

Decision No. 55542**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,)
 rates, and practices of ELWIN R.)
 MANN, doing business as ELWIN R.) Case No. 5871
 MANN TRANSPORTATION and LUCKY)
 STRIKE TRANSPORTATION.)

Berol & Silver by Edward M. Berol and
Bruce Geernaert, for respondent.
Martin J. Porter, for the Commission staff.

O P I N I O N

On January 8, 1957, the Commission issued its order instituting an investigation into the operations, rates and practices of Elwin R. Mann, doing business as Elwin R. Mann Transportation and Lucky Strike Transportation. The purpose of the investigation was to determine whether respondent violated 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 Tariffs Nos. 2 (dealing with general commodities) and 8 (dealing with fresh fruit and vegetables).

A public hearing was held on May 1, 1957, at San Francisco before Examiner William L. Cole at which time the matter was submitted.

At the time of the hearing in addition to the testimony of various witnesses, certain documents were introduced into evidence. Included among these documents were shipping documents with respect to various shipments handled by respondent. The facts indicated by these documents together with those facts determined by the testimony show that violations of the Commission's Minimum Rate Tariffs No. 2 and No. 8 occurred with respect to these shipments.

The Commission takes official notice of the fact that it has issued to the respondent Radial Highway Common Carrier Permit No. 44-1231, Highway Contract Carrier Permit No. 44-1271 and City Carrier Permit No. 44-1188. The evidence indicates that respondent has been served with the Commission's Minimum Rate Tariffs Nos. 2 and 8.

Violations of Minimum Rate Tariff No. 8

The evidence indicates that on September 17 and 18, 1955, respondent transported four shipments of fresh vegetables between Santa Cruz, Watsonville and Castroville, on the one hand, and Los Angeles, on the other hand. Respondent assessed a charge of \$140.70 for these shipments on the basis that the shipments were one split pickup shipment. However, the evidence showed that the provisions of Item No. 170-E of Minimum Rate Tariff No. 8 were not complied with in that a single bill of lading or other shipping document covering all of the property shipped was not issued at or prior to the time the first shipment was picked up. Consequently, the four shipments must be rated separately. The total of the applicable minimum charges for the four shipments amounts to \$154.05.

Violations of Minimum Rate Tariff No. 2

The remaining shipments transported by respondent which resulted in violations were shipments involving glass bottles and jars and lids. The transportation of these items of property is governed by the Commission's Minimum Rate Tariff No. 2. The relevant facts, which the Commission hereby finds, together with its conclusion concerning the charges for the shipments in question are set forth in the following table:

<u>Document No.</u>	<u>Date of Invoice</u>	<u>Point of Origin</u>	<u>Point of Destination</u>	<u>Applicable Minimum Charge</u>	<u>Charge Assessed by Respondent</u>
WA 2018 (2017)	9/18/55	Los Angeles	Various	\$ 238.53	\$ 207.84
WA 2089	9/29/55	Los Angeles	Various	249.01	194.47
WA 1971 (1970)	9/ 9/55	Los Angeles	Various	247.49	244.57
WA 1892 (1893)	9/14/55	Los Angeles	Various	207.88	202.04
WA 1923 (1924)	9/ 1/55	Los Angeles	Various	216.18	195.79
WA 1939	8/20/55	El Monte	Oakland	383.51	356.56
WA 2069	9/23/55	El Monte	Various	170.59	155.84
WA 1863	8/10/55	El Monte	Various	280.12	257.13
14358	3/29/56	Los Angeles	Various	223.99	167.80
13448	5/ 8/56	Los Angeles	Cupertino	190.42	186.56
14359	3/30/56	Los Angeles	Various	219.06	164.70
Unnumbered	4/ 9/56	Los Angeles	Cupertino	185.08	179.89
13466	5/10/56	Los Angeles	Cupertino	191.92	187.92
13596	6/ 6/56	Los Angeles	Cupertino	191.40	186.99
13583	6/ 4/56	Los Angeles	Cupertino	191.12	186.73

With respect to certain of the shipments shown above, the evidence did not show whether or not the points of destination were on railhead. However, the applicable minimum charges shown above with respect to such shipments are the lowest minimum charges that could be assessed regardless of whether the particular points of destination are or are not on railhead. With respect to the shipment identified by Document No. 14359, the Commission hereby takes official notice that Mission San Jose, the location of one of the consignees of the shipment, is not served by a railroad.

A large number of the shipments shown above were split delivery shipments. The evidence shows that respondent used either an improper method or incorrect rates in determining his charges for such shipments.

With respect to the shipment identified by document numbered 1939, the evidence shows that respondent picked up three loads from the consignor, one on August 19, 1955, one on August 22, 1955, and one on August 23, 1955. Respondent in determining the

transportation charge treated these loads as one multiple lot shipment. However, Item 85-A of Minimum Rate Tariff No. 2 requires that in order for a carrier to avail himself of multiple lot shipments, the entire shipment must be picked up within a period of two days computed from 12:01 a.m. of the date on which the first pickup commences. Inasmuch as this was not done in this instance the transportation charges must be determined on the basis of two separate shipments.

Additional Evidence

The evidence shows that respondent had been sent an undercharge letter by the Commission prior to the time when the violations hereinabove set forth occurred. The evidence also shows that respondent prior to the hearing rebilled all of the shippers involved in the shipments set forth above and that most of the undercharges have been collected. The evidence also shows that prior to the hearing, respondent reviewed his records for the past one or two years for the purpose of ascertaining if there were any additional undercharges and has rebilled the shippers where undercharges were found.

Conclusions

All of the facts and circumstances of record have been considered. The evidence shows and we find that respondent violated Section 3667 of the Public Utilities Code in that he charged and collected for the transportation of property rates or charges less than the minimum rates and charges established by the Commission resulting in undercharges totaling at least \$324.82. Respondent's operative rights will be suspended for five consecutive days and he will be directed to collect all undercharges hereinabove found and not already collected.

O R D E R

A public hearing having been held in the above-entitled matter, the Commission being fully informed therein and having found as above specified, now therefore,

IT IS ORDERED:

(1) That Radial Highway Common Carrier Permit No. 44-1231, Highway Contract Carrier Permit No. 44-1271 and City Carrier Permit No. 44-1188 issued to Elwin R. Mann be and they hereby are suspended for five consecutive days starting at 12:01 a.m. on the second Monday following the effective date hereof.

(2) That Elwin R. Mann 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 operating authority has been suspended by the Commission for a period of five days.

(3) That Elwin R. Mann is hereby directed to take such action as may be necessary to collect the amounts of undercharges set forth in the preceding opinion which are not already collected.

(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, Elwin R. Mann 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.

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(5) The Secretary of the Commission is directed to cause personal service of this order to be made on Elwin R. Mann and this order shall be effective twenty days after the completion of such service.

Dated at San Francisco, California, this 13th
day of SEPTEMBER, 1957.

[Signature]
President
[Signature]
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Commissioners