

ORIGINAL

Decision No. 56041

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,)
 rates, and practices of HARRY B.)
 JOHNSTON, Jr., doing business as)
 CITIZENS WAREHOUSE.)

Case No. 5937

Glanz and Russell, by Arthur H. Glanz and Richard D. Hassenplug, for Harry B. Johnston, Jr., doing business as Citizens Warehouse.

Martin J. Porter and J. R. Smith for the Commission staff.

O P I N I O N

Under date of May 7, 1957, this Commission issued an order of investigation into the operations, rates and practices of Harry B. Johnston, Jr., doing business as Citizens Warehouse, for the purpose of determining whether or not the "said respondent has violated or is violating 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 Tariff No. 2." The order also had for its further purposes the determination as to whether or not the respondent should be required to collect undercharges, whether or not the operating authority should be cancelled, revoked or suspended, or whether a cease and desist order should be issued.

Public hearings were held before Examiner Grant E. Syphers on August 30 and September 23, 1957, in Los Angeles, on which dates

evidence was adduced and on the last named date the matter was submitted.

The staff of this Commission presented at the hearing copies of the shipping documents covering 11 shipments which allegedly had been hauled by respondent carrier at lesser rates than those applicable thereto. Seven of these shipments consisted of salt moving from the Western Salt Company at San Diego to the California Salt Company at Los Angeles, 3 consisted of cleansing powder known as "Bab-O" from the B. T. Babbit Corporation in Los Angeles to various destinations in San Diego, and 1 consisted of canned abalone from the Marine Products Company in San Diego to various consignees in the Los Angeles area.

The rate charge on the 7 shipments of salt was 10 cents per hundred pounds or \$114 for each shipment based upon a weight in each case of 114,000 pounds. According to representations of the staff, each of these shipments should have been divided into three separate shipments each taking the 50,000 pound rate of 14 cents per hundred weight. This would have resulted in a charge of \$70 for each 50,000 pounds or a total of \$210 for each of the seven groups of shipments. Allegedly, therefore, there was an undercharge of \$96 for each of the 7 shipments or a total of \$672.

The 3 shipments of Bab-O were rated at 21 cents per hundred pounds, plus 15 percent and with certain additional charges for split deliveries. The total amounts originally charged by the carrier for these 3 shipments amounted to \$384.52. The staff contended that one of these shipments should have been rated at 34½ cents per hundred weight with a 7 percent surcharge and additional

charges for the split deliveries, and the remaining 2 at 30½ cents with additional charges for the split deliveries. All in all, these 3 shipments resulted in alleged undercharges of \$125.92.

The eleventh shipment of canned abalone was rated at 22 cents per hundred pounds with an additional charge for two stops en route all of which amounted to \$16.55. The staff contended the rate should have been 31½ cents per hundred pounds subject to a 7 percent surcharge and two split delivery charges resulting in a total of \$24.44. Allegedly this shipment resulted in an undercharge of \$7.89.

The total undercharges for all of the eleven shipments, according to the staff testimony, amounted to \$805.51.

In reply to the staff presentation the defendant company presented testimony in which it took the position that it had made undercharges on the shipments involved but that these were the result of inadvertent mistakes and were in no way intentional. Further, the company has collected these undercharges from the shippers.

Concerning the 7 shipments of salt, the company has collected undercharges in the amount of \$312. While this is not the amount of undercharges alleged by the staff, it was the defendant's position that the rates on these first 7 shipments should be lower than those assessed by the staff. In other words, each of these 7 shipments consists of 3 different loads. Apparently the shipper did call the carrier and advise that there was a total of 114,000 pounds of salt to be shipped. Under the terms of Item 85 of Minimum Rate Tariff No. 2, the applicable tariff as to these

shipments, a carrier may pick up a shipment within two days from 12:01 a.m. of the date it is tendered to him in order to secure the advantage of a single rate on the entire shipment. In the 7 shipments here in question, it was the contention of a witness for defendant that the first 2 loads of each shipment moved within the two-day period. Therefore the rate on each shipment should be 10 cents per 100 pounds subject to a 100,000 pound minimum for the first 2 loads of each shipment, and 14 cents subject to a 50,000 pound minimum for the third load of each shipment. This would make the total charge for each shipment \$170.

