

Decision No. 54058**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
 own motion into the rates, opera-  
 tions, practices and methods of  
 A. D. RUTHERFORD.

Case No. 5701

William C. Bricca for the Commission's staff.

J. Lane Barbour for the Field Section of the  
 Commission.

Verne Summers for respondent.

O P I N I O N

This proceeding was instituted, upon the Commission's own motion, by the service of an order of investigation upon the respondent on December 20, 1955, to determine whether (1) respondent has violated Sections 3667, 3668, 3703, 3737 and 5003 of the Public Utilities Code; (2) respondent should be ordered to cease and desist from any or all unlawful operations and practices; (3) respondent's operating authority, or any part thereof, should be cancelled or suspended; and (4) to issue any other order or orders.

The order recites that respondent, holder of Radial Highway Common Carrier Permit No. 54-4109, during the year 1953 and thereafter, while acting in his capacity as a highway permit carrier: (a) may have charged, demanded, collected or received for the transportation of property rates or charges less than the

minimum rates applicable to such transportation established by this Commission, particularly by Minimum Rate Tariff No. 2 and Distance Table No. 4; (b) may have, by means of known false billing, weight, weighing or report of weight, assisted or permitted certain corporations or persons to have obtained transportation for property between points within this State at rates less than those established by the Commission, particularly by Minimum Rate Tariff No. 2 and Distance Table No. 4; (c) failed to keep accounts, records and memoranda pertaining to the movement of traffic and receipt or expenditure of money in the form prescribed by the Commission in the Uniform System of Accounts for Class III carriers; (d) after service on him by the Commission of Minimum Rate Tariff No. 2 may have failed to issue shipping documents in compliance with Item 255 Series of Minimum Rate Tariff No. 2; and (e) may have failed to file with the Commission a true statement showing the gross operating revenue derived from the transportation of property between points within this State for the second quarter of 1954, and to pay to the Commission a fee of one-fourth of one percent of the correct amount of such gross operating revenue.

A public hearing was held in Bishop, California, on August 1, 1956, before Examiner Kent C. Rogers, and the matter was argued and submitted subject to the filing by respondent, within ten days, of a motion to reopen the matter. Such a motion was not filed. The respondent presented no evidence at the hearing. The respondent having presented no proof to the contrary, we will take judicial notice that the records of this Commission show that Highway Carriers' Tariff No. 2 (now Minimum Rate Tariff No. 2) and

amendments and supplements thereto, Distance Table No. 4 and amendments thereto, and the Uniform System of Accounts for Class III motor carriers of persons and property were served on respondent A. D. Rutherford in conformance with Section 3737 of the Public Utilities Code of California.

Exhibits Nos. 1 through 10 consist, in each instance, of either a freight bill and a bill of lading or a freight bill and a weight certificate. The respondent stipulated that he had received payment for the carriage of each of the shipments represented by the said exhibits (Exhibit No. 14).

Exhibits Nos. 1, 2, 5 and 6 show that respondent failed to insert required data in his freight bills (Item 255 Series, Minimum Rate Tariff No. 2). In Exhibits Nos. 1, 5 and 6 no points of origin or destination are shown, and in Exhibit No. 2 the points of origin and destination are reversed. Exhibits Nos. 11a, 11b, 11c, 12 and 13 are public weighmaster weight certificates reflecting shipments handled by respondent. Concerning Exhibits Nos. 11a, 11b and 11c, a member of the Commission staff testified he checked respondent's freight bills and found no freight bills covering the shipments. Respondent informed the witness that the amounts of the freight charges were deducted from the amount respondent owed the shipper for a commodity. Concerning the shipments reflected by Exhibits Nos. 12 and 13, the exhibits reflect that respondent drove the truck transporting the shipments which were carried from Los Angeles to Bishop and Lone Pine, respectively. It is apparent, and we find, that respondent transported the shipments reflected by the above-referred to exhibits for compensation, and it appears, and we

find, that he issued no shipping documents therefor, as required by Item 255 Series of Minimum Rate Tariff No. 2. We find and conclude that the foregoing omissions constitute violations by respondent of Section 3737 of the Public Utilities Code.

