

ORIGINALDecision No. 55601

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)	
own motion into the operations,)	Case No. 5869
rates, and practices of SAN JOSE)	
TRANSPORTATION, INC.)	

Marvin Handler, for respondent.
William Bricca and A. J. Lyon, 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 San Jose Transportation, Inc. The purpose of the investigation was to determine whether respondent violated pertinent sections of the Public Utilities Code by charging, demanding, collecting, or receiving a lesser compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 8 (dealing with fresh fruits and vegetables) 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 May 9, 1957, at San Jose 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. These documents referred to various shipments of

carrots 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 Tariff No. 8 occurred.

The evidence indicated and we hereby find that at the time the shipments set forth below took place, respondent had been served with Minimum Rate Tariff No. 8.

Improper Consolidation - Single Consignees

With respect to certain shipments of carrots, the evidence shows that a single consignor, Merit Packing Company, and a single consignee, Witkim Produce Company, were involved and that single points of origin and destination were involved. The evidence shows that various shipments were tendered to respondent on successive days. In assessing its charges for these shipments, respondent would consolidate several of the shipments together and bill the shipper as though there were only one shipment involved. Because of such consolidations a lower rate was charged than if the shipments had been rated separately. Minimum Rate Tariff No. 8, however, has no provisions authorizing such consolidations. To the contrary, Item No. 50 of that tariff provides that each shipment shall be rated separately and that shipments shall not be consolidated or combined by the carrier. Item 11-C of the tariff defines the term "shipment" as meaning "a quantity of freight tendered by one shipper on one shipping document at one point of origin at one time for one consignee at one point of destination."

The relevant facts, which the Commission hereby finds, together with the Commission's conclusions concerning the charges for the shipments referred to above are set forth in the following table:

<u>Document No.</u>	<u>Date of Shipment</u>	<u>No. of Crates^{2/} of Carrots Shipped</u>	<u>Applicable Minimum Charge</u>
15375	6/18/56	85	\$ 71.51
15378	6/19/56	75	63.11
15319	6/21/56	175	119.07
15331	6/22/56	200	123.60
15343	6/23/56	225	123.60
15350	6/25/56	50	42.06
15263	6/26/56	350	169.91
15275	6/27/56	100	77.70
15050	7/ 3/56	100	77.70
15072	5/ 5/56	100	77.70
15082	7/ 6/56	125	91.55
15109	7/ 9/56	150	109.86
15124	7/10/56	100	77.70
15133	7/11/56	225	123.60
15151	7/12/56	150	109.86
15226 (15234) ^{1/}	7/18/56	175	119.07
15242	7/19/56	300	145.63
15504	7/20/56	128	93.74
15517	7/21/56	75	63.11
15541 (15542) ^{1/}	7/24/56	200	123.60
15557	7/25/56	75	63.11
15529	7/23/56	72	60.57

^{1/} With respect to these shipments, the evidence indicated that two loads were tendered to the respondent on the same day. There was no evidence that they were not tendered at the same time. Therefore, in each instance the applicable minimum charge was determined on the basis that only a single shipment was involved.

^{2/} The evidence relating to the individual shipments showed only the number of crates of carrots and not their weight. However, examination of respondent's freight bills indicates that the lowest average weight used by it was 94.26 pounds per crate. This figure was used in ascertaining the applicable minimum charge for the individual shipments.

The evidence shows and the Commission hereby finds and concludes that the total charges for the shipments set forth above that were assessed by respondent amounted to \$1,701.96 whereas the correct minimum charges amount to at least \$2,127.36.

The evidence also shows, and the Commission hereby finds and concludes, that with respect to certain of the individual shipments set forth above respondent did not prepare, or retain copies of proper shipping documents as required by Item 255-A of Minimum Rate Tariff No. 8.

