

Decision No. 56314

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
rates, and practices of JAMES A.)
HURLEY, doing business as HURLEY)
TRUCKING CO.)

Case No. 5966

Turcotte and Goldsmith, by Jack Goldsmith,
for respondent.

Martin Porter, for the Commission staff.

O P I N I O N

On August 20, 1957, the Commission issued an order institut-
ing an investigation into the operations, rates, and practices of
James A. Hurley, doing business as Hurley Trucking Co. This investi-
gation was instituted for the purpose of determining whether the
respondent violated Section 3667 of the Public Utilities Code by
charging, demanding, collecting, or receiving a lesser compensation
for the transportation of property than the applicable minimum rates
and charges required by Minimum Rate Tariff No. 2.

A public hearing was held on November 26, 1957 at Los
Angeles before Examiner William L. Cole at which time the matter was
submitted.

Facts

Based upon the evidence introduced into the record, the
Commission hereby finds the following facts to exist:

1. During the period of time the shipments hereinafter referred to took place, respondent was a highway permit carrier as that term is defined in Section 3515 of the Public Utilities Code.

2. During the same period of time, respondent had been served with the applicable rules and regulations of the Commission concerning such shipments.

3. Respondent was first issued a permit by this Commission to operate as a carrier on July 3, 1956.

4. On 15 occasions during the period from July 3, 1956 through February 27, 1957, respondent received quantities of property from consignors in Los Angeles for transportation to various points of destination in the State of California. All of the property transported was canned beer. In assessing his charges for such transportation, respondent consolidated the quantities of property received on various of these occasions together and considered such consolidations as single, multiple-lot shipments. The rates used by respondent in assessing his charges were based upon minimum weights which in turn were determined by the total weight of each consolidation. These minimum weights exceeded the weight of the quantity of property received on any single occasion. The quantity of property received by the respondent on each occasion was not picked up by him within two days, excluding Saturdays, Sundays and legal holidays, of the date the other quantities of property with which it had been consolidated were picked up. With respect to each consolidation, a single shipping document was not issued prior to

or at the time the first quantity of property was picked up setting forth therein the entire quantity of property consolidated. Further facts with respect to the property transported on these 15 occasions are set forth in the following table:

<u>Ident- ifi- cation Letter</u>	<u>Bill of Lading Number</u>	<u>Date</u>	<u>Weight^{1/}</u>	<u>Point of Destination</u>	<u>Charge^{2/} Originally Assessed</u>
A	02925	9/25/56	40,700	Sacramento	--
B	02959	10/11/56	36,000	Sacramento	222.43
C	Frt. Bill 6823	9/12/56	40,650	Stockton	-
D	02934	10/ 1/56	40,650	Stockton	235.77
E	03014	9/17/56	19,200	San Francisco	-
F	02937	10/ 1/56	17,925	San Francisco	-
G	02964	10/16/56	16,750	San Francisco	156.24
H	02898	9/ 6/56	24,000	Redding	-
I	02905	9/11/56	38,400	4 mis. North of Anderson	333.01
J	03151	10/22/56	23,850	Redding	-
K	03407	11/21/56	40,800	Redding	400.83
L	03409	11/29/56	43,200	San Leandro	-
M	03315	12/ 7/56	16,800	San Leandro	186.18
N	03505	2/18/57	45,600	San Leandro	-
O	03518	2/27/57	14,400	San Leandro	186.18

5. The consignor of the transportation identified by the letters L, M, N, and O was Best Distributing Company and the consignor of the remaining transportation referred to in paragraph 4 was the Le Vecke Company.

6. The points of destination of the transportation identified by the letters A, B, H, I, L, M, N, and O were served by spur tracks of the Southern Pacific Company at the time the transportation in question took place.

^{1/} Weight in pounds.

^{2/} Each charge shown in this column represents the charge originally assessed by respondent for that particular transportation and those immediately preceding it for which no charges are shown.

7. The points of destination of the transportation identified by the letters C and D were located on spur tracks of The Atchison, Topeka and Santa Fe Railroad Company at the time the transportation in question took place.

8. On February 11, 1957, respondent received a quantity of canned beer from the Le Vecke Company in Los Angeles to be shipped as a split delivery shipment to Sacramento and Redding. Respondent transported the shipment which consisted of a total of 45,550 pounds, of which 24,000 pounds were shipped to Redding and 21,550 pounds were shipped to Sacramento. The points of destination at Sacramento and Redding were located on spur tracks of the Southern Pacific Company at the time the shipment took place. A single bill of lading or other shipping document for the entire shipment was not issued. Respondent assessed a transportation charge of \$211.29.

9. On September 4, 1956, respondent received a quantity of canned beer from the Le Vecke Company in Los Angeles to be shipped to San Jose. Respondent transported the shipment, which weighed 9,600 pounds, and assessed a transportation charge of \$27.84.

10. On three different occasions during the period from July 3, 1956 through February 27, 1957, respondent received quantities of canned beer from the Maier Brewing Company in Los Angeles to be shipped to either San Mateo or Sacramento. Further facts relative to these shipments are set forth in the following table:

<u>Ident- ifi- cation Letter</u>	<u>Bill of Lading Number</u>	<u>Date</u>	<u>Weight</u>	<u>Point of Destination</u>	<u>Charge Assessed and Collected</u>
P	02968	10/18/56	31,200	San Mateo	\$ 90.48
Q	03462	1/29/57	43,200	Sacramento	166.32
R	03715	2/ 4/57	45,000	Sacramento	173.25

11. With respect to the shipments identified by the letters Q and R, the points of destination were not located on railhead at the time the shipments took place.

