

ORIGINAL

Decision No. 44093

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,)
rates and practices of AL BLASI.)

Case No. 5113

Frank Loughran, Willard S. Johnson and Frank M. Chandler, for respondent.
J. T. Phelps, for the Field Division, Public Utilities Commission.

O P I N I O N

This proceeding was instituted, upon the Commission's own motion, by service of an order of investigation upon respondent, to determine whether (1) respondent has violated the provisions of the Highway Carriers' Act in failing to issue shipping documents in the form prescribed by the Commission or in assessing or collecting less than minimum charges; (2) respondent's highway contract or radial highway common carrier permits should be cancelled, revoked or suspended; (3) respondent should be ordered to collect from shippers any or all undercharges for shipments transported by him; (4) respondent should be ordered to cease and desist from issuing shipping documents in form other than prescribed by the Commission and from assessing and collecting less than minimum rates and charges.

Public hearings were held in San Francisco on October 10, 1949 and January 17, 1950, before Examiner R. K. Hunter, and at the conclusion thereof, the matter was submitted for decision.

The field division examined 15 freight bills recording shipments of lumber via respondent for the Richardson Lumber Co., Willits, California, to various points within California, during the period July 23, 1948 to September 23, 1948, and 66 freight

bills recording similar shipments transported by respondent (one of which was for the Sherwood Stake Co. and all the rest for said Richardson Lumber Co.) for the period October 1, 1948, to January 13, 1949. Thirteen of the freight bills examined for the first period above noted, and 31 of the freight bills examined for the second period above noted, were analyzed by an associate transportation rate expert in the employ of the Commission, on two documents introduced into evidence. ⁽¹⁾ These documents were mailed to counsel for respondent prior to the hearings, in response to his request for a bill of particulars, and we will accordingly consider the evidence restricted to the freight bills noted therein.

A field division representative testified that respondent told him that, unless the freight bill otherwise indicated, all of the lumber transported by him was "green". None of the freight bills here involved indicates that the lumber was not "green". Based upon that information, the associate transportation rate expert computed the minimum charges for the 44 shipments as "green" lumber, and found that on this basis, in all but six cases undercharges were indicated. One of the shipments on which there was found to be no undercharge was that transported for the Sherwood Stake Co., with the result that all of the shipments in connection with which undercharges appear to have occurred were transported for the Richardson Lumber Co. as consignor.

S. W. Richardson, president of said consignor, testified on behalf of respondent that he was personally familiar with every shipment transported by respondent for his company. According to him, portions of three shipments were green lumber and all other

(1) Exhibits Nos. 5 and 6.

seasoned lumber. Respondent testified that he did not recall telling the transportation representative that the shipments were green lumber unless the freight bill otherwise indicated; that he did not go over each freight bill with that representative, but when asked as to the kind of lumber, would state dry, seasoned or green, in accordance with the fact. Respondent also introduced into evidence a statement of the Golden Gate Bridge and Highway District showing the charges, according to gross weight, of vehicles crossing the bridge. The charges apply to gross weight brackets for truck and load - i.e. 71,001 pounds to 75,000 pounds was charged \$3.30, and 75,001 pounds to 80,000 pounds was charged \$3.40. Respondent testified that during the periods covered by this investigation, he owned and used only two trucks, each of which weighed 30,000 pounds. He then produced eleven receipts for Golden Gate Bridge tolls, and identified these with eleven of his shipments that moved across the bridge. The maximum and minimum weight brackets that apply to the tolls thus paid would indicate that if computed at the estimated weights set forth in Item 680 of the Highway Carriers' Tariff No. 2, three of the shipments were "dry" lumber, four of the shipments were "seasoned" lumber. However, in these four instances each load would have had to weigh from 2,730 to 6,960 pounds less than the estimated "green" lumber weights shown in Highway Carriers' Tariff No. 2 to come within the maximum weight of the bracket indicated by the bridge toll actually paid.

Item 680 of Highway Carriers' Tariff No. 2 provides for certain estimated weights for "seasoned", "green" and "dry" lumber to be used "when no scale or other means of ascertaining actual weight is available." This tariff contains no definition of any one of these three terms and therefor no means by which respondent in using said tariff could determine from it what lumber is intended to be embraced within each

of these three terms and at just what point lumber ceases to be "green" and becomes "seasoned" or "dry". The determination of the particular category within which any individual lot of lumber falls appears to be left to the judgment or determination of anyone using the tariff or rating the shipment. This lack of definiteness makes the precise determination of the proper estimated weight to be used on any particular shipment extremely difficult and very uncertain. The respondent testified that at the time of the investigation by the Commission's field representative he did not know exactly what "seasoned" meant and that upon inquiry said representative was unable to give him a satisfactory explanation of the meaning of the word.

The difficulty is further illustrated by the testimony of the president of Richardson Lumber Co., who stated that he has been in the lumber business 32 years and that the weight of lumber depends on the moisture content and that some seasoned lumber can weigh less than some lumber classified as kiln-dried.

However, basing a recalculation of the applicable minimum charges on the testimony of the shippers' president, which is supported by the bridge toll receipts, gives a different result. This evidence showed that all shipments consisted of seasoned lumber except three which were partly green and partly seasoned. On all shipments except four the minimum rates appear to have been protected. On these four shipments the under-charges amounted respectively, to 5 cents, 28 cents, \$1.22 and \$8.54. Respondent will be directed to collect or take appropriate action to collect within 10 days after the effective date of the order, the lawful charges on the shipments described in the appendix attached hereto. A copy of this decision will be served upon each of the shippers and consignees listed in said appendix. In this connection,

attention is called to the provisions of the Highway Carriers' Act respecting the penalties for violations thereof and for aiding and abetting carriers in such violations.