Split Delivery Shipments

With respect to certain other shipments of carrots transported by respondent, the evidence indicates that the same consignor was involved but that different consignees were involved together with different points of destination. The evidence shows that in assessing its transportation charges, respondent consolidated certain of the shipments as split delivery shipments. Because of such consolidation a lower rate was charged than if the shipments had been rated separately. The term "split delivery shipment" is defined in Item 11-C of Minimum Rate Tariff No. 8, as "a shipment consisting of several component parts delivered to (a) one consignee at more than one point of destination, or (b) more than one consignee at one or more points of destination, the composite shipment weighing (or transportation charges computed upon a weight of) not less than 4,000 pounds, said shipment being shipped by one consignor on one shipping document at one point of origin at one time and charges thereon being paid by the consignor when there is more than one consignee." This definition includes the word "shipment" which, as indicated previously, is defined in part as a quantity of freight tendered at one time.

The evidence indicates that certain of the shipments consolidated by respondent as split delivery shipments were not tendered at the same time.

Furthermore, Item 180 of Tariff No. 8 provides that shipments can be rated as split delivery shipments only if at the time of or prior to the tender of the shipment a single bill of lading or other shipping document shall have been issued for the composite shipment and the carrier shall have been furnished with written instructions showing the name of each consignee, the point of destination and the kind of property in each component part. The evidence shows that this was not done with respect to these shipments. The relevant facts, which the Commission hereby finds, together with its conclusions concerning the charges for these shipments are set forth in the following table:

<u>Document No.</u>	<u>Date</u>	<u>No. of Crates^{2/} of Carrots</u>	<u>Consignee</u>	<u>Applicable Minimum Charge</u>
15170 (15171) ^{1/}	7/14/56	350	Witkim Produce Silberman & Gerst	\$169.91
15183	7/15/56	50	Silberman & Gerst	42.06
15190 (15191) ^{1/} (15189)	7/16/56	300	Witkim Produce Silberman & Gerst	145.63
15209	7/17/56	75	Witkim Produce	63.11

^{1/} The quantities of freight have been consolidated as shown for the purpose of determining the applicable minimum charge. The evidence shows that the ones consolidated together were tendered on the same date. There is no evidence that they were not tendered at the same time. While the consignees and points of destination of the various quantities of freight were different, there is no evidence that the points of destination were not in the same market area. Item 120-D of Tariff No. 8 provides that multiple deliveries made within a single market area shall be deemed to be made to one consignee at one point of destination.

^{2/} A weight of 94.26 pounds per crate was used in determining the applicable minimum charges.

The evidence shows and the Commission hereby finds and concludes that the total charges that were assessed by respondent amounted to \$405.83, whereas the correct minimum charges amount to at least \$420.71.

Additional Evidence

The evidence also shows that respondent, prior to the hearing, rebilled the shipper involved for all of the undercharges found. The evidence shows further that respondent is one of the largest produce carriers in Northern California and that its gross receipts amount to approximately \$70,000 per month.

Conclusions

All of the facts and circumstances of record have been considered and the Commission hereby finds and concludes that respondent charged lesser rates than the minimum rates established by the Commission in violation of Sections 3664 and 3667 of the Public Utilities Code and that such violations resulted in a total undercharge of at least \$440.28. The Commission further finds and concludes that respondent violated Minimum Rate Tariff No. 8 in that proper shipping documents were not prepared or retained.

Respondent's operating rights will be suspended for five consecutive days and it will be directed to collect the undercharges hereinabove found.

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 the operating rights of San Jose Transportation, Inc., 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 San Jose Transportation, Inc., shall post at its 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 its operating authority has been suspended by the Commission for a period of five days.

(3) That San Jose Transportation, Inc., is hereby directed to take such action as may be necessary to collect the amount 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, San Jose Transportation, Inc., 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) The Secretary of the Commission is directed to cause personal service of this order upon San Jose Transportation, Inc., and this order shall become effective twenty days after such service.

Dated at Los Angeles, California, this 24th day of SEPTEMBER, 1957.

[Signature]
President
[Signature]
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Commissioners