12. The property received from Maier Brewing Company and from the Best Distributing Company was received at the same location, which location was served by a spur track of The Atchison, Topeka and Santa Fe Railroad Company at the time the transportation in question took place.

13. With respect to the transportation identified by the letters A through I in paragraph 4 and the transportation referred to in paragraph 9 hereof, respondent, after assessing the transportation charges shown in paragraphs 4 and 9, rebilled the shipper and assessed lower transportation charges using rates based upon the number of cases of canned beer transported rather than upon the weight of the property transported. Respondent collected the lower transportation charges, which amounted to \$875.35. The difference between the charges originally assessed and the charges actually collected was shown in another statement sent to the shipper as a cash advancement.

14. The rebilling of the transportation charges referred to in paragraph 13 was accomplished by an employee of respondent and not by respondent.

15. The rebilling of the transportation charges referred to in paragraph 13 constituted a deliberate attempt on the part of respondent's employee to collect less than the applicable minimum charges established by the Commission for that transportation.

Conclusions

With respect to the transportation referred to in paragraph 4 relative to the consolidation of the various quantities of property into single, multiple-lot shipments, Item 85-A of the Commission's Minimum Rate Tariff No. 2 sets forth the following requirements for multiple-lot shipments:

"2. A single shipping document for the entire shipment shall be issued prior to or at the time of the first pickup.

"*****"

"4. The entire shipment shall be picked up by the carrier within a period of 2 days computed from 12:01 a.m. of the date on which the first pickup commences, excluding Saturdays, Sundays and legal holidays."

"*****"

This item further provides that any property separately picked up without complying with the foregoing provisions shall constitute a separate shipment and shall be subject to the rates, rules and regulations applicable thereto.

It is clear from the facts hereinabove found that the two requirements set out were not complied with in regard to the consolidations set forth in paragraph 4 above. Therefore, the

various quantities of property must be treated as separate shipments. Based upon the facts hereinabove found, it is the Commission's conclusion that the lowest possible minimum charges for these shipments are those set forth in the following table:

<u>Identification Number</u>	<u>Lowest Possible Minimum Charge</u>	<u>Identification Number</u>	<u>Lowest Possible Minimum Charge</u>
A	\$174.00	I	\$289.20 ^{3/}
B	173.34	J	205.92
C	174.00	K	296.40
D	174.00	L	179.53
E	93.31	M	87.48
F	87.48	N	179.53
G	87.48	O	87.48
H	206.64		

It is apparent from the foregoing that the transportation charges originally assessed by respondent for these shipments were less than the applicable minimum charges prescribed by the Commission. Respondent, by rebilling the shipments A through I and assessing and collecting even lower charges, aggravated these violations.

With respect to the split delivery shipment referred to in paragraph 8, Item 170-I of the Commission's Minimum Rate Tariff No. 2 requires that for each split delivery shipment a single bill of lading or other shipping document shall be issued. If this shipping document is not issued, each component part must be treated as a separate shipment. Inasmuch as the facts found indicate that

^{3/} The evidence with respect to this shipment indicated the possibility that 13 cases of beer were damaged in transit. The charge shown is for the entire quantity of the goods transported. The shipper may or may not have a claim against respondent in this matter.

a single shipping document was not issued for this split delivery shipment, the two component parts thereof must be treated as separate shipments. Based upon the facts found, with respect to this transportation, it is the Commission's conclusion that the minimum charge therefor is \$311.38.

With respect to the shipment described in paragraph 9, it is the Commission's conclusion, based upon the facts found, that the lowest possible minimum charge for this transportation is \$84.24. With respect to the shipments identified by the letters P, Q, and R, it is the Commission's conclusion, based upon the facts found, that the minimum charges are \$151.63, \$209.95, and \$218.70, respectively.

Therefore, based upon the facts hereinabove found and the conclusions heretofore reached, the Commission hereby finds and concludes that respondent violated Section 3667 of the Public Utilities Code by charging and collecting a lesser rate than the minimum rate established by the Commission for the transportation in question resulting in undercharges amounting to \$1,181.81.

Respondent's operating authority will be suspended for a period of 10 days and he will be ordered to collect the undercharges found. Respondent will also be ordered to examine his records for the period from July 3, 1956 to the present time to ascertain if there are any additional undercharges.

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 James A. Hurley is ordered to cease and desist from further violation of Section 3667 of the Public Utilities Code.

(2) That the radial highway common carrier permit issued to James A. Hurley be and it hereby is suspended for a period of ten consecutive days commencing at 12:01 a.m. on the second Monday following the effective date hereof.

(3) That James A. Hurley 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 James A. Hurley shall examine his records for the period from July 3, 1956 to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

(5) That James A. Hurley is hereby directed to take such action as may be necessary to collect the amount of the undercharges set forth in the preceding opinion, together with any additional undercharges found after the examination required by paragraph (4) of the

order, and to notify the Commission in writing upon the consummation of such collection.

(6) That in the event charges to be collected as provided in paragraph (5) of this order, or any part thereof, remain uncollected eighty days after the effective date of this order, James A. Hurley 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.

(7) The Secretary of the Commission is directed to cause personal service of this order upon James A. Hurley, and this order shall be effective twenty days after the completion of such service.

Dated at Los Angeles, California, this 3rd

day of MARCH, 1958.

E. Mitchell
President

Raulo Intermier

Monty Deane

E. Lynn Fox

Commissioners