

**ORIGINAL**

55409

Decision No. \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates and practices of JOE CASELLA  
and CLOTILDA CASELLA, doing busi-  
ness as CASELLA LUMBER TRANSPORTA-  
TION. )

Case No. 5901

Marquam C. George, for respondents.  
E. E. Cahoon, George B. Dill and Hector Anninos,  
for the Commission staff.

O P I N I O N

On February 19, 1957, the Commission issued an order insti-  
tuting investigation into the operations, rates and practices of  
Joe Casella and Clotilda Casella for the purpose of determining:

1. Whether respondents have acted in violation of the Public Utilities Code by failing to adhere to the applicable rates and charges specified in their tariff schedules filed and in effect at the time, including but not limited to, Item 200-A and Item 50-A of the Casella Lumber Transportation Local Freight Tariff No. 1, Cal. P.U.C. No. 1.
2. Whether respondents have 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 rates prescribed in Minimum Rate Tariff No. 2.
3. Whether any or all of the operating authority of respondents should be canceled, revoked, or suspended.
4. Whether respondents should be ordered to collect from shippers and other persons liable for freight charges, the difference

between the charges billed or collected and minimum or published charges due under Minimum Rate Tariff No. 2 or respondents' highway common carrier tariff.

5. Whether respondents should be ordered to cease and desist from any or all unlawful operations or practices.

6. Whether any other order or orders that may be appropriate should be issued in the lawful exercise of the Commission's jurisdiction.

This order further states that this investigation includes, but is not limited to, the following transportation:

<u>Freight Bill No.</u>	<u>Date</u>	<u>Consignor</u>	<u>Consignee</u>
10395	6-19-56	Lumber Sales Co.	Baugh Bros. Lumber Co.
10921	7-10-56	Westwood-Ingram Co.	Piedmont Lumber Co.
10464	9--8-56	Westwood-Ingram Co.	Denning Mills
10318	4-26-56	Lumber Sales Co.	Redwood Lumber & Sup. Co.
10375	5-24-56	Lumber Sales Co.	Peninsula Lumber & Construction Co.
10077	2--3-56	Cal-Pacific Wholesale Wholesale Lumber Co.	Montgomery Investment Corp.
9599	2-16-56	Associated Wholesale Lumber Co.	Hyman Bros.
10325	4-30-56	Lumber Sales Co.	The Marley Co.
10335	5--2-56	Lumber Sales Co.	Service Lumber Co.
10937	7-30-56	Westwood-Ingram Co.	Silvera Lumber Co.
11062	8-15-56	Cal-Pacific Lumber Co.	Arlington Construction Co.
11107	9--7-56	Westwood-Ingram Co.	Home Lumber Co.
11165	10--5-56	Westwood-Ingram Co.	El Monte Lumber Co.

Public hearings were held before Examiner Rowe on April 8 and May 7, 1957, at San Francisco, at which time evidence was adduced and on the latter date the matter was duly submitted.

During the hearings the staff presented three witnesses from its Field Section, one from its Rate Section, one from its Permits and Fees Section and the bookkeeper of one of the shippers involved. The results of the staff investigations were introduced into the record. From evidence adduced it is found that respondents Joe Casella and Clotilda Casella at all times hereinafter mentioned

were and now are, the holders of highway common carrier rights to carry lumber and lumber products generally between (1) the San Francisco territory, on the one hand, and Arcata and Fort Bragg, on the other, and (2) Los Angeles territory, on the one hand, and Fort Bragg on the other, and are the holders of Radial Highway Common Carrier Permit No. 1-4609 and of Highway Contract Carrier Permit No. 1-6191 issued to them by this Commission; that said respondents have been served with copies of Highway Carriers' Tariff No. 2, Highway Carriers' Tariff No. 8, Highway Carriers' Tariff No. 1, City Carriers' Tariff No. 2 with all applicable revisions, together with Distance Tables Nos. 3 and 4 with all applicable revisions, and at all times hereinafter referred to knew or should have known the contents of said tariffs and revisions and of said distance table and of its revisions; that respondents undercharged for the transportation indicated by the above-numbered freight service bills in the amounts shown as follows:

