

ORIGINAL

Decision No. 56046

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations, )  
rates and practices of Joe F. Costa, )  
doing business as JOE F. COSTA )  
TRUCKING CO. )

Case No. 5866

Arthur G. Potter, Jr., for respondent. ✓  
Clyde H. Nunnemaker, for Nunnemaker  
Transportation, J. J. O'Neill, for A.  
& E. Readimix Corporation, and T. C.  
Reasonover and S. A. Moore, for  
Permanente Cement Company, interested  
parties.  
Martin J. Porter, for the Commission staff.

O P I N I O N

On December 27, 1956, the Commission issued an order instituting investigation into the operations, rates and practices of Joe F. Costa, doing business as Joe F. Costa Trucking Co. Particular reference was made to alleged violation of Section 3667 of the Public Utilities Code by charging a lesser compensation than the applicable minimum rates and charges required by Minimum Rate Tariff No. 10 (including but not limited to Item 200A) and Minimum Rate Tariff No. 2 (including but not limited to Items 690H and 210D).

A public hearing was held before Examiner Thomas E. Daly at San Francisco on February 19, 1957, at which time and place the matter was submitted and is now ready for decision.

During the course of the hearing the staff presented one witness from its Field Section and one from its Rate Section. The results of their investigations were introduced into the record.

The investigation covered a period from January 1, 1956, to and including September 30, 1956. Respondent's operating authority consists of a radial highway common carrier permit and a highway contract carrier permit.

The record consists primarily of ten freight bills and supporting documents (Exhibit No. 1) relating to cement shipments and six freight bills and supporting documents (Exhibit No. 2) relating to lumber shipments. The staff contends that respondent charged less than the lawful minimum rates on said shipments. The staff introduced Exhibit No. 3 which indicates total undercharges amounting to \$307.81 on the cement shipments and \$362.49 on the lumber shipments.

The record discloses that cement companies situated in Arcata and Crescent City engaged respondent to transport shipments of sacked cement from cement plants located in Redwood City and Permanente. With but one exception the intervals between shipments varied anywhere from two days to five weeks and each shipment was billed separately. On the basis of the documents contained in Exhibit No. 1, the staff applied the minimum rates applicable to ten separate shipments weighing approximately 47,500 pounds each. Respondent in each instance applied the rail rate, based upon a minimum weight of 60,000 pounds. He contends that each transaction was a component part of larger shipments, which the cement companies had previously placed with the cement plants. No documentary evidence, however, was introduced relating to the terms, conditions or size of these alleged larger shipments, or when they were placed.

Although the period of investigation covered from January to September, 1956, the last of the ten shipments occurred on May 15, 1956. This supports respondent's testimony that he ceased using the rail rates and commenced charging the truck rates after discussing the matter with Commission representatives in May of 1956.

With regard to Exhibit No. 2, respondent testified that he merely charged the rate of \$16.50 per thousand feet on the six shipments of lumber and made no attempt to consult Minimum Rate Tariff No. 2.

After consideration the Commission is of the opinion and so finds that Joe F. Costa, doing business as Joe F. Costa Trucking Co., violated Section 3667 of the Public Utilities Code by charging less than the minimum rates as alleged in the Commission's order instituting investigation. } ✓

Respondent will be directed to cease and desist from the collection of charges not authorized. Respondent's operating authority will be suspended for five days, and respondent will be directed to collect the undercharges set forth in Appendix A attached hereto.

O R D E R

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

IT IS ORDERED:

1. That Joe F. Costa, doing business as Joe F. Costa Trucking Co., cease and desist from receiving a lesser compensation for the transportation of property than the applicable minimum rates and charges required by Minimum Rate Tariff No. 2 and Minimum Rate Tariff No. 10.

2. That Radial Highway Common Carrier Permit No. 12-2109 and Highway Contract Carrier Permit No. 12-2672 are hereby suspended for a period of five consecutive days beginning at 12:01 a.m. on the second Monday following the effective date hereof.

3. That Joe F. Costa, doing business as Joe F. Costa Trucking Co., shall also post in 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 under his radial highway common carrier permit and highway contract carrier permit has been suspended by the Commission for the period of five days.

4. That Joe F. Costa, doing business as Joe F. Costa Trucking Co., is directed within twenty days after the effective date of this order:

- (a) To institute and diligently prosecute proceedings to collect the amounts indicated upon Appendix A attached hereto.
- (b) To notify the Commission in writing upon the consummation of said collections.

5. That in the event that the 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, Joe F. Costa, doing business as Joe F. Costa Trucking Co., shall submit to the Commission on Monday of each week a report specifying the action taken to collect said charges and the results of said action, until said charges have been paid in full or until further order of this Commission.

6. That the Secretary of the Commission is directed to cause personal service of this order to be made upon Joe F. Costa, doing business as Joe F. Costa Trucking Co., and this order shall be effective twenty days after the date of said service.

Dated at San Francisco, California, this 7<sup>th</sup> day of January 1958.

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

APPENDIX A

<u>FREIGHT BILL</u>	<u>AMOUNT THAT SHOULD HAVE BEEN CHARGED</u>	<u>AMOUNT ACTUALLY CHARGED</u>	<u>AMOUNT TO BE COLLECTED</u>
C 2042	\$209.00	\$168.39	\$ 40.61
C 2460	209.00	157.61	51.39
C 2525	251.38	226.58	24.80
C 5265	251.38	226.58	24.80
C 5330	251.38	226.58	24.80
C 5327	251.38	226.58	24.80
C 5391	245.10	217.51	27.59
C 3933	251.38	226.58	24.80
C 3984	209.00	169.58	39.42
C 4040	251.38	226.58	24.80
C 4018	322.39	305.91	16.48
C 4261	318.79	273.98	44.81
C 4783	142.27	93.45	48.42
C 4859	303.87	283.68	20.19
C 5127	325.52	117.88	207.64
C 5155	312.42	283.87	28.55