

Decision No. 56038**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,)
 rates, and practices of George C.)
 Vochatzer, doing business as GEORGE'S) Case No. 5927
 TRUCKING SERVICE.)

George C. Vochatzer, appearing for himself.
S. A. Moore, appearing for Permanente Cement
 Company, interested party.
Eugene A. Feise, appearing for Calaveras
 Cement Company, interested party.
Martin J. Porter and Arthur Lyons, appearing
 for the Commission staff.

O P I N I O N

On April 9, 1957, the Commission issued its order instituting an investigation into the operations, rates, and practices of George C. Vochatzer, doing business as George's Trucking Service. The purpose of the investigation was to determine whether respondent violated Section 3667 of the Public Utilities Code by charging, demanding, collecting, or receiving less than the applicable minimum rates for the transportation of property and whether he violated Section 3775 of the Public Utilities Code by conducting operations during the period of suspension and after revocation of respondent's radial highway common carrier permit.

A public hearing was held on August 21, 1957, at Eureka before Examiner William L. Cole at which time the matter was submitted.

At the time of the hearing, counsel for the Commission staff and the respondent entered into a stipulation relative to certain facts concerning the shipments in question. It was stipulated, among other facts, that respondent transported property as a radial highway common carrier and that during the period the transportation

in question took place, he had the applicable minimum rate tariffs and rules. Various exhibits and testimony were also introduced into the record. From the evidence introduced it is shown that all of the shipments under examination took place during 1955 and 1956. Likewise, it was shown that the shipments all involved either sacked cement or lumber.

Questions Presented

There were three principal questions presented by this investigation. The first is whether respondent violated the provisions of the Commission's Minimum Rate Tariff No. 10 (dealing with cement) by improperly consolidating more than one shipment for billing purposes and thereby gaining the advantage of the lower rate because of the higher weight resulting from the consolidation.

The second question is whether respondent violated the provisions of the Commission's Minimum Rate Tariff No. 2 (dealing with general commodities) by using alternate rail rates on shipments of lumber to points of destination that were not on railhead.

Thirdly, the question is presented whether respondent violated the Public Utilities Code by transporting property for compensation during a period when his carrier permit was either suspended or revoked.

Shipments of Cement

The evidence shows and the Commission hereby finds and concludes that the following facts exist with respect to respondent's methods of operation relative to his transportation of cement.

With respect to the shipments of cement in question, respondent picked up the cement at the mill of the Ideal Cement Company at Redwood City and it was transported to the Nilsen Company in Eureka or Ferndale.

The transportation is ordered by means of a letter to respondent from the Nilsen Company which states: "This is your authority to pick up 2500 sacks of cement at Ideal Cement Company."^{1/} Respondent would then transport five truckloads of cement of approximately 500 sacks per truckload. When respondent picks up the various truckloads of cement he signs a receipt for that cement. Respondent then sends a freight bill to the Nilsen Company for each truckload of cement covering just the amount of cement hauled by that truckload. The weight of each load of cement is less than 60,000 pounds. In calculating the charge on the freight bill, respondent uses the alternate rail rate which requires that a minimum of 60,000 pounds shall have been transported.

There is no question but that Tariff No. 10 is arranged such that the transportation charges are to be calculated by shipments. Therefore, the pertinent tariff item is the one setting forth the definition of the word "shipment". This definition is set out in subparagraph (k) of Item 10-B of the tariff and reads as follows:

"(k) Shipment means a quantity of property tendered for transportation to one carrier at one time on one shipping document by: (See Note)

- (1) one shipper at one point of origin for one consignee at one point of destination; or
- (2) one shipper at one point of origin for one consignee at more than one point of destination, or for more than one consignee at one or more points of destination (split delivery).

Note: - The entire shipment need not be transported on one vehicle at one time."

^{1/} The letter introduced into evidence referred to 2500 barrels of cement. However, respondent testified that this was an error on the part of the clerk at the Nilsen Company and what was meant was 2500 sacks.

The facts show that the respondent did not issue any document which set forth more than one truckload of cement as the amount of property transported. Therefore, under the definition of "shipment" in Item 10B(K), the size of the shipments of cement in question could not exceed one truckload of cement. For this reason and in view of the fact that the individual truckloads of cement weighed less than 60,000 pounds, it is the Commission's conclusion that respondent's use of the alternate rail rate was incorrect.

Therefore, the Commission finds and concludes that respondent violated Section 3667 of the Public Utilities Code by charging, demanding, collecting, or receiving a lesser compensation for the transportation of cement as a highway permit carrier than the applicable minimum rates and charges prescribed by the Commission. The total amount of the undercharges are \$323.16.

In this regard the Commission finds and concludes that the following facts exist with respect to the shipments of cement in question.

