

Decision No. 54927**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,)
 rates and practices of Louie Tomasetti)
 and Josephino Minnix, dba TOMASETTI)
 and MATTOS, and LOUIE TOMASETTI, as)
 an individual.)

Case No. 5842

Robert S. Crossland, for respondents.
William C. Bricca and Art Lyons, for
 the Commission staff.

O P I N I O N

On October 30, 1956, the Commission issued its order instituting an investigation into the operations, rates and practices of Louie Tomasetti and Josephino Minnix, doing business as Tomasetti and Mattos, and Louie Tomasetti, as an individual. The purpose of the investigation was to determine whether, during certain periods of time, respondents violated various sections of the Public Utilities Code by charging less than the applicable minimum rates for the transportation of property and whether respondents failed to execute, obtain and maintain certain required documents and records. The periods of time included within the order of investigation were the periods between April 1, 1955 and December 31, 1955, and between April 1, 1956 and June 1, 1956. During these periods of time and at the time of the issuance of the order instituting investigation, respondents hold a valid permit as a radial highway common carrier issued by the Commission.

A public hearing was held on January 22, 1957, at Fresno before Examiner William L. Cole at which time the matter was submitted.

The following sections of the Public Utilities Code are the sections pertinent to the matters involved in this investigation:

"3664. It is unlawful for any highway permit carrier to charge or collect any lesser rate than the minimum rate or greater rate than the maximum rate established by the Commission under this article."

"3665. The Commission shall make such rules as are necessary to the application and enforcement of the rates established or approved pursuant to this chapter."

"3703. The Commission may prescribe the forms of any accounts, records, and memoranda, including those pertaining to the movement of traffic and the receipt or expenditure of money, to be kept by highway permit carriers, and the length of time the accounts, records, and memoranda shall be preserved."

"3774. The Commission may cancel, revoke, or suspend the operating permit or permits of any highway carrier upon any of the following grounds:

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- (b) The violation of any of the provisions of this chapter, or of any operating permit issued thereunder.
 - (c) The violation of any order, decision, rule, regulation, direction, demand, or requirement established by the Commission pursuant to this chapter.

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At the time of the hearing, a member of the Commission's field section and a rate expert from the Commission's rate section testified on behalf of the Commission staff. Respondent Tomasetti testified on behalf of the respondents. Various exhibits were introduced into evidence. Included in these exhibits was one entitled "Summary of Certain Shipping Data Contained in Records of Tomasetti and Mattos together with Opinion as to the applicable minimum rate for shipment reflected by such data." This exhibit summarized certain factual data and contained the opinion of the

rate expert as to the proper minimum rates for the various shipments indicated therein based upon such factual data. During the hearing, counsel for the Commission staff and counsel for the respondents entered into a stipulation that the factual material contained in this exhibit, excluding rates, is true and correct.

It is apparent from the evidence introduced and the facts stipulated to, that various types of violations of the Commission's Minimum Rate Tariff No. 3 (dealing with livestock) and the Commission's Minimum Rate Tariff No. 2 (dealing with general commodities) occurred during the periods indicated in the order instituting investigation.

For the purposes of this decision, it appears convenient to group the various shipments involved by the type of violation shown.

Use of Incorrect Rates, Minimum Rate Tariff No. 3

One type of violation shown involves the use of a rate lower than the applicable minimum rate contained in the Commission's Minimum Rate Tariff No. 3. Item 170-H of this tariff sets forth the applicable minimum rates to be used in assessing charges for the transportation of certain types of livestock. These rates vary depending upon the distance traveled and the type and weight of the livestock shipped. The rates are given in cents per hundred pounds. This applicable rate when applied to the weight (actual or otherwise) of the livestock shipped produces the applicable minimum charge for the transportation.

With respect to certain shipments of livestock, the evidence shows that respondents in calculating the charges for the transportation, while using the correct weights, applied an incorrect

rate which resulted in an incorrect charge being assessed to the shipper. The relevant facts, which the Commission hereby finds, together with its conclusions concerning the charges for the shipments in question are set forth in the following table:

Frt. Bill No.	Date	Point of Origin	Point of Destination	Rate Used by Respondents	Applicable Min. Rate	Amt. of Undercharge
584	8-10-55	17 mi. N.W. Kerman	16 mi. S.E. Kerman	11.5	12.5	\$ 3.00
866	10-10-55	3 mi. S.W. Avonal	10 mi. N. Helm	24	25	5.00
639	11-6-55	5 mi. S. Devils Den	16 mi. N. Kerman	31.5	32.5	2.50
141	8-6-55	4 mi. S. Raisin City	So. San Francisco	49	54	12.50

All of the shipments concerned involved the type of livestock for which Item 170-H is applicable.

Based upon the foregoing facts, the Commission finds that, with respect to the shipments of livestock indicated by freight bills numbered 584, 866, 639 and 141, respondents did charge lesser rates than the minimum rates established by the Commission in violation of Section 3664 of the Public Utilities Code and that such violations resulted in a total undercharge of \$23.00.

Use of Incorrect Rates, Minimum Rate Tariff No. 2

Another type of violation shown involves the use of a rate lower than the applicable minimum rates set out in the Commission's Minimum Rate Tariff No. 2 for the transportation of wool and alfalfa hay. The applicable minimum rates for wool and alfalfa hay are contained in Sections 2 and 3, respectively, of

that tariff. The rates as set forth in these sections vary depending upon the distance involved and the type and weight of the commodity shipped. The applicable rate when applied to the weight (actual or otherwise) of the commodity shipped produces the applicable minimum charge for the transportation.

With respect to the shipments of wool and alfalfa hay in question, the evidence shows that respondents in calculating the charges for the transportation, again while using the correct weights, applied an incorrect rate which resulted in an incorrect charge being assessed to the shipper. The relevant facts, which the Commission hereby finds, together with its conclusions concerning the charges for the shipments in question are set forth in the following table:

<u>Frt. Bill No.</u>	<u>Date</u>	<u>Type of Commodity</u>	<u>Point of Origin</u>	<u>Point of Destination</u>	<u>Rate* Used by Respondent</u>	<u>Applicable Min. Rate**</u>	<u>Amt. of Undercharge</u>
531	4-11-55	Wool	25 mi. S.W. Kock's Corners	San Francisco	50	63	43.39
81	4-14-55	Wool	4 mi. S. Coalinga	Berkeley	40	56	61.23
13	4-1-55	Wool	5 mi. S. Lost Hills	San Francisco	50	(20** (37	36.40
2828	6-12-55	Alfalfa Hay	Caruthers	Artesia	40	42	9.12
2859	6-20-55	Alfalfa Hay	Caruthers	Artesia	40	42	8.73
2862	6-28-55	Alfalfa Hay	Caruthers	Artesia	40	42	7.67

*Rates in cents per hundred pounds.

**The application of two rates for this shipment results from the fact that the point of destination is located on a rail spur. The lowest charge for the transportation of this shipment results from applying the off-rail rate from point of origin to the nearest team track and using the rail rate from that team track to the point of destination.

Based upon the foregoing facts, the Commission finds that, with respect to the shipments of wool and alfalfa hay indicated by freight bills numbered 531, 81, 13, 2828, 2859 and 2862, respondents did charge lesser rates than the minimum rates established by the Commission in violation of Section 3664 of the Public Utilities Code and that such violations resulted in a total undercharge of \$166.54.

Use of Incorrect Weights, Minimum Rate Tariff No. 3

As indicated previously, the final charges assessed to the shipper for the transportation of the various types of commodities in question depend upon the weight of the individual shipment as well as upon the proper rate. In the violations previously discussed, respondents, while using incorrect rates, had applied the correct weights. Another type of violation shown by the evidence involves the use of incorrect weights which resulted in lower than minimum charges being assessed even though the rates used were equal to or greater than the applicable minimum rates. The evidence shows that all of the shipments involved in this type of violation were shipments of livestock.

Item 123-A of the Commission's Minimum Rate Tariff No. 3 provides as follows:

"Charges shall be assessed on the gross weight of the shipment evidenced by a certified weighmaster's certificate which shall be attached to the carrier's shipping document and made part of the carrier's permanent records. (Subject to Note No. 1 and Note No. 2.)

*NOTE NO. 1 - On shipments transported other than to or from packing houses, slaughter houses, feed lots and auction yards, when actual gross weight is not obtained and is not evidenced by certified weighmaster's certificate, charges for shipments of cattle, hogs or #sheep shall be based upon the minimum weights specified in Item No. 65.

*NOTE NO. 2 -- On shipments received at points of origin where the livestock to be transported has been sold at auction, and on shipments consigned to points of destination where such livestock is to be sold at auction, when actual gross weight is not obtained and is not evidenced by certified weighmaster's certificate, charges for shipments shall be based upon the following weights per animal:

<u>Type of Animal</u>	<u>Pounds Per Head</u>
Cattle, Bulls, Steers, Oxen, Cows -----	900
Calves -----	300
Hogs, Pigs -----	200
Sows, Swine -----	350
Stags -----	450
Sheep, other than Ewes or Bucks -----	85
Ewes or Bucks -----	120
Kids, Lambs -----	85
Goats -----	120

*Change)
#Addition) Decision No. 51342

With respect to a shipment by respondents of livestock indicated by freight bill number 16, dated April 6, 1955, the evidence shows that a certified weighmaster's certificate was obtained, that this weighmaster's certificate showed the weight of the livestock shipped to be 30,810 pounds, and that respondents assessed their charge on the basis of a weight of 29,800 pounds. As can be seen, Item 123-A requires that when a certified weighmaster's certificate is obtained, the weight shown thereon is the weight that must be used in assessing the transportation charge. The use of the incorrect weight in assessing the charge for this shipment resulted in an undercharge of \$5.45.

With respect to two shipments of livestock indicated by freight bill number 588, dated August 17, 1955, and freight bill number 172, dated August 5, 1955, the evidence shows that 55 head of cattle were transported in each shipment and that a certified weighmaster's certificate was not obtained for either shipment.

The evidence further shows that, in both shipments, the point of origin was an auction yard. From this last fact an inference can be drawn that the livestock transported in each shipment had been sold at auction. The evidence also showed that respondents, in the case of each shipment, applied a weight 30,000 pounds (the minimum weight provided in Item 65 of Tariff No. 3) in calculating the charges to be assessed for the transportation. Pursuant to the provisions of Note No. 2 of Item 123-A, quoted above, however, an estimated weight of 49,500 pounds should have been applied with respect to each shipment in the calculation of the proper charge for the transportation. The evidence shows that respondents in the case of both shipments applied a rate (19 cents per hundred pounds) greater than the applicable minimum rate (16.5 cents per hundred pounds). Notwithstanding this fact, however, the over-all charge by respondents for each shipment was less than the allowable minimum charge because of the fact that the incorrect weights were used. A total undercharge of \$49.36 resulted because of the use of the incorrect weights on these two shipments.

The evidence shows that the same type of violation occurred with respect to the shipment of livestock indicated by freight bill number 107, dated May 5, 1955. Item 123-A, quoted above, was not in effect on the date of this shipment. However, Item 123 was in effect on that date. Note No. 2 of Item 123 provides:

"NOTE NO. 2 - On shipments to or from auction yards when actual gross weight is not obtained and is not evidenced by certified weighmaster's certificate, charges for shipments shall be based upon the following weights per animal:

<u>Type of Animal</u>	<u>Pounds Per Head</u>
Cattle, Bulls, Steers, Oxen, Cows -----	900
Calves -----	300
Hogs, Pigs -----	200
Sows, Swine -----	350
Stag -----	450
Sheep, other than Ewes or Bucks -----	85
Ewes or Bucks -----	120
Kids, Lambs -----	85
Goats -----	120

The evidence shows that the shipment in question was to or from an auction yard; that no certified weighmaster's certificate was obtained; that a weight of 30,000 pounds was used by respondents in calculating the charges for the transportation; and that 5 cows, 42 heifers, and 2 calves were transported in the shipment. Based upon these facts and in view of the provisions of Note No. 2 of Item No. 123, respondents should have applied an estimated weight of 42,900 pounds in calculating the charges for this transportation. The use of the incorrect weight resulted in an undercharge of \$27.09.

In view of the foregoing facts, the Commission finds that, with respect to the shipments of livestock indicated by freight bills numbered 16, 588, 172 and 107, respondents, by the use of improper weights, did charge a lesser rate than the minimum rate established by the Commission in violation of Section 3664 of the Public Utilities Code resulting in a total undercharge of \$81.90.

Shipments Requiring Weighmaster's Certificates,
Minimum Rate Tariff No. 3

Another type of violation shown by the evidence involves the fact that certified weighmaster's certificates were not obtained for certain shipments of livestock by respondents. The Commission

has previously determined that Item 123-A of its Minimum Rate Tariff No. 3 requires that a certified weighmaster's certificate must be obtained for all shipments of livestock to or from packing houses, slaughter houses or feed lots.¹ The evidence introduced shows that the shipment of livestock evidenced by freight bill number 490, dated June 13, 1956, was to a slaughter house and that a certified weighmaster's certificate was not obtained. With respect to this shipment, therefore, the Commission finds that respondents, by not obtaining a certified weighmaster's certificate, failed to observe and comply with the requirements of Item No. 123-A of Minimum Rate Tariff No. 3.

At the time of the hearing, the testimony of one of the witnesses suggested that a similar violation occurred with respect to the shipment of livestock indicated by freight bill number 250, dated April 25, 1956. However, there is no evidence in the record indicating that this shipment was to or from a packing house, slaughter house or feed lot.

