

ORIGINALDecision No. 55250

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,)
rates and practices of JOHN L.)
WEDGWORTH.)

Case No. 5920

John L. Wedgworth, in propria persona.
Martin J. Porter, 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, John L. Wedgworth, on April 6, 1957, to determine (1) whether respondent has violated or is violating Section 3667 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of property as a highway permit carrier than the applicable minimum rates and charges required by Minimum Rate Tariff No. 2, (2) whether any or all of the operating authority of respondent should be cancelled, revoked or suspended, (3) whether respondent shall be ordered to collect from shippers and other persons liable for freight charges, the difference between charges billed or collected and minimum charges due under Minimum Rate Tariff No. 2, (4) whether respondent should be ordered to cease and desist from any or all unlawful operations or practices, and (5) whether any other 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 June 10, 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, John L. Wedgworth, at all times mentioned herein, was the holder of Radial Highway Common Carrier Permit No. 36-2154 issued by this Commission on October 30, 1946; that respondent has been served with a copy of Minimum Rate Tariff No. 2 and pertinent amendments and supplements thereto, and Distance Table No. 4, and at all times hereinafter set forth knew or should have known the contents of said tariff and distance table; that respondent transported ten shipments of grapefruit, orange and lemon peel in barrels on pallets; that nine of the shipments originated in Ontario, California, at the Exchange Orange Products, and one of the shipments originated in Covina, California, at the Exchange Lemon Products; that eight of the shipments were delivered to S & W Fine Foods in Redwood City, California, which paid the shipping charges, and two of the shipments were delivered to Lyons-Magnus in San Francisco which paid the shipping charges; that the ten shipments are reflected on respondent's freight bills numbers 55342, 55323, 5572, 55322, 55273, 55311, 55285, 55286, 55267 and 55287 (Exhibit No. 2, pages A-J inclusive); that respondent prepares freight bills in quadruplicate but sets forth the rate and the amount of charges only on the copy which is delivered to the shipper; and that the copy or copies of the freight bills retained by the respondent show neither the rate nor the amount of the charges.

The evidence further shows and we find that respondent undercharged for the transportation services shown in the following-numbered freight bills (Exhibit No. 2, A through J, inclusive) amounts as follows:

<u>Date</u>	<u>Freight Bill Number</u>	<u>Amount Charged and Collected by Respondent</u>	<u>Correct Total Charges *</u>	<u>Amount Undercharged</u>
7/27/56	55342	\$ 31.01	\$ 87.65	\$ 56.64
5/15/56	55323	98.21	141.24	43.03
5/10/56	5572	211.91	217.56	5.65
5/13/56	55322	96.66	138.60	41.94
5/15/56	55273	213.53	223.41	9.88
4/3/56	55311	191.16	196.26	5.10
4/4/56	55285	207.50	213.03	5.53
4/9/56	55286	214.34	220.06	5.72
4/10/56	55267	36.66	118.65	81.99
4/13/56	55287	207.11	212.64	5.53
Total Undercharges				\$261.01

* As per Minimum Rate Tariff No. 2, and pertinent Supplements, and governing Classification and Exception Sheet.

The evidence further shows and we find that respondent's records were examined for the period April 1, 1956 to December 31, 1956, inclusive, and that the violations herein reflected are the bulk of the violations found to have occurred during that period.

On his own behalf the respondent testified that the transportation of April 10, 1956, a palletized shipment having a gross weight of 8,650 pounds or a weight less pallets of 8,146 pounds, (Part 9, Exhibit No. 5) was one of three components of a single shipment and that for that reason lower rates and a deduction for the weight of pallets was proper. Item 85-A of Minimum Rate Tariff No. 2, in effect on the date of said shipment

required, among other things, that "a single shipping document for the entire shipment tendered shall be issued prior to or at the time of the first pickup" and Item 70-D of Minimum Rate Tariff No. 2, also in effect on said date, provided:

"Charges shall be assessed on the gross weight of the shipment. No allowance shall be made for the weight of containers. (See Exception)

EXCEPTION---When palletized shipments subject to a minimum weight of 20,000 pounds or more are loaded or unloaded by powerloading device, the weight of the pallets (elevating truck pallets or platforms or lift truck skids) shall not be used in determining the weight of the shipment nor the charges thereon. This exception is not applicable to shipments of empty pallets."

A single shipping document was not issued.

The Commission having considered the evidence of record and having found facts as hereinabove set forth, finds and concludes that John L. Wedgworth has failed to retain in his possession 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 has 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 and 3737 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 set forth above,

IT IS ORDERED:

1. That Radial Highway Common Carrier Permit No. 36-2154 issued to John L. Wedgworth be, and the same hereby is, suspended

for a period of five consecutive days beginning at 12:01 a.m. on the ~~first~~ ^{second (REU)} Monday following the effective date of this order.

2. That John L. Wedgworth 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 five days.

3. That John L. Wedgworth is 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, John L. Wedgworth 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.

5. That respondent shall henceforth issue shipping documents in strict conformance with Item 255 Series of Minimum Rate Tariff

No. 2.

