation performed by them.

Hearings were held before Examiner Bradshaw at Fresno.

Respondents maintain their headquarters in Fresno. They

were granted a permit to operate as a radial highway common carrier on August 20, 1942. It was stipulated that respondents transported for compensation shipments described in various shipping documents, which were received in evidence herein, and assessed and collected the transportation charges set forth thereon.

In addition to the shipping documents embraced in the stipulation, evidence was presented by an associate transportation rate expert in the employ of the Commission's rate division, analyzing the data appearing in the shipping documents from the standpoint of whether the charges assessed conformed to the regulations and orders of the Commission prescribing minimum rates and charges.

The evidence related to shipments transported by respondents between August 2 and October 13, 1948, inclusive. It was asserted that the charges collected on 21 shipments which moved during this period were lower than the minimum charges prescribed for such transportation. These shipments consisted of various commodities. Most of them moved between the San Francisco Bay area and Fresno or points in that vicinity. The aggregate charges collected thereon amounted to \$1,320.46. According to the Commission's rate expert, the charges if based upon the established minimum rates would have been \$1,619.43.

The tariff provisions governing the shipments in question are of record herein. Pertinent facts concerning the shipments were also introduced in evidence through testimony by members of the Commission's staff or stipulated to by respondents. In some instances, according to the evidence, the rates assessed and collected were lower than those published in the Commission's

Highway Carriers' Tariff No. 2 or the correct minimum weight was not applied. It also appears that certain multiple shipments were treated as a single shipment and rated accordingly, although they were covered by separate shipping documents bearing different dates. Such a method of computing transportation charges is not permitted under the provisions of the tariff. In other cases, railroad rates were applied according to a tariff provision which permits the use of common carrier rates when they result in a lower aggregate charge for the same transportation than the rates provided in Highway Carriers' Tariff No. 2. However, in doing so respondents did not assess additional charges where consignors' or consignees' places of business were not served by an industrial spur track. Respondents also failed in some instances to use the correct rail rate and minimum weight or neglected to include a railroad switching charge where such a charge would have applied on rail shipments. The resultant aggregate charges were lower than required by the tariff and the Commission's orders.

Sol Kaufman, one of the respondents, testified that respondents have been in business in Fresno for about 30 years, buying and selling scrap, burlap bags and other usable materials. He declared that the firm became engaged in the trucking business about 1941, when it took over the equipment of a trucker to whom respondents had advanced money. This witness asserted that respondents did not have any previous experience in for-hire transportation; that they knew nothing about rates or tariffs; and that, being of the impression that ascertaining the proper rates was a simple matter, they placed their bookkeeper in charge of the trucking operations.

According to Kaufman's testimony, when errors in the

assessment of charges were called to respondents' attention steps were taken to prevent a reoccurrence, their trucking manager was never told to go below the minimum rates and any violations of the Commission's rate orders were unintentional. He further stated that one of the rates charged on certain shipments on which alleged undercharges occurred was based on a quotation received from the Commission's staff and that respondents relied upon some of their shippers for information with respect to the proper rates to be assessed.

Transportation operations were characterized as merely an incidental part of respondents' business, in which the determination of charges to be made therefor had been left entirely to the discretion of the employee in charge. Kaufman also asserted that the only explanation he could make for failure to charge the proper rates was that the tariffs were too complex. The witness denied having any knowledge of previous rate violations, but later conceded that the Commission had called attention to undercharges on other shipments and requested that the lawful charges thereon be collected. It appears that the Commission's staff quoted a rate, as alleged by the witness, but that respondents disregarded a supplement to the tariff which was subsequently issued providing certain rate increases.

Respondents' transportation manager and former bookkeeper testified that prior to taking charge of the trucking operations four or five years ago he had no experience in making freight bills or applying rates; that he tried to learn and thought that he understood how to use Highway Carriers' Tariff No. 2; and that prior to the hearing herein was not aware that less than the minimum rates had been assessed. According to this witness' testimony, he did

not have any common carrier tariffs except a copy of the Western Classification, but did not know that supplements or reissues were published or where to obtain copies thereof. Other matters indicating a lack of understanding in ascertaining published transportation charges were mentioned during the course of his testimony.

The record in this proceeding definitely shows that respondents have engaged in the practice of assessing and collecting lower transportation charges than prescribed by the Commission as minima for the services performed. No evidence was presented which casts the slightest doubt upon the correctness of the minimum rates and charges which the Commission's rate expert testified applied upon the shipments referred to in his testimony.

We find that in assessing and collecting transportation charges upon the shipments described in the record in this proceeding, respondents violated Sections 10, 12(a) and 13-5/8 of the Highway Carriers' Act.

The explanations advanced on behalf of respondents for their failure to observe the established minimum rates and charges have been carefully considered. In our opinion, they cannot be accepted as extenuating circumstances justifying respondents' course of conduct. Persons engaged in for-hire transportation should realize the high degree of responsibility to the public entailed in conducting such a business. Of paramount importance in this connection is a full compliance with the Highway Carriers' Act and the Commission's orders and regulations thereunder, intended as they are to promote sound transportation conditions beneficial to carriers and the shipping public alike.

