

Decision No. 45155

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,
rates and practices of John N. Rocha) Case No. 5243
)
)Cecil W. Walton, for respondent.
Halsey L. Rixford for Field Division, Public
Utilities Commission.**ORIGINAL**O P I N I O N

This proceeding was instituted upon the Commission's own motion to determine whether John N. Rocha, hereinafter called respondent, has violated Sections 10, 12 (a) and 13-5/8 of the Highway Carriers' Act.

A public hearing was held on December 6, 1950, at Modesto before Examiner Silverhart, and the matter submitted for decision.

Respondent owns, controls, operates or manages auto trucks used in the transportation of property for compensation over public highways in California. Since May, 1937, he has held permits to operate as a radial highway common carrier and highway contract carrier. Respondent stipulated that he was served with Highway Carriers' Tariff No. 3 and Distance Table No. 3 on or about May 25, 1948.

A document introduced into evidence as Exhibit 14 analyzed 20 shipments of livestock handled by respondent during the period June 5, 1949 to November 24, 1949, inclusive. The evidence revealed that respondent charged and collected the rates prescribed by Highway Carriers' Tariff No. 3 for the transportation of one such shipment and therefore it will not be considered further herein. Exhibit 14 sets forth 18 shipments, for which, in each case, respondent assessed a total charge of \$204.05, made up as follows:

Minimum rate as provided in Highway Carriers' Tariff No. 3	\$196.99
Bedding charge as provided in Highway Carriers' Tariff No. 3	<u>1.12</u>
	\$198.11
Federal tax on transportation of property . . .	<u>5.94</u>
	\$204.05

the sum of \$215.53 assessed for the remaining shipment is composed of the following:

Minimum rate as provided in Highway Carriers' Tariff No. 3	\$208.13
Bedding charge as provided in Highway Carriers' Tariff No. 3	<u>1.12</u>
	\$209.25
Federal transportation tax	<u>6.28</u>
	\$215.53

Cecil W. Walton, an accountant in respondent's employ since May, 1949, was called as a witness by the Field Division. This witness testified that respondent collected transportation charges of \$200 for each of the 19 shipments above referred to and that he paid the federal transportation taxes on all such shipments.

It thus appears that respondent actually paid \$4.05⁽¹⁾ of the

(1) The sum of \$4.05 is arrived at in the following manner:

Respondent collected \$200 -	
Minimum Rate	\$196.99
Bedding Charge	<u>1.12</u>
	\$198.11
Balance	\$ 1.89
Respondent paid federal transportation tax of \$	5.94
Less	<u>1.89</u>
	\$ 4.05

federal transportation tax upon each shipment for which he assessed charges in the sum of \$198.11. Further, the evidence discloses that respondent not only paid the entire amount of federal transportation tax (\$6.28) upon the shipment for which he assessed a charge of \$209.25, but collected \$9.25 less than the minimum rate therefor.

Respondent did not testify nor offer any evidence in his own behalf.

Federal transportation tax is imposed upon and applies to the amount paid for the transportation of property (26 U.S.C.A. (Internal Revenue Code) Sec. 3475(a)). The tax is payable by the person making the taxable transportation payment and is collectible by the person receiving such payment (26 U.S.C.A. (Internal Revenue Code) Sec. 3475(c)). It is apparent therefore that respondent, in paying all or any part of such tax, relieved the shipper of his obligation so to do and to such extent granted a refund of a portion of the minimum rates and effected a reduction thereof.

The record in this proceeding establishes and we hereby find that respondent has refunded a portion of the minimum rates established by the Commission for the transportation of the property herein and has collected lower transportation charges than prescribed by the Commission for the services performed, in violation of Sections 10, 12(a) and 13-5/8 of the Highway Carriers' Act.

Respondent will be directed to cease and desist from collecting transportation rates lower than those set forth in Highway Carriers' Tariff No. 3 and from making refunds of or remitting any portion of such rates. Respondent will also be directed to collect, within 20 days after the effective date of this 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 consignors and consignees 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 procuring, aiding or abetting any violations by carriers.

O R D E R

A public hearing having been had and basing this order upon the evidence adduced and the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED:

(1) That John N. Rocha is directed to cease and desist from: (a) refunding or remitting in any manner or by any device any portion of the rates or charges specified by the provisions of the Commission's Highway Carriers' Tariff No. 3, supplements thereto and reissues thereof; (b) failing and refusing to collect transportation charges in any manner whatsoever other than as authorized by the provisions of the Commission's Highway Carriers' Tariff No. 3, supplements thereto and reissues thereof.

(2) That John N. Rocha is directed, within 20 days after the effective date of this order, (a) to collect the amounts indicated on the appendix attached hereto, and (b) to notify the Commission in writing upon the consummation of said collections.

(3) That John N. Rocha, in the event he has been unable to collect all of the charges specified in paragraph (2) of this order within twenty (20) days after said order becomes effective, shall submit to the Commission on Monday of each week, until all of said charges are collected or unless otherwise ordered

APPENDIX

Sheet 1

<u>Freight Bill</u> <u>1949</u>	<u>Consignor</u>	<u>Consignee</u>	<u>Applicable Charges</u>	<u>Amount Collected</u>	<u>Amount to Be Collected</u>
1. June 5	Roy Marriott Galt	Chas. Adams Artesia	Minimum Rates \$196.99 Bedding <u>1.12</u> 198.12 Fed. Transp. Tax <u>5.94</u> \$204.05	\$200	\$ 4.05
2. June 12	"	"	"	"	4.05
3. June 28	"	"	"	"	4.05
4. July 8	"	"	"	"	4.05
5. Aug. 14	"	"	"	"	4.05
6. Aug. 20	"	"	"	"	4.05
7. Aug. 31	"	"	"	"	4.05
8. Oct. 4	"	"	"	"	4.05
9. Sept. 8	"	"	Minimum Rates \$208.13 Bedding <u>1.12</u> 209.25 Fed. Transp. Tax <u>6.28</u> \$215.53	"	15.53
10. July 2	"	Bill Marriott Hynes	Minimum Rates \$196.99 Bedding <u>1.12</u> 198.12 Fed. Transp. Tax <u>5.94</u> \$204.05	"	4.05

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APPENDIX (Cont'd)

Sheet 2

<u>Freight Bill</u> <u>1949</u>	<u>Consignor</u>	<u>Consignee</u>	<u>Applicable Charges</u>		<u>Amount Collected</u>	<u>Amount to Be Collected</u>
11. July 15	Bill Marriott Galt	Bill Marriott Hynes	Minimum Rates	\$196.99	\$200	\$ 4.05
			Bedding	<u>1.12</u>		
				198.12		
			Fed. Transp. Tax	<u>5.94</u>		
				\$204.05		
12. July 19	Roy Marriott Galt	"		"	"	4.05
13. July 27	Bill Marriott Galt	"		"	"	4.05
14. Aug. 11	"	"		"	"	4.05
15. Aug. 19	Roy Marriott Galt	"		"	"	4.05
16. Sept. 25	"	"		"	"	4.05
17. Oct. 11	"	"		"	"	4.05
18. Nov. 4	"	"		"	"	4.05
19. Nov. 24	"	"		"	"	4.05

* * * * *

by the Commission, a report specifying the action taken to collect said charges and the results of said action.

The Secretary is directed to cause a certified copy of this decision to be served personally upon the respondent, and by registered mail upon each of the persons listed in the appendix hereto.

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

Dated at San Francisco, California, this 19th day of December, 1950.

R. Z. [Signature]
Justice J. [Signature]
Harold [Signature]
Harold [Signature]
[Signature]
 COMMISSIONERS