

ORIGINALDecision No. 55302

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations, rates)
 and practices of DAVID B. LEAL, an)
 individual.)

Case No. 5882

Cyril M. Saroyan and J. Lane Barbour,
 for the Commission's Staff.

David B. Leal, for self.

O P I N I O N

This investigation, instituted by the Commission on its own motion, pertains to the operations, rates and practices of David B. Leal, an individual, operating as a Radial Highway Common Carrier pursuant to a permit issued to him on April 15, 1953, which permit at all times hereinafter mentioned has been and now is in full force and effect. The purposes of the investigation and the hearing, held in Los Angeles on April 11, 1957, before Examiner Mark V. Chiesa, were to determine whether or not said David B. Leal, hereafter sometimes referred to as respondent, violated the provisions of Minimum Rate Tariff No. 7, particularly Items Nos. 45, 93, 94 and 130 thereof, in connection with the transportation services rendered by said respondent for Wyckoff and Bianchi Construction Co., during the month of May 1956.

The Commission finds:

That respondent on June 12, 1956, billed Wyckoff and Bianchi Construction Co., of Camarillo, California, for hauling 8,398.58 tons of rock, rough quarried, from Camarillo to Simi, California, at the rate of \$1.00 per ton or \$8,398.58; that the

transportation services were performed between May 1 and May 31, 1956; that the actual distances traversed between the point of origin in Camarillo and the point of destination in Simi were in excess of 20 miles but not more than 23 miles; that the proper charge for said hauling as per Item No. 130 series of said Minimum Rate Tariff No. 7 is \$1.19 per ton or \$9,994.31; that the amount of undercharge is \$1,595.73.

That respondent hired underlying carriers, subhaulers, to perform a part of said transportation service and that said subhaulers were paid on the basis of 95 per cent of the charge of \$1.00 per ton, less deductions; that payments to subhaulers should have been on the basis of 95 per cent of \$1.19 per ton, less deductions, as per Item No. 94 series of said tariff.¹

That respondent presented the said freight bill more than five days after the last calendar day of the month in which the transportation was performed, to wit, twelve days later (Item No. 45 series).

That respondent failed to issue shipping documents as required by Item No. 93 series.

The Commission having found facts as hereinabove set forth, concludes that respondent has violated the provisions and requirements of Minimum Rate Tariff No. 7, Items Nos. 45, 93, 94 and 130 thereof.

¹ The names of the underlying carriers, tonnage, charges applied, deductions, applicable charges and additional amounts due are set forth in the staff's Exhibit No. 6, a copy of which was presented to respondent at the hearing.

The Commission being cognizant of respondent's cooperation with the staff in the investigation of this matter and that the said violations may have occurred by reason of a mistaken interpretation of the said tariff or an unintentional misapplication of its provisions, makes its order as follows:

O R D E R

A public hearing having been held, the Commission being fully advised in the premises and good cause appearing,

IT IS ORDERED:

(1) That the Radial Highway Common Carrier Permit No. 56-1544 issued to David B. Leal be, and the same is, hereby suspended for a period of five days beginning at 12:01 a.m. on the second Monday following the effective date of this order.

(2) That David B. Leal shall take appropriate action or measures to collect from Wyckoff and Bianchi Construction Co. the balance of the applicable charges as above set forth, and shall pay, or make arrangements satisfactory to this Commission to pay, each of the underlying carriers the balance of the unpaid applicable charges less the appropriate deductions.

(3) That, in the event charges to be collected and payments to be made as provided in paragraph (2) of this order remain uncollected or unpaid ninety days after the effective date of this order, David B. Leal shall submit to the Commission on Monday of each week thereafter a report setting forth the action taken to collect said charges and to pay said

underlying carriers and the result of such action until such charges and payments have been collected and paid in full or until the further order of this Commission.

(4) That the Secretary of the Commission is directed to cause personal service of this order upon David B. Leal and this order shall become effective twenty days after the date of such service.

Dated at San Francisco, California, this 22nd day of JULY, 1957.

President
Paul L. Hutterer

Michael D. Cole

R. Hardy

E. Lynn Fox
Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.