Under the circumstances, respondents will be directed to

cease and desist from assessing or collecting lower transportation charges than those established as minima and their permit to operate as a for-hire carrier will be suspended for a period of 10 consecutive days. Respondents will also be directed to collect or take appropriate action to collect within seven (7) days after the effective date of this order, the lawful charges on the shipments to which reference is made in the record in this proceeding. A list identifying said shipments appears as an appendix to this decision. A copy of this decision will be served upon each shipper listed in such appendix. In this connection, attention is called to the provisions of the Highway Carriers' Act with respect to penalties for violations thereof and for aiding and abetting carriers in such violations.

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, with respect to shipments hereafter transported as a radial highway common carrier, David Levi, Mary Levi, Sol Kaufman and Theodore E. Weiner be and they are hereby directed to cease and desist from assessing and collecting transportation charges in any manner whatsoever other than as authorized by the provisions of the Commission's Highway Carriers' Tariff No. 2, supplements thereto and reissues thereof.

(2) That Radial Highway Common Carrier Permit No. 10-2486, heretofore granted to David Levi, Mary Levi, Sol Kaufman and

Theodore E. Weiner, doing business as Levi's Iron & Metal Co., be and it is hereby suspended for a period of ten (10) days from and after the effective date of this order.

(3) That David Levi, Mary Levi, Sol Kaufman and Theodore E. Weiner, doing business as Levi's Iron & Metal Co., be and they are hereby directed within seven (7) days after the effective date of this order, (1) to assess and collect or take appropriate action to collect on the shipments specified in the appendix annexed hereto, and on all other similar shipments which they may have transported the difference between (a) the amounts collected and (b) those which would result from applying the contemporaneous rates or charges provided for in the Commission's Highway Carriers' Tariff No. 2, as amended, and (2) to notify the Commission in writing upon the consummation of said collections.

The Secretary is directed to cause a certified copy of this decision to be served, either personally or by registered mail, upon each of the respondents and upon each of the shippers listed in the appendix attached to this order.

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

Dated at San Francisco, California, this 21st day of March, 1950.

R. 3. [Signature]
Justin J. [Signature]
[Signature]
Harold P. [Signature]
[Signature]
COMMISSIONERS

A P P E N D I X

SHIPMENTS TRANSPORTED BY RESPONDENTS, AMOUNT
OF CHARGES COLLECTED AND AMOUNT OF CHARGES
BASED ON PRESCRIBED MINIMUM RATES

<u>No.</u>	<u>Date</u> <u>1948</u>	<u>Consignor</u>	<u>Consignee</u>	<u>Collected</u>	<u>Applicable Minimum Charges</u>
3148	Aug. 2	National Iron & Metal Co. Oakland	T. G. Schmeiser Fresno	\$72.60	\$ 98.93
3154	Aug. 4	Levi's Iron & Metal Co. Fresno	American Forge Co. - Niles	22.22	25.21
3158	Aug. 10	Leslie Salt Co. Newark	Fresno Meat Pkg. Co. - Fresno	83.46	85.28
3164	Aug. 18	Kerman Tallow Works - Kerman	Anderson Smith Milling Co. San Francisco	134.25	153.01
3168	Aug. 21	Levi's Iron & Metal Co. Fresno	Standard Dis- tributing Co. Los Angeles	47.99	70.73
3169	Aug. 21	"	Vulcan Iron & Steel Co. - Los Angeles	13.00	28.34
3171	Aug. 23	"	Consolidated Engineering Co. Los Angeles	30.00	47.00
3174	Aug. 27	Pacific States Steel Co. - Niles	Federal Pipe & Supply Co. Fresno	106.42	210.00
3176	Aug. 30	El Dorado Oil Works - Oakland	Valley Feed & Fuel Co. - Fresno	69.08	72.00
3178	Sept. 1	Leslie Salt Co. Newark	United Groceries, Ltd. - Fresno	64.08	68.53
3180	Sept. 2	U. S. Steel Supply Co. San Francisco	T. G. Schmeiser Fresno	30.00	47.00
3128	Sept. 10	Ace Foundry, Ltd. Los Angeles	"	120.90	137.89

Cs. 5130 AM

<u>Freight Bill</u> <u>No.</u>	<u>Date</u> <u>1948</u>	<u>Consignor</u>	<u>Consignee</u>	<u>Collected</u>	<u>Applicable</u> <u>Minimum</u> <u>Charges</u>
3189	Sept. 15	Libby, McNeil & Libby - Selma	Spiegelman Bag Co. - San Francisco	\$ 74.40	\$ 86.30
3132	Oct. 13	Kerman Tallow Works - Kerman	Bissinger Co. San Francisco	119.49	123.32
3157	Aug. 10	"	Anderson Smith Milling Co. - San Francisco	129.60	152.20
3188	Sept. 14	Leslie Salt Co. - Newark	United Grocer- ies, Ltd., - Fresno	58.78	63.23
3200	Oct. 2	"	"	60.73	65.18
3204	Oct. 13	"	Fresno Meat Packing Co. Fresno	83.46	85.28