However, in order to secure the benefit of this multiple lot rule, it is necessary, among other things, that a single shipping document should be issued prior to or at the time of the first pick-up. Exhibits Nos. 4 and 5 were submitted as samples of such shipping documents, it being the contention of the defendant that shipping documents were issued in accordance with the above-noted tariff rule.

However an examination of Exhibits Nos. 4 and 5 leads us to find that neither of them meet the requirements of a shipping document as prescribed in Item 255 (of Minimum Rate Tariff No. 2). For example, Exhibit No. 4 does not show the point of origin, the rate, nor the charges. Neither does it describe the commodity shipped in the terms used in the Western Classification or Exception Sheet. Exhibit No. 5 has similar defects. It does show the point of origin but not the point of destination. Neither does it describe the commodities in terms of the Western Classification or the Exception Sheet. In short, Exhibits Nos. 4 and 5 appear to be copies of sales invoices rather than shipping documents.

As to the shipments of scouring powder and the shipment of abalone, the evidence discloses and we now find that the rates set out by the staff are the applicable rates. The defendant carrier did not take serious issue with such a position and as a matter of fact it has collected from the shippers all undercharges on shipments 8 to 11, inclusive.

Various witnesses, shippers and carriers alike, testified as to the reputation and standing in the community of the defendant company. According to this record, this company has not complied with the law but the instances which were set out herein were in no way committed with a view to avoiding the lawful rates.

A thorough consideration of all the evidence in this matter leads us to make the following findings of fact:

1. The defendant company did charge less than the applicable tariff rates for each of the 11 shipments here involved.

2. The defendant company has collected the undercharges on shipments 8 to 11, inclusive, and has made a partial collection of the undercharges on shipments 1 to 7, inclusive.

3. The applicable tariff rates for the shipments involved are the rates set out by the staff in Exhibit No. 2 in these proceedings.

We therefore conclude that the defendant herein has violated Section 3667 of the Public Utilities Code. The statute is designed to protect the public interest, and it is fundamental that the established rates must be followed if that public interest is to be protected.

In this case the defendant's mistakes, once they are corrected, do not warrant too severe a penalty.

O R D E R

An order of investigation as above-entitled having been issued, public hearings having been held thereon, and the Commission being fully advised in the premises,

IT IS ORDERED:

(1) That Harry B. Johnston, Jr., doing business as Citizens Warehouse, be and he hereby is directed to take such action as may be necessary to collect the balance of the undercharges in the amount of \$360 on the following shipments of salt from the Western Salt Company in San Diego to the California Salt Company in Los Angeles:

<u>Freight Bill No.</u>	<u>Date</u>
H-19240	3-24-56
H-19391	3-29-56
H-20592	4-26-56
H-20987	5- 7-56
H-21427	5-17-56
H-21771	5-25-56
H-24263	7-19-56

(2) That the highway contract carrier, radial highway common carrier, household goods carrier and city carrier permits issued to Harry B. Johnston, Jr., doing business as Citizens Warehouse, by this Commission, be and they hereby are suspended for a period of three days starting at 12:01 a.m. on the second Monday following the effective date hereof.

(3) That Harry B. Johnston, Jr., doing business as Citizens Warehouse, 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 its highway contract carrier, radial highway common carrier, household goods carrier and city carrier permits have been suspended by the Commission for a period of three days.

(4) That in the event charges to be collected as provided in paragraph (1) of this order, or any part thereof, remain uncollected eighty days after the effective date of this order, Harry B. Johnston, Jr., doing business as Citizens Warehouse, 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.

The Secretary is directed to cause personal service of this decision to be made on Harry B. Johnston, Jr., doing business as Citizens Warehouse. The effective date of this order shall be twenty days after the date of such service.

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

W. E. ...
President

W. ...
R. ...
E. ...
Commissioners