Using the recalculated basis the record shows that on the remaining shipments the rate assessed was either the same as the minimum rates or in excess thereof. On the 27 shipments on which the charges were in excess of the minimum rates such excess charges ran from \$1.08 to \$26.96 per shipment. The evidence fails to show a general plan to charge less than said minimum. The representative of the respondent's principal shipper testified that he had told respondent to always charge the minimum rate or a little more because he was so satisfied with his service.

The field division based its case for a finding of a violation of minimum rates solely upon the testimony that respondent had stated that the lumber shipped was green. In contrast to this, respondent denied that he made that statement and produced the direct testimony of the consignor that the lumber was seasoned. This testimony was supported in part by the Golden Gate Bridge toll receipts. Under the circumstances we must hold that the field division has failed to meet the burden of proof that is cast upon it in proceedings of this character with respect to all shipments involved except the four noted.

Relative to the form of shipping document issued by respondent, the evidence discloses that on each of the 44 freight bills involved, respondent has failed to show the weight of the shipment, has failed to state whether the lumber was seasoned, green or dry, and has assessed his charges on the basis of cents per 1,000 feet, board measure, instead of in cents per 100 pounds as required.

With reference to using the per 1000 feet board measure rather than the per 100 pound unit the respondent testified that it was generally the custom in the lumber business to use the former although both are sometimes used; that in arriving at the rate to be charged he would first figure what it would be in cents per 100 pounds and then convert it to so much per 1000 board feet for the convenience of the shipper. The testimony of the representative of the shipper was to the effect that the use of the per 1000 board feet unit was more desirable and convenient to him and such testimony tended to support the respondents statement.

Both the respondent and the shipper involved testified that as of the time of the hearing herein the hauling was being done on the basis of per 100 pounds. The respondent also stated that since the institution of the investigation he has been showing on all shipping documents whether the lumber was green, seasoned, or dry.

The respondent stated that in 1939 he started hauling lumber with one truck and soon acquired another, then was inducted into the service during the war, sold one truck and had his wife operate the other. After being discharged from the service he resumed active operation until at the present time he operates five trucks. He stated that during the time covered by the investigation he not only drove one of the trucks but also did the billing and other office work; that while he received Highway Carriers' Tariff No. 2 he knew very little about tariffs and was not thoroughly familiar with all the requirements of the rules and regulations particularly the items requiring full information to be shown on the shipping document and the use of the cents per 100 pound unit. He said that he first became acquainted with the latter provision ✓

when the Commission's field representative called on him in connection with this investigation. It would appear, however, from the results shown by the recalculation of the charges on the shipments under consideration that the respondent must have taken into consideration whether the lumber was seasoned, green, or dry and what the minimum rate was in cents per 100 lbs.

It appears that the failure to comply strictly with the detailed provisions of Highway Carriers' Tariff No. 2 could have resulted from the respondents inexperience in the use of complicated tariffs and that this investigation has contributed substantially to his education along this line. However, while such considerations may constitute mitigating circumstances they do not excuse the respondent for his failure to comply with the law and the Commission's rules and regulations made thereunder.

From a careful consideration of the entire record it is clear, and we so find, that the respondent has failed to show on his shipping documents the information required by the Commission's rules and regulations, and further that he has failed to assess and collect minimum rates as prescribed by the Commission's Highway Carriers' Tariff No. 2, and by so doing has violated Sections 10, 12(a) and 13-5/8 of the Highway Carriers' Act.

While respondents failure to comply with the Commission's rules and regulations appear to be serious enough to justify a short suspension of its Radial Common and Highway Contract Carrier permits, 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 he will comply with applicable statutes and outstanding orders of the Commission. Accordingly, the order to follow, although imposing a five-day

suspension of both permits will also provide that such suspension be stayed until December 31, 1950, unless the Commission prior to that date, 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 on that date.

O R D E R

Public hearing having been held in the above entitled proceeding, and the Commission 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. 49-663 and that Highway Contract Carrier Permit No. 49-1116 held by Al Blasi, respondent herein, be and they are 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 31, 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) That respondent Al Blasi is hereby ordered within ten (10) days after the effective date of this order to assess and collect or take appropriate action to collect the undercharges shown in the attached appendix and to notify the Commission in writing upon consummation of such collections.

(3) The secretary is hereby directed to cause a certified copy of the order to be served, either personally or by registered

A P P E N D I XFreight Bill

<u>No.</u>	<u>Date</u> 1948	<u>Consignor</u>	<u>Consignee</u>	<u>Collected</u>	<u>Applicable</u>	<u>Under- charges</u>
7120	9-16	Richardson Lumber Co. Willits	Wm. Horstmeyer Burlingame	\$132.64	\$132.69	\$.05
8198	10-20	"	Tony Marshall 619 S.State St. Ukiah	11.46	20.00	8.54
7155B	10-27	"	Arthur Bros. San Mateo	138.00	138.28	.28
7166	12-1	"	Grace Perego San Francisco	85.78	87.00	1.22

mail, upon the respondent herein and upon the shippers and consignees mentioned in the attached appendix.

This order shall become effective twenty (20) days after the date hereof.

Dated at San Francisco, California, this 25th day of April, 1950.

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