

Decision No. 55029

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, and practices of AL VAN
FOEKEN.

Case No. 5894

Albert Van Foeken, in propria persona.

Hector Anninos, for the Commission staff.

O P I N I O N

This proceeding was instituted upon the Commission's own motion by the service of an order instituting investigation upon the respondent, Albert Van Foeken, on February 8, 1957, to determine (1) whether respondent has acted in violation of the Public Utilities Code by charging, demanding, collecting, or receiving a lesser compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 2; (2) whether respondent has acted in violation of the Public Utilities Code by failing to adhere to Item 250-A of Minimum Rate Tariff No. 2 in neglecting to collect freight charges within the period of time set forth therein; (3) whether respondent has acted in violation of the Public Utilities Code by failing to adhere to Item 255-C of Minimum Rate Tariff No. 2 in failing to issue to the shipper a shipping document bearing the prescribed information; and (4) whether any order or orders that may be appropriate should be issued in the lawful exercise of the Commission's jurisdiction.

A public hearing was held in Los Angeles on April 18, 1957, before Examiner Kent C. Rogers. Oral and documentary evidence having

been adduced and the matter having been submitted for decision, the Commission makes the following findings of fact and conclusions of law:

That respondent, Albert Van Foeken, at all times mentioned herein was the holder of Radial Highway Common Carrier Permit No. 19-33607 issued by this Commission on January 20, 1948; that said permit was suspended for one year by the Commission on December 31, 1956, at the request of respondent; that respondent has been served with a copy of Minimum Rate Tariff No. 2 (formerly Highway Carrier's Tariff No. 2), Distance Table No. 3, Distance Table No. 4 and pertinent amendments and supplements thereto, and at all times hereinafter set forth knew or should have known the contents of said tariffs and distance tables; that respondent transported ten shipments of hay bales from seven consignors to ten consignees for one shipper, Woodruff Hay Company, in Bellflower, California; that all of said shipments originated in the North Kern Territory (McFarland, Wasco or Bakersfield); that in each instance the freight charges were paid by the Woodruff Hay Company, but the shipments were delivered to various consignees in the Los Angeles-Hynes Territory; that the ten shipments are reflected on respondent's freight bills numbers 05030, 05032, 05033, 05034, 05035, 05036, 05037, 05040, 05042 and 05043 (Exhibits 2 through 11); that respondent prepares only one of each freight bill which he keeps; that the freight bills contain no description of the commodity which was baled hay in each instance; that after each of the shipments was picked up it was weighed and a public weighmaster's certificate received by respondent; that each such certificate shows only the date the shipment was weighed, the weight of the shipment, the signature of the weighmaster and his official seal; that each shipment was delivered to Woodruff Hay

Company's designated point of delivery in the Los Angeles-Hynes Territory on the date of the freight bill or the following day; that on the date of the delivery the Woodruff Hay Company was given the weighmaster's certificate and no other document; that no copy of the freight bill or any other document with reference to any of said shipments, other than the weighmaster's certificate, was ever given by respondent to the Woodruff Hay Company or to the consignees; that for shipments delivered on August 2, August 7, and August 9, 1956, the Woodruff Hay Company paid the freight charges to respondent on August 18, 1956; that for shipments delivered on August 16, August 18, August 23 and August 28, 1956, the Woodruff Hay Company paid the respondent on September 5, 1956; and that the only records of the herein referred to operations which respondent keeps, other than his copies of the freight bills, are his monthly bank statements showing the deposit of checks from the Woodruff Hay Company.

The evidence further shows that respondent undercharged for the transportation services shown in the following numbered freight bills (Exhibits 2 through 11) amounts as follows:

<u>Date</u>	<u>Freight Bill No.</u>	<u>Amt. Charged and Collected by respondent</u>	<u>Correct Total Charges as per MRT #2, Item 658-H, and Supplement 30 thereto</u>	<u>Amount Under-charged</u>
8- 2-56	05030	\$ 136.18	\$ 161.40	\$ 25.22
8- 7-56	05032	119.99	142.21	22.22
8- 9-56	05033	144.76	171.56	26.80
8-11-56	05034	126.43	149.84	23.41
8-14-56	05035	150.35	178.20	27.85
8-16-56	05036	132.73	157.31	24.58
8-18-56	05037	120.45	142.76	22.31
8-23-56	05040	113.56	138.67	25.11
8-28-56	05042	146.77	173.96	27.19
8-30-56	05043	150.28	178.11	27.83

The record further shows that between July 1, 1956, and August 31, 1956, the respondent carried sixteen shipments of baled hay for Woodruff Hay Company in addition to the ten shipments specifically referred to herein, and that each such shipment showed some practices similar to those discussed herein, including undercharges and failures to comply with the provisions of Item 250-A and Item 255-C of Minimum Rate Tariff No. 2.

The Commission having considered the evidence of record and having found facts as hereinabove set forth, concludes that Albert Van Foeken has violated the provisions of Minimum Rate Tariff No. 2, particularly Item 250-A, and Section 3737 of the Public Utilities Code, in that he failed to present freight bills to the shipper within seven calendar days from the first 12 o'clock midnight following delivery of the freight, excluding Sundays and holidays; in that he received a lesser compensation for the transportation of freight than the applicable charges prescribed in Minimum Rate Tariff No. 2, in violation of Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code; in that he failed to issue shipping documents containing the information required by Item 255-C of Minimum Rate Tariff No. 2, in violation of Section 3737 of the Public Utilities Code; and in that he failed to keep adequate records as required by the appropriate Uniform System of Accounts for Motor Carriers as prescribed by this Commission, in violation of Sections 3703 and 3704 of the Public Utilities Code.

O R D E R

A public hearing having been held in the above-entitled matter, the Commission being fully advised in the premises and having made the findings and conclusions as set forth above,

IT IS ORDERED:

(1) That Radial Highway Common Carrier Permit No. 19-33607, issued to Albert Van Foeken, which now is suspended, shall remain suspended unless and until, upon further order of this Commission, the suspension be set aside and respondent's permit restored upon a satisfactory showing made to this Commission in writing that respondent, Albert Van Foeken, has: (a) collected or has taken appropriate action or measures to collect all undercharges as hereinbefore set forth, (b) commenced an audit of his transportation operations for a period of three years prior to the effective date of this order, and, within thirty days after the completion of said audit but not later than ninety days after the effective date of this order, has collected or has taken appropriate steps to collect all undercharges arising out of his said transportation operations during said three-year period.

(2) That respondent, Albert Van Foeken, shall henceforth issue shipping documents in strict conformance with Item 255 Series of Minimum Rate Tariff No. 2.

(3) That respondent, Albert Van Foeken, shall henceforth comply with the provisions of Item 250 Series of Minimum Rate Tariff No. 2.

(4) That within sixty days after the effective date of this order, respondent, Albert Van Foeken, shall have prepared and thereafter keep in proper form a set of accounts in conformance with the appropriate Uniform System of Accounts for Motor Carriers as prescribed by this Commission.

(5) That upon Albert Van Foeken's failure to have his Permit No. 19-33607 restored in the manner set forth in paragraph (1) hereof within ninety days after the effective date of this order, said permit is hereby revoked and canceled effective ninety-one days after the effective date of this order.

The Secretary is ordered to cause service of this order to be made upon respondent, Albert Van Foeken.

The effective date of this order shall be twenty days after service on respondent.

Dated at San Francisco, California,
this 21st day of May, 1957.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners