

ORIGINAL

Decision No. 56445

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of )  
JAY B. BOOTH, an individual trading )  
as Booth Transportation, for authority )  
under Section 3667, Public Utilities )  
Code, to compromise a disputed under- )  
charge claim. )

Application No. 39489

O P I N I O N

Applicant, under authority issued by this Commission, conducts trucking operations as a Radial Highway Common Carrier, a City Carrier and a Petroleum Irregular Route Carrier.

The application shows that during the period from July 28, 1955, to January 22, 1957, the applicant transported numerous shipments of steel reinforcing bars in truckload quantities from the Judson Steel Corporation at Emeryville, California, to the Hagen Steel Corporation at Glendale, California. All of these shipments were assessed freight charges on the basis of the common carrier rail rate, it having been applicant's understanding that the Hagen Steel Corporation had the use of a rail spur facility at its Glendale plant and that the Judson Steel Corporation at Emeryville likewise was served by a rail spur track.

In the course of an investigation by the staff of the Public Utilities Commission it was discovered that the Hagen Steel Corporation was not in fact served by a rail spur, it being located a short distance away from the nearest such facility. Accordingly, the carrier was not entitled to use the rail-compelled rate.

In due course the applicant submitted a bill for undercharges in the amount of \$5,662.70, which amount constituted the

difference between the applicable truck rate and the common carrier rail rate. The Hagen Steel Corporation, upon receiving this bill for undercharges, contacted an attorney-at-law who investigated the matter and concluded that certain defenses to the undercharge claim could be advanced. As a result, it is the present position of the Hagen Steel Corporation that there is a defense to the claim for undercharges in that certain of its competitors located in the immediate vicinity are receiving the advantage of the rail-compelled rate, and further that it was induced to accept the transportation of the applicant carrier through representations of the carrier that the rail-compelled rate was applicable. Accordingly, the Hagen Steel Corporation has refused, and now refuses, to pay the sum of \$5,662.70, but as a compromise has offered to pay the sum of \$4,334.79.

In the instant application authority is requested by the carrier for permission to accept this compromise payment. It is alleged that there is "an air of plausibility" to the defense of the steel company which might preclude a recovery of the undercharges in a court of law. Furthermore, the cost of instituting and conducting such a suit would be far greater than the difference between the claimed undercharges of \$5,662.70 and the offered compromise of \$4,334.79. The Hagen Steel Corporation, through its attorney, has advised this Commission that in the event the carrier attempts to collect the full amount of the undercharges, it will actively defend the matter in court and will advance the defenses indicated.

The law in such situations is clear. These shipments obviously were hauled by the applicant carrier under the authority

of its Radial Highway Common Carrier Permit. This type of carrier is subject to the provisions of the minimum rate tariffs prescribed by this Commission and there is no question that in the normal course of events such a carrier cannot charge less than the applicable minimum rates.

Section 3667 of the Public Utilities Code reads as follows:

"No highway permit carrier shall charge, demand, collect, or receive for the transportation of property, or for any service in connection therewith, rates or charges less than the minimum rates and charges or greater than the maximum rates and charges applicable to such transportation established or approved by the commission; nor shall any such carrier directly or indirectly pay any commission or refund, or remit in any manner or by any device any portion of the rates or charges so specified, except upon authority of the commission."

Under the provisions of the foregoing statute it is evident that there can be no charges less than the applicable minimum rates "except upon authority of the commission". The question now before us is whether such authority shall be granted in the instant case.

There is no dispute as to the facts.

A consideration of the entire record in this matter leads us to conclude that in spite of the facts of this case, which indicate there was no intention on the part of applicant to create a deviation from the general rule of law, the applicable minimum rates

must be observed until the Commission authorizes a carrier to depart therefrom after proper justification. / The Commission is aware that the sum offered as a compromise is not disproportionate to the amount of the undercharges. However, the Commission is reluctant to entertain an application, such as the instant one, until an action looking toward the recovery of the full amount of the undercharges has been commenced in a court of competent jurisdiction. Therefore, the relief sought herein will be denied.

A public hearing is not necessary. /

ORDER

Application as above entitled having been filed, the Commission being fully advised in the premises and hereby finding and concluding that the relief sought by applicant is not justified and must be denied,

IT IS ORDERED that Application No. 39489 be and it is denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 12<sup>th</sup> day of April, 1958.

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