Exhibits Nos. 1, 2, 4, 5, 7, 8 and 10, in each instance, consist of a bill of lading of the Lloyd A. Fry Roofing Company in Compton, California, and one of respondent's freight bills. Exhibits Nos. 6 and 9 each consist of a public weighmaster weight certificate and one of respondent's freight bills. All of the shipments were transported for the Copeland Lumber Company. In each of Exhibits Nos. 1, 2, 4, 5, 7, 8 and 10 the weight reflected on the freight bill is approximately one-half of the weight reflected on the bill of lading, and in several instances it is exactly one-half the weight shown on the bill of lading. In Exhibits Nos. 6 and 9 the weights on the freight bills are exactly one-half the weight shown on the weight certificate. A staff witness testified, concerning Exhibits Nos. 1, 2, 4, 5, 7, 8 and 10, that he examined all of respondent's freight bills for the period from November 1953 to January 1954, both months inclusive, and all of the Lloyd A. Fry Roofing Company's bills of lading for the same period, and that the two items comprising each of the listed exhibits were the only freight bills and bills of lading that matched as to the commodities, drivers, dates, and destinations. Concerning Exhibit No. 6, the weight certificate number is shown on the freight bill, the date, destination, and origin, and the driver are the same on each document. Concerning Exhibit No. 9, the date, commodity, origin and destination, and driver are the same on each document. It is

a reasonable inference, in the absence of explanation by the respondent, and we find, that the weight of each shipment reflected by the above-referred to exhibits was approximately double the weight for the transportation of which respondent charged the Copeland Lumber Company, the company for which the transportation was performed, and it is a reasonable inference, from the fact that respondent failed to explain the discrepancy, and we find, that respondent knew of the incorrect weight. The Commission finds and concludes that in each of the instances referred to above there was a violation by respondent of Section 3668 of the Public Utilities Code.

Exhibit No. 15 is a document prepared by a Public Utilities Commission rate expert, and refers to fourteen separate shipments. The attorney for the respondent stipulated that if the staff rate expert were to testify he would testify in substance the same as set forth in Exhibit No. 15. Ten of the shipments reflected in Exhibit No. 15 are the ten shipments reflected in Exhibits Nos. 1 to 10 herein, concerning which, with the exception of the Exhibit No. 3 shipment, we have heretofore found that the respondent knowingly set forth false weights in his freight bills in violation of Section 3668 of the Public Utilities Code. We will take judicial notice of the appropriate minimum rates, weights, classifications, and mileages, as shown in Minimum Rate Tariff No. 2, Western Classification No. 75, Cal. P.U.C. W.C. No. 8 of George Dumas, Agent, and Distance Table No. 4. Upon the evidence of record and the matters of which we take judicial notice as heretofore stated, it appears, and we find, that respondent has collected

and received for the transportation of the shipments set forth in Exhibit No. 15 (except the shipment reflected on page 3), rates or charges less than the minimum rates or charges applicable to such transportation, in violation of Section 3667 of the Public Utilities Code.

The respondent stipulated that as of May 12, 1954, his books of account were not being kept in the manner and form required in the appropriate Uniform System of Accounts for Motor Carriers as prescribed by this Commission. A staff witness stated that about the only thing respondent's books showed was the quarterly revenue. The witness testified further that he had pointed out to respondent the deficiencies in his books on four separate occasions between May 12, 1954 and January 1955. The report of respondent's quarterly revenue is not in conformance with the Uniform System of Accounts of either Class I, II or III motor carriers, as prescribed by this Commission. The Commission has the authority to prescribe the form of accounts (Section 3703 of the Public Utilities Code) and in the absence of evidence to the contrary is presumed to have served a copy thereof on the respondent. The Commission finds and concludes that respondent has failed to comply with the appropriate Uniform System of Accounts, as prescribed by this Commission, in violation of Section 3737 of the Public Utilities Code.

Respondent is also charged with failing to file a true statement of gross operating revenue for the second quarter of 1954, and of failing to pay the correct fee thereon, in violation of Section 5003 of the Public Utilities Code. There is nothing

in the record herein to show the amount due under Section 5003, or the amount paid, if any, pursuant to that section. Inasmuch as it is possible that the respondent paid the correct fee required by Section 5003, regardless of the fact that the record shows conclusively that respondent has, in several instances, charged and collected less than the minimum rates prescribed by this Commission, the charge of violation of Section 5003 of the Public Utilities Code will be dismissed.

From the record herein it is clear that respondent wilfully violated the law by means of known false billing. It also appears probable that the shipper Copeland Lumber Company or J. W. Copeland knew that the respondent was violating the law by means of false billing. The remaining charges we have herein found to be true are less flagrant, but are nevertheless violations of the law.

Respondent will be ordered to collect forthwith all undercharges resulting from the transportation of property for compensation pursuant to authority from this Commission, to henceforth issue shipping documents in compliance with Item 255 Series of Minimum Rate Tariff No. 2, and to henceforth keep his accounts in conformance with the appropriate system of accounts for motor carriers of property as prescribed by this Commission. In addition, respondent's operating authority will be suspended for a period of thirty days.

O R D E R

A 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 A. D. Rutherford is directed, within twenty days after the effective date of this order:

- (a) To institute and diligently prosecute proceedings to collect the amounts indicated upon Appendix A attached hereto from J. W. Copeland and/or Copeland Lumber Company.
- (b) To notify the Commission in writing upon the consummation of said collections.

(2) That in the event the charges to be collected, as provided in paragraph (1) of this order, or any part thereof, remain uncollected sixty days after the effective date of this order, A. D. Rutherford shall submit to the Commission, on Monday of each week, a report specifying the action taken to collect said charges and the results of said action, until said charges have been paid in full or until further order of this Commission.

(3) That A. D. Rutherford shall henceforth issue all shipping documents in strict compliance with Item 255 Series of Minimum Rate Tariff No. 2.

(4) That A. D. Rutherford shall forthwith prepare and hereafter maintain a set of books and records in strict conformity with the appropriate Uniform System of Accounts for Motor Carriers of Property as prescribed by this Commission, and shall at all times keep said books and records available for inspection by a qualified officer or employee of this Commission.



(5) That Radial Highway Common Carrier Permit No. 54-4109, held by A. D. Rutherford, and all amendments thereto, be, and they hereby are, suspended for a period of thirty consecutive days commencing with the effective date of this order.

(6) The secretary is hereby directed to cause personal service of a certified copy of this decision to be made upon A. D. Rutherford, and this decision shall become effective on the 20th day after the date of such service.

Dated at San Francisco, California, this 5<sup>th</sup> day of NOVEMBER, 1956.

[Signature]  
President

[Signature]

[Signature]

[Signature]

Commissioners

Commissioner L. J. Fox did not participate in the disposition of this proceeding.

APPENDIX A

<u>Freight Bill No.</u>	<u>Correct Charge</u>	<u>Amount Collected</u>	<u>Amount to be Collected</u>
08110	\$ 90.00	\$ 61.25	\$ 28.75
08111	80.00	28.00	52.00
08059	40.00	16.00	24.00
08140	47.20	15.00	32.20
08139	72.00	30.97	41.03
08162	110.14	70.60	39.54
08164	80.75	37.70	43.05
08172	74.25	36.00	38.25
08185	72.00	32.55	39.45
08306	24.53	12.75	11.78
08264	124.00	72.48	51.52
08281	81.00	45.00	36.00
08285	18.06	10.50	<u>7.56</u>
Total to be Collected			\$ 445.13