

Decision No. 55147**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 JOHN DOMPELING, doing  
 business as JOHN DOMPELING TRUCKING  
 COMPANY. )

Case No. 5877

John Dompeling, in propria persona.  
William C. Sricca and Art Lyons, for  
the Commission staff.

O P I N I O N

On January 15, 1957, the Commission issued its order instituting an investigation into the operations, rates and practices of John Dompeling, doing business as John Dompeling Trucking Company. The purpose of the investigation was to determine whether respondent violated various sections of the Public Utilities Code by charging, demanding, collecting, or receiving a lesser compensation for the transportation of livestock than the applicable charges prescribed in the Commission's Minimum Rate Tariff No. 3 (concerning livestock) and whether respondent has acted in violation of the Public Utilities Code by failing to adhere to other provisions and requirements of that tariff.

A public hearing was held on February 18, 1957 and February 19, 1957, at Turlock before Examiner William L. Cole. The matter was submitted on February 19, 1957.

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."

"3668. No highway permit carrier, or any officer, or agent thereof, or any person acting or employed by it, shall, by means of known false billing, classification, weight, weighing or report of weight, or by any other device, assist, suffer, or permit any corporation or person to obtain transportation for any property between points within this State at rates less than the minimum rates or more than the maximum rates then established or approved by the Commission."

"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:

- (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."

At the time of the hearing, two members of the Commission field section and a rate expert from the Commission rate section testified on behalf of the Commission staff. Respondent Dompeling testified in his own behalf. Various exhibits were introduced into evidence. One of the field section witnesses testified that he examined the respondent's books for the period from January 1956 to September 1956. Most of the exhibits introduced into evidence were photostatic copies of various documents selected by the witness which evidenced certain shipments of livestock by the respondent during that period. The witness testified that these documents appeared to be a representative showing of the general rating practice of respondent.

The evidence indicated and we hereby find that respondent had been served with Minimum Rate Tariff No. 3. The evidence also

showed that this tariff had been in the possession of respondent's accountant.

Shipments Involved

The evidence shows, and the Commission hereby finds that the following shipments of livestock were made by respondent:

<u>Freight Bill Number</u>	<u>Date (1956)</u>	<u>Point of Origin</u>	<u>Point of Destination</u>	<u>No. of Head Cattle, Bulls, Steers, Oxen, Cows</u>	<u>Type of Movement</u>
685	1-28	4 mi. from Ceres	Bellflower	8	Auction*
589	2--6	2.4 miles north Ceres	Bellflower	11	Auction
698	2-14	1 mile from Modesto	Bellflower	5	Auction
940	5-19	Manteca and Turlock	Norwalk	23	Auction
821	4-11	Turlock	2 miles south of Artesia	5	Auction
833	5--1	2.4 miles north of Ceres	2 miles north of Artesia	7	Auction
None Issued	4--4	(1)	2 miles south of Artesia	9	Auction
936	5-15	Modesto	Bellflower	2	Auction
1028	5-17	2.4 miles north of Ceres	Bellflower	4	Auction
1034	5-22	Modesto	Bellflower	3	Auction
None Issued	5-11	(2)	(2)	4	(3)
946	5-22	Turlock	Whittier	9	Auction
1039	5-24	Turlock	Whittier	8	Auction
1005	5--5	Artesia	5.7 miles northeast of Denair	49	(4)
896	4--3	Artesia	Denair	48	Pasture***
902	4--9	Artesia	5.7 miles north of Denair	43	Pasture
None Issued	4--4	Artesia	5.7 miles north of Denair	-	Pasture
None Issued	4--6	Artesia	5.7 miles north of Denair	-	Pasture

(Explanation of symbols is on next page)

- \* To or from an auction.
- \*\* Pasture to pasture.
- (1) It could not be determined from the evidence what the precise point of origin of this shipment was.
- (2) It could not be determined from the evidence what the precise points of origin and destination of this shipment were.
- (3) It could not be determined from the evidence what the type of movement of this shipment was.
- (4) The evidence indicated that the type of movement of this shipment was either pasture-to-pasture or to or from an auction yard. A pasture-to-pasture movement would result in a lower minimum transportation charge.

The evidence indicates and the Commission hereby finds that no certified weighmaster's certificates were obtained for the shipments identified by freight bill numbered 902 and also the shipments set forth above made on April 4, 1956, and April 6, 1956 for which no freight bills were issued. With respect to the shipments identified by freight bills numbered 685, 698, 821, 833, 936, 1028, 1034, 946, and 1039, the evidence indicates that respondent used the estimated weights set forth in Note 2 of Item 123-A in calculating the transportation charges for those shipments. Inasmuch as Note 2 of Item 123-A provides that estimated weights can be used only when no certified weighmaster's certificate has been obtained and the type of movement is to or from an auction and in view of the presumption that the law has been obeyed, it is presumed and the Commission hereby finds that no certified weighmasters' certificates were obtained for these shipments. There is no evidence in the record to the contrary. With respect to the shipments identified by freight bills numbered 589, 1005, and 896, the evidence indicates that respondent used minimum weights in calculating the transportation charges for these shipments. Items 66 and 123-A of Tariff No. 3 provide that such weights may only be used either if no certified

weighmasters' certificates were obtained and the type of movement involved is pasture-to-pasture or if the use of the minimum weight results in a lower minimum charge than the use of lower actual weights. In view of the presumption that the law has been obeyed, it can be presumed and the Commission hereby finds that one of two facts exist, to wit, that no certified weighmaster's certificate was obtained for these shipments or that the use of the minimum weights in these shipments result in lower minimum charges than the use of lower actual or estimated weights. There is no evidence in the record that would contradict either of these facts.