Showing Points of Origin or Destination on Freight Bills

The evidence indicates that respondents violated Item 125 of Minimum Rate Tariff No. 3 in that they did not put the correct points of origin or points of destination on the freight bills issued for certain shipments of livestock. Item 125 provides that a bill for freight charges shall be issued by the carrier to the shipper for each shipment received for transportation. This item requires that such a freight bill shall show among other items the point of origin and the point of destination. The evidence shows that the points of destination shown on freight bills 81 and 531 were not the actual points of destination of the shipments involved.

¹ In re Sanzberro, Decision No. 54794, Case No. 5770, Dated April 2, 1957.

Therefore, the Commission finds that respondents by failing to indicate the correct points of destination on freight bills numbered 81 and 531 failed to observe and comply with the requirements of Item 125 of Minimum Rate Tariff No. 3.

With respect to this type of violation, the evidence indicates that respondent Tomasetti had been warned once before by the Commission staff that he was not showing the points of origin and destination specifically enough on his freight bills.

Showing Necessary Information on Freight Bill

The evidence indicates that respondents also violated Item 125 of Minimum Rate Tariff No. 3 in that they did not show all of the information on certain freight bills that is necessary to an accurate determination of the applicable minimum rate and charge. This item provides that freight bills shall show "Such other information as may be necessary to an accurate determination of the applicable minimum rate and charge." With respect to the shipment of livestock indicated by Freight Bill No. 151, dated May 12, 1955, the evidence shows that no certified weighmaster's certificate was obtained and that the shipment was to or from an auction yard. From this last fact it can be inferred that the livestock had been sold at auction or were going to be sold at auction. The freight bill indicates that one load of mixed cattle were transported and that a weight of 30,000 pounds was used in assessing the transportation charge. Inasmuch as no certified weighmaster's certificate was obtained Item 123-A requires that estimated weights must be used in calculating the proper charge. However, in order to determine the correct estimated weights, the number of head of cattle must be known. This fact was not shown

on the freight bill. Therefore, the Commission finds that respondents by failing to show the number of head of cattle on freight bill numbered 151, failed to observe and comply with the requirements of Item 125 of Minimum Rate Tariff No. 3.

The evidence also shows that respondents did not indicate the type of movement on the freight bills for certain of the shipments of livestock previously referred to or that they indicated incorrect types of movement. It has been previously determined by this Commission that Minimum Rate Tariff No. 3 does not require that the type of movement be shown on the freight bill.² Therefore, there have been no violations in this regard.

Conclusion

The evidence shows that respondents were served with the applicable minimum rate tariffs of the Commission covering the transportation of livestock and general commodities by radial highway common carriers. As indicated above, the evidence indicates, and the Commission has found, numerous violations of Minimum Rate Tariffs Nos. 2 and 3. The evidence also shows that these violations resulted in undercharges totalling \$271.44 where such undercharges could be determined.

All of the facts and circumstances of record have been considered. Respondents' operative rights will be suspended for five consecutive days and they will be directed to collect the undercharges hereinabove found.

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In re Sanzberro, Decision No. 54794, Case No. 5770, dated April 2, 1957.

O R D E R

A public hearing having been held in the above-entitled matter and the Commission being fully informed therein, now therefore,

IT IS ORDERED:

1. That Radial Highway Common Carrier Permit No. 10-5912 issued to Louie Tomasetti and Josephine Minnix, doing business as Tomasetti and Mattos, be and it hereby is suspended for five consecutive days starting at 12:01 a.m. on the first Monday following the effective date hereof.

2. That Louie Tomasetti and Josephine Minnix shall post at their terminal and station facilities used for receiving property from the public for transportation, not less than five days prior to the beginning of the suspension period, a notice to the public stating that their radial highway common carrier permit has been suspended by the Commission for a period of five days.

3. That Louie Tomasetti and Josephine Minnix are hereby directed to take such action as may be necessary to collect the amounts of undercharges set forth in the preceding opinion and to notify the Commission in writing upon the consummation of such collections.

4. That in the event charges to be collected as provided in paragraph 3 of this order, or any part thereof, remain uncollected eighty days after the effective date of this order, Louie Tomasetti and Josephine Minnix shall submit to the Commission, on Monday of each week, a report specifying the action taken to collect such charges and the result of such action, until such charges have been paid in full or until further order of the Commission.

5. That the Secretary of the Commission is directed to cause personal service of this order upon Louie Tomasetti and Josephine Minnix and this order shall be effective twenty days after the completion of such service.

Dated at Los Angeles, California, this 30th day of April, 1957.

[Signature]
President

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Commissioners