<u>Freight Bill Number</u>	<u>Point of Origin</u>	<u>Point of Destination</u>	<u>Weight</u>	<u>Charge Assessed</u>	<u>Correct Minimum Charge</u>
1431	Redwood City	Eureka	47,500	152.95	192.00
1473	Redwood City	Eureka	47,500	152.95	192.00
1386	Redwood City	Eureka	47,500	152.95	192.00
4024	Redwood City	Eureka	47,500	152.95	192.00
1551	Redwood City	Eureka	47,500	152.95	192.00
3915	Redwood City	Ferndale	44,080	141.94	191.75
3897	Redwood City	Eureka	47,500	152.95	192.00
1509	Redwood City	Eureka	47,500	152.95	192.00

Shipments of Lumber

The evidence indicates that respondent transported various shipments of lumber involving various consignors and various consignees and involving various points of origin and various points of destination. In assessing his transportation charges, the evidence indicates that respondent used the alternate rail rates authorized by Item 200 of Minimum Rate Tariff No. 2.

The opinion of the Commission's rate section as to the correct minimum charges for the shipments of lumber in question were admitted into evidence through the stipulation entered into between the Commission staff and the respondent.

The stipulation provided that this opinion could be introduced in evidence and considered by the Commission just as if oral testimony under oath was presented on the stand. The respondent did not stipulate as to the correctness of the opinion.

While it is not directly stated, it appears that the opinions of the Commission staff were based on the assumption that the respective points of destination were not on a railhead. The respondent presented evidence that all but one point of destination, with respect to these shipments, were located on railhead. The staff did not rebut this evidence. For this reason, the Commission cannot conclude that the charges assessed by respondent, on all but the one shipment, were less than the minimum charges required by the Commission's Minimum Rate Tariff No. 2.

With respect to the one shipment concerning which respondent did not introduce any evidence relative to railhead information at point of destination, the staff's opinion as to the correct minimum charge was uncontradicted. This shipment involved the transportation of 45,950 pounds of lumber from Fields Landing to El Monte.

Respondent assessed a charge of \$270.34. It is the Commission's conclusion that the correct minimum charge should have been \$292.96. With respect to this shipment, the Commission hereby finds and concludes that respondent violated Section 3667 of the Public Utilities Code by charging a lesser compensation for the transportation of property than the minimum charges prescribed by the Commission resulting in an undercharge of \$22.62.

Transportation During Period of Suspension or Revocation

At the time of the hearing, respondent and the Commission staff entered into a stipulation that respondent's permit was suspended from July 3, 1956 to July 31, 1956, and that on July 31, 1956, the permit was revoked. Respondent then obtained a new permit on September 4, 1956. It must be determined whether respondent has violated Section 3775 of the Public Utilities Code by conducting operations during this period of suspension and revocation. Section 3775 provides in part:

"After the cancellation or revocation of a permit, or during the period of its suspension, it is unlawful for a highway permit carrier to conduct any operations as such a carrier."

From the evidence introduced it is shown that respondent issued freight bills bearing the following dates: July 5, 11 and 17, 1956, and, August 7 and 18, 1956. Respondent testified that his drivers put on the freight bills either the date the load is picked up or the date that the load is delivered.^{2/} In view of this evidence the Commission finds and concludes that respondent violated Section 3775 of the Public Utilities Code in that he conducted operations as a carrier during the period his permit was suspended or revoked.

Conclusions

The Commission has found and concluded that respondent has violated Section 3667 of the Public Utilities Code by charging,

^{2/} Transcript page 12.

demanding, collecting, or receiving a lesser compensation for the transportation of property as a highway permit carrier than the applicable minimum rates and charges prescribed by the Commission and that respondent has violated Section 3775 of the Code in that he conducted operations as a carrier during the period his permit was suspended or revoked.

With respect to the rate violations hereinabove found, respondent will be ordered to cease and desist from such violations in the future and he will be ordered to collect the undercharges hereinabove found. For these violations, respondent's operating rights will be suspended for a period of five days. It is the Commission's conclusion also that respondent's violations of Section 3775 of the Code resulting from his conducting operations during the period of time his operating rights were suspended or revoked, are extremely serious in nature. For these violations, respondent's operating rights will be suspended for an additional period of five days. Respondent will be required to file with the Commission at the termination of this suspension period, his affidavit setting forth whether or not he conducted any carrier operations during such suspension period. Respondent is hereby admonished that any future violations of Section 3775 of the Code, on his part, will result in the revocation of his operating rights.

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 George C. Vochatzer, doing business as George's Trucking Service, is hereby directed to cease and desist from

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 prescribed by the Commission.

(2) That the Radial Highway Common Carrier Permit issued to George C. Vochatzer, doing business as George's Trucking Service, be and it hereby is suspended for ten consecutive days commencing at 12:01 A.M. on the second Monday following the effective date hereof.

(3) That George C. Vochatzer 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 ten days.

(4) That George C. Vochatzer is hereby directed to take such action as may be necessary to collect the amounts of undercharges found in the preceding opinion.

(5) That in the event charges to be collected as provided in paragraph 4 of this order, or any part thereof, remain uncollected eighty days after the effective date of this order, George C. Vochatzer 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.

(6) Within thirty days after the end of the suspension period hereinabove ordered, George C. Vochatzer shall submit to the Commission his affidavit setting forth whether or not he has conducted carrier operations during the period of suspension.

(7) The Secretary of the Commission is directed to cause personal service of this order to be made on George C. Vochatzer and this order shall be effective twenty days after such service.

Dated at San Francisco, California, this 7th day of January, 1958.

[Signature]
President

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Commissioners