The evidence also indicates, and the Commission hereby finds, with respect to the pasture-to-pasture shipments on April 4, 1956 and April 6, 1956 for which no freight bills were issued and on the shipment identified by freight bill No. 896, that bedding service was performed and that in each case the shipment involved a single deck truck and trailer.

#### Respondent's Records

The evidence shows that respondent issued freight bills for the majority of the shipments involved and that these freight bills set forth the weight of the shipment (estimated or minimum) upon which the transportation charge was assessed and the applicable rate together with the resultant charge. As will be shown below, the evidence indicated that the transportation charges shown on the freight bills corresponded closely with the correct minimum charge for the transportation involved.

The evidence also showed that for the majority of the shipments involved respondent issued other invoices covering the same shipments for which the freight bills were issued. These invoices would list together several shipments involving the same shipper, showing a charge for each shipment and then a total charge. In all but one instance, the charges shown on the invoices for a given shipment were somewhat lower than the charges shown on the freight bill for the same shipment. The evidence also indicated that with respect to some of these invoices, the charges shown thereon were calculated on the basis of the number of head of live-stock handled in the shipment.

The evidence also showed that included in his bookkeeping records, respondent kept a form of record entitled "Distribution of Income" where the respective transportation charges were set forth, which charges were those shown on the freight bills. Respondent also maintained a set of ledger sheets by individual shipper. These sheets showed the transportation charges owed and paid by the various shippers. The charges shown on these sheets, however, were the lower charges set forth on the invoices referred to hereinabove.

Collecting Less Than Applicable Minimum Charges

The evidence showed, and the Commission hereby finds, that respondent collected the charges shown on the invoices hereinabove referred to rather than the amounts shown on the freight bills. The relevant facts, which the Commission hereby finds, together with

its findings concerning the correct minimum charges for the shipments involved, are set forth in the following table:

<u>Freight Bill Number</u>	<u>Date (1956)</u>	<u>*Charges Shown on Respondent's Freight Bills</u>	<u>*Amounts Collected</u>	<u>*Correct Minimum Charge</u>	<u>Amount of Undercharge</u>
685	1-28	\$ 74.79	\$ 72	\$ 75.64	\$ 3.64
589	2--6	102.29	99	100.94	1.94
698	2-14	47.28	45	47.28	2.28
821	4-11	47.28	45	47.28	2.28
833	5--1	66.19	63	66.19	3.19
936	5-15	18.91	18	18.91	0.91
1028	5-17	37.82	36	37.82	1.82
1034	5-22	28.37	27	28.37	1.37
946	5-22	85.10	81	85.10	4.10
1039	5-24	85.10	72	75.64	3.64
1005	5--5	217.65	125	216.30**	91.30
896	4--3	217.69	125****	217.69	92.69
902	4--9	217.69	125****	216.30	91.30
None Issued	4--4	-	125****	217.69	92.69
None Issued	4--6	-	125****	217.69	92.69

\* Charges shown do not include transportation tax.

\*\* Charges for this shipment were calculated on the basis of a pasture-to-pasture movement.

\*\*\* The evidence shows that the type of invoice hereinabove referred to was not issued for these shipments. The charges collected, however, appeared on the shipper's individual ledger sheets.

It is to be noted that with respect to a large number of the shipments involved, the amount of the undercharge was relatively small. With respect to the shipments identified by freight bills numbered 1005, 896, and 902 and the shipments made on April 4, 1956 and April 6, 1956, the evidence showed that they were so-called "back hauls" where respondent had taken a shipment into an area and then took the respective shipment in question on the return trip.

The evidence showed that for such "back hauls" as those shown above, the respondent charged a flat rate for the transportation.

It should be pointed out also that the evidence showed that with respect to the shipment identified by freight bill No. 940, respondent collected an amount a great deal in excess of the charge shown on the freight bill.

In view of the evidence presented, however, the Commission finds and concludes that respondent violated Section 3664 of the Public Utilities Code with respect to the shipments set forth above in that he collected less than the minimum rates prescribed by the Commission for such transportation and that the amount of the undercharges were at least \$485.84. The evidence indicated that respondent's books of account were kept by his accountant and were not in his possession. In testifying in his own behalf, respondent did not explain why he charged a flat sum for "back hauls" or why different transportation charges for the same shipment were shown on different documents. He did state, however, that he never looked at his books. Notwithstanding these facts, the Commission must conclude from the evidence presented that respondent knew of and at the very least condoned the practices found herein.