1. To points between which respondents' tariff was applicable

<u>Date</u>	<u>Freight Bill No.</u>	<u>Amount Charged and Collected by Respondents</u>	<u>Correct Total Charges as per Respondents' Tariff</u>	<u>Amount of Under-charge</u>
6-19-56	10395	\$287.23	\$371.50	\$ 84.27
7-10-56	10921	157.34	274.34	117.00
9--8-56	10464	138.24	171.26	33.02
4-26-56	10318	168.96	216.13	47.17
5-24-56	10375	161.28	209.87	48.59

2. To points between which respondents' tariff not applicable

<u>Date</u>	<u>Freight Bill No.</u>	<u>Amount Charged and Collected by Respondents</u>	<u>Correct Total Charges as per MRT #2 and Other Applicable Minimum Tariffs</u>	<u>Amount of Under-charge</u>
2--3-56	10077	\$132.80	\$152.71	\$19.91
2-16-56	9599	70.85	90.35	19.50
4-30-56	10325	173.22	176.51	3.29
5--2-56	10335	143.62	168.22	24.60
7-30-56	10937	181.07	194.83	13.76
8-15-56	11062	140.80	159.87	19.07
9--7-56	11107	168.17	212.75	44.58
10--5-56	11165	168.60	191.38	22.78

The respondents, although notified of this investigation and of the time and place of hearings thereon, and although represented by counsel, did not avail themselves of the opportunity offered them to testify or introduce evidence to explain any of the transactions represented by the above-numbered freight bills.

The respondents are found in the case of the freight movements represented by freight bills numbered 10395, 10921, 10464, 10318 and 10375 to have violated Sections 458 and 494 of the Public Utilities Code and are further found in the case of the freight movements represented by freight bills numbered 10077, 9598, 10325, 10335, 10937, 11062, 11107, and 11165 to have maintained a dual system of records and to have violated Sections 3667 and 3668 in each instance by false billing and by charging less than the applicable tariff rate.

Respondents will be directed to cease and desist from the collection of charges, not authorized by their effective tariffs and where applicable to cease and desist from the collection of charges less than those prescribed in Minimum Rate Tariff No. 2, and respondents further will be directed to collect the undercharges referred to above. Respondents' operating authority will be suspended as provided in the following order.

#### O R D E R

The Commission having instituted investigation herein, public hearing having been held and the Commission being fully advised in the premises,

#### IT IS ORDERED:

1. That Joe Casella and Clotilda Casella cease and desist from collecting from their shippers rates and charges less than those specified in their effective tariffs.

2. That Joe Casella and Clotilda Casella in their operations under permits issued by this Commission cease and desist from collecting from their shippers rates and charges less than those specified in the applicable minimum rate tariffs issued by this Commission.

3. That the operating authority of Joe Casella and Clotilda Casella issued by Decision No. 51812 dated August 9, 1955, in Application No. 35347 and the operating authority under Radial Highway Common Carrier Permit No. 1-4609 and under Highway Contract Carrier Permit No. 1-6191 issued by this Commission to them are suspended for a period of 10 days beginning at 12:01 a.m. on the second Monday following the effective date of this decision.

4. That all rates and charges filed with the Commission by Joe Casella and Clotilda Casella, doing business as Casella Lumber Transportation are hereby suspended for the 10-day period beginning on the second Monday following the effective date of this decision.

5. That Joe Casella and Clotilda Casella, doing business as Casello Lumber Transportation, shall, not less than five days prior to the beginning of the suspension period file suspension supplements to their tariffs on file with the Commission stating that their rates and charges are under suspension so far as they apply to respondents and may not be used by them for the suspension period.

6. That Joe Casella and Clotilda Casella shall post at their terminal and station facilities 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 that their operating authority as aforesaid has been suspended by the Commission for a period of 10 days.

7. That Joe Casella and Clotilda Casella 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.

8. That in the event charges to be collected as provided in paragraph 5 of this order, or any part thereof, remain uncollected 80 days after the effective date of this decision, Joe Casella and Clotilda Casella shall file, 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 this Commission.

9. The Secretary of the Commission is directed to cause personal service of this decision and order to be made on Joe Casella and Clotilda Casella and this decision and order shall become effective twenty days after the date of such service.

Dated at San Francisco, California, this 13<sup>th</sup> day of AUGUST, 1957.

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

Commissioners

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