

Decision No. 56542

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion into the operations, rates,) Case No. 6039
and practices of GEORGE T. DUNLAP.)

George T. Dunlap, in propria persona.
James Eddy, for the Commission staff.

O P I N I O N

On January 14, 1958, the Commission issued an Order of Investigation on its own motion into the operations, rates and practices of George T. Dunlap for the purpose of ascertaining:

(1) Whether respondent violated Sections 3664 and 3667 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of property than the minimum charges prescribed in the Commission's Minimum Rate Tariff No. 2.

(2) Whether respondent violated Item 257 of the Commission's Minimum Rate Tariff No. 2 by assessing charges based on rates the unit of measurement of which is different from that stated in the tariff.

(3) Whether respondent violated other provisions and requirements of the Public Utilities Code and the Commission's Minimum Rate Tariff No. 2.

A public hearing was held on March 12, 1958 at Sacramento before Examiner William L. Cole, at which time the matter was submitted.

Facts

Based upon the evidence introduced at this hearing, the Commission hereby finds that the following facts exist:

1. During the period of time the shipments hereinabove referred to took place, respondent was operating pursuant to a Radial Highway Common Carrier Permit and a Highway Contract Carrier Permit issued by this Commission.

2. Prior to this period of time, respondent had been served with the Commission's Minimum Rate Tariff No. 2, all supplements thereto, the Commission's Distance Table No. 4, and all supplements thereto, which were applicable to the shipments in question.

3. During the period from August 31, 1956 through October 10, 1956, respondent transported 18 shipments of lumber between Feather Falls, on the one hand, and various points in California, on the other hand, and one shipment from Oroville to San Gabriel. The transportation charges assessed by respondent for these shipments were based on a rate of 70 cents per loaded mile. The weight of the lumber transported in these shipments was not shown in respondent's records.

4. During the period from November 5, 1956 through March 22, 1957, respondent transported 15 shipments of lumber from Feather Falls, on the one hand, and various points of destination in California, on the other hand. In assessing his charges for these shipments, respondent considered that the point of origin and point of destination were both located on railhead and therefore assessed charges based only upon the rail rates between the point of origin

and the respective points of destination. The point of origin of these shipments at Feather Falls was located on railhead at the time the shipments took place. However, the various points of destination were not located on railhead during that period of time.

Further facts relative to these 15 shipments are set forth in the following table:

<u>Freight Bill No.</u>	<u>Date of Shipment</u>	<u>Weight</u>	<u>Destination</u>	<u>Charge Assessed by Respondent</u>
06754	11/16/56	48020	Hawthorne	\$288.12
07273	12/21/56	49300	Pomona	295.80
07264	12/11/56	51960	Los Angeles	311.76
07266	12/12/56	46180	Oakland	157.02
07265	12/12/56	46300	Los Angeles	277.80
07267	12/13/56	49680	Fairfield	134.14
07268	12/14/56	51800	North Hollywood	310.80
07275	12/26/56	47800	Gardena	286.80
7362	12/ 7/56	52500	Torrance	315.00 ✓
07262	12/ 5/56	50360	Vacaville	125.90
2554	3/15/57	48620	Pomona	291.72
2555	3/18/57	48790	Hawthorne	292.74
2557	3/22/57	43830	So. San Gabriel	262.98
7359	11/29/56	52200	So. San Gabriel	313.20
07331	11/ 5/56	47900	Gardena	287.40

5. On April 9, 1953, respondent received from members of the Commission staff an official notice of freight bill unit of measurement violations wherein respondent was admonished for violations