Other Violations

The evidence showed and the Commission hereby finds, that no freight bills were issued for the five shipments set forth above, which shipments were made on April 4, 1956, April 6, 1956, and May 11, 1956. Item 125 of Tariff No. 3 requires such freight bills to be issued. This item provides:



"A bill for freight charges (either in individual or manifest form) shall be issued by the carrier to the shipper for each shipment received for transportation. The shipping document shall show the following information:

1. Name of shipper
2. Name of consignee
3. Point of origin
4. Point of destination
5. Description of the kind and number of head of livestock shipped
6. Weight of the shipment (or other factor or measurement upon which charges are based)
7. Rate and charge assessed
8. Such other information as may be necessary to an accurate determination of the applicable minimum rate and charge.

The form of freight bill in Item No. 230 will be suitable and proper.

A copy of each freight bill shall be retained and preserved by the issuing carrier, subject to the Commission's inspection, for a period of not less than three years from the date of its issuance.

Prior to or at the time each shipment is tendered to the carrier for transportation a shipping document shall be issued by the carrier and shall show the following information:

1. Name of shipper
2. Name of consignee
3. Point of origin
4. Point of destination
5. Description of the kind and number of head of livestock shipped
6. The terms of the contract of carriage which shall include:
  - a. Unless caused by the negligence of the carrier or its employees, no carrier shall be liable for or on account of any injury or death sustained by such livestock occasioned by an act of God, the public enemy, quarantine, the authority of law, the inherent vice, weakness or natural propensity of the animal, act or default of the shipper or owner or the agent of either, riots, strikes, stoppage of labor or threatened violence, overloading, crowding one upon the other, escaping from vehicles, kicking or goring or otherwise injuring themselves, suffocation, fright, heat or cold, changes in weather or delay caused by stress of weather, or damage to highways or roads or other causes beyond the carrier's control.
  - b. As a condition precedent to the recovery of damages caused by the carrier's negligence, claims must be filed in writing with the carrier within 90 days after date of delivery, or, in the case of failure to make delivery, within 100 days after tender of the shipment.

- c. No claim shall be honored by a carrier covering any shipment on which the shipper has not re-mitted to the carrier full transportation charges.
- d. All claims shall be accompanied by paid freight bill, shipping order and delivery receipt, or exact copies thereof, and a verified statement itemizing the extent of loss or damage.
- e. Unless written notice of loss or damage is given to a carrier before or at the time the shipment is unloaded at point of destination, the carrier will be discharged from all liability in respect to any claim for loss and damage.

The form of shipping document in Items Nos. 235 and 240 will be suitable and proper.

A copy of each shipping document shall be retained and preserved by the issuing carrier, subject to the Commission's inspection for a period of not less than three years from the date of its issuance."

Therefore, the Commission finds and concludes with respect to the four shipments referred to, that respondent violated Item 125 by not issuing freight bills for such shipments.

The evidence also showed with respect to the shipments identified by freight bills 589, 833, 1028 and 1034, that respondent either did not show both point of origin and point of destination on the freight bills or that he showed incorrect points of destination. As indicated above, Item 125 requires such information to be on all freight bills. Therefore, the Commission finds and concludes that respondent violated Item 125 by not setting forth the correct points of origin and destination on these four freight bills.

The evidence also shows with respect to the shipment identified by freight bill 946, that the shipping document issued by the respondent did not show the number and description of the live-stock shipped. Item 125 requires such information. Therefore the Commission finds that respondent violated Item 125 in this regard.

#### Conclusions

The evidence indicates that respondent had been sent an undercharge letter in 1955 concerning violations of Item 125.

All of the facts and circumstances of record have been considered. Respondent's operative rights will be suspended for ten consecutive days and he will be directed to collect the undercharges hereinabove found. Respondent will also be directed to examine his records from the period January 1, 1956 to the present time in order to determine if any additional undercharges have occurred and, if so, to collect such undercharges.

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. 50-2392 issued to John Dompeling be and it hereby is suspended for ten consecutive days starting at 12:01 a.m. on the first Monday following the effective date hereof.
2. That John Dompeling shall post at his 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 his radial highway common carrier permit has been suspended by the Commission for a period of ten days.
3. That John Dompeling shall examine his records for the period from January 1, 1956 to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.
4. That John Dompeling is hereby directed to take such action as may be necessary to collect the amounts of undercharges

set forth in the preceding opinion together with any additional undercharges found after the examination required by paragraph 3 of this order and to notify the Commission in writing upon the consummation of such collections.

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

6. The Secretary of the Commission is directed to cause personal service of this order to be made on John Dompeling and this order shall become effective twenty days after the date of such service.

Dated at San Francisco, California, this 17th day of       , 1957.

*[Handwritten signatures and names]*  
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President  
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Commissioners

Rex Hardy  
Commissioner S. C. Lynn Fox being necessarily absent, did not participate in the disposition of this proceeding.