

Decision No. 45992

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the )  
operations, rates and practices of )  
SPENCER TRUCK COMPANY. )

Case No. 5288

Crossland & Crossland, by Robert S. Crossland, for  
respondent.

John Power, for Field Division, Public Utilities  
Commission of the State of California.

O P I N I O N

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

A public hearing was held at Fresno, before Examiner Silverhart and the matter submitted.

Respondent has been engaged in the transportation of property for compensation for several years past and since April, 1948, has held permits to operate as a radial highway common carrier, highway contract carrier and city carrier. Respondent stipulated that it was served with Highway Carriers' Tariff No. 2 and amendments thereto and Distance Table No. 3, on or about or prior to November 15, 1949.

A document introduced into evidence by the Field Division as Exhibit 2, analyzed 31 shipments of several commodities transported by respondent at various times between April 19, 1950, and October 16, 1950. These shipments moved between (a) Richmond and Fresno, (b) Los Angeles and Fresno, (c) Newark and Fresno, and (d) Oleum and Sonora. It was stipulated that the commodity descriptions

and the charges assessed and collected by respondent, as set forth in Exhibit 2 were correctly transcribed from its shipping documents. According to this exhibit,<sup>(1)</sup> respondent violated the established minimum rates by:

1. Applying rail rates but failing to assess charges for transportation from rail team track in Fresno to point of destination.
2. Making a charge one cent per hundred pounds higher than rail rates but failing to assess charges for carriage from rail team track in Fresno to point of destination resulting in undercharges.
3. Improperly treating a split delivery shipment as a single shipment and so rating it.
4. Applying rail rates but failing to assess railroad switching charges from interchange track in Fresno to consignee's spur track in Fresno.
5. Failing to assess split delivery rates and split delivery charges for component parts of a shipment delivered to two different consignees.

The evidence shows that the consignee of all the shipments falling within paragraphs 1 and 2 was the Shelton Roofing Co., Fresno, and that its place of business was not served by a spur track which it owned, nor did it have a private track available for its use.

---

(1) It appears from Exhibit 2 that the violations referred to in (1), (2), (3), (4) and (5) above occurred 18, 3, 1, 6 and 1 times, respectively.

Exhibit 2 also disclosed that 24 of respondent's freight bills did not contain proper commodity descriptions.

D. H. Spencer, president and manager of respondent, stated that he has been engaged in the trucking business and has rated shipments for many years. He testified that he rated shipments after deliveries thereof were made by his drivers, with billing routine handled by office personnel; that his procedure was to check the Western Classification and Highway Carriers' Tariff No. 2; that he consults the Truck Owners' Association, the Southern Pacific Company or The Atchison, Topeka & Santa Fe Railway Company as to rail rates; that he has relied upon rates furnished him by traffic managers of large companies. The witness stated he rated one shipment incorrectly because he was unaware that delivery of one part thereof had been effected at Livermore and the other at Fresno; that he had never heard nor had the Commission advised him that a railroad switching charge was applicable; that he would have assessed such charges had he known about them; that he had assumed Shelton Lumber Co. was on rail and didn't discover otherwise until several months ago. The witness further declared that he does not knowingly or intentionally assess charges below the minimum rates and that he did not knowingly violate any of the rates set forth in Exhibit 2. According to his testimony, respondent now assesses switching charges and has requested, but as yet not collected, payment for all such switching charges referred to in Exhibit 2.

The record in this proceeding shows that respondent has assessed and collected transportation charges lower than are prescribed as minima for the services performed and there was a deficiency in the data supplied on the freight bills involved.

We find that in assessing and collecting transportation charges upon the shipments described in the record in this proceeding and in failing to keep shipping documents showing all required information as prescribed by the Commission's Highway Carriers' Tariff No. 2, respondent violated Sections 10, 12(a) and 13-5/8 of the Highway Carriers' Act.

An order will be entered directing respondent to cease and desist from assessing or collecting lower transportation charges than those prescribed as minima, and to collect or take appropriate action to collect within 20 days after the effective date of this order, the lawful charges on the shipments described in the appendix attached hereto, and to cease and desist from issuing shipping documents in form other than prescribed by the Commission. The order will also suspend respondent's permit to operate as a radial highway common carrier for a period of three consecutive days. A copy of this decision will be served upon each of the shippers 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 aiding and abetting carriers in such violations.

Evidence as to respondent's operations pursuant to its highway contract carrier's permit was not offered herein and therefore we make no finding with reference thereto.

O R D E R

A public hearing having been held and based upon the evidence therein adduced and the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED:

(1) That Spencer Truck Company forthwith cease and desist from:

a. Assessing or collecting less than the minimum rates and charges prescribed by the Commission's Highway Carriers' Tariff No. 2 for any and all transportation performed by it.

b. Issuing shipping documents in form other than prescribed by the Commission.

(2) That Radial Highway Common Carrier Permit No. 10-5097, issued to Spencer Truck Company is suspended for a period of three(3) days from and after the effective date of this order.

(3) That Spencer Truck Company is directed within 20 days after the effective date of this order.

a. To collect the amounts indicated upon the appendix attached hereto, and

b. To notify the Commission in writing upon the consummation of said collections.

(4) That Spencer Truck Company, in the event it has been unable to collect all of the charges as required in paragraph (3) of this order, shall submit to the Commission on Monday of each week, until all of said charges are collected or unless otherwise ordered herein, 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 24th day of July, 1951.

A. J. [Signature]  
Justice J. [Signature]  
Harold P. [Signature]  
Wm. [Signature]  
[Signature]

APPENDIX

<u>Freight Bill No.</u>	<u>Consignor</u>	<u>Consignee</u>	<u>Applicable Charges</u>	<u>Amt. Collected</u>	<u>Amt. to be Collected</u>
2332	Certain-toed Products Richmond	Shelton Roofing Co. Fresno	\$84.78	\$ 71.39	\$ 13.39
02482	"	"	92.62	74.19	18.43
02638	"	"	94.27	75.42	18.85
02711	"	"	95.37	72.83	22.54
02824	"	"	114.88	87.73	27.15
03008	"	"	105.15	67.33	37.82
03201	"	"	93.80	71.63	22.17
03210	"	"	110.23	84.18	26.05
3291	"	"	106.69	81.47	25.22
02333	The Celotex Corp. Los Angeles	"	139.27	115.13	24.14
02420	"	"	155.25	128.34	26.91
02421	"	"	134.20	110.94	23.26
02508	"	"	138.85	114.78	24.07
02720	"	"	112.50	93.00	19.50
02738	"	"	115.48	95.46	20.02
02883	"	"	112.55	93.04	19.51
02937	"	"	115.88	95.79	20.09
03009	"	"	123.65	102.22	21.43
03054	"	"	112.59	93.07	19.52
03060	"	"	114.21	94.72	19.49
03036	The Flintkote Co. Los Angeles	"	116.98	96.70	20.28
02342	Morton Salt Co. Newark	United Grocers Fresno	82.94	78.13	4.81
02677	"	"	81.36	76.55	4.81
02903	"	"	69.26	64.45	4.81
03137	"	"	71.07	66.26	4.81
02343	"	Buy Rite Whole- sale Dist. Fresno	69.84	65.03	4.81
02449	"	Wellman Peck & Co. Fresno	75.45	70.64	4.81
03002	"	"	113.70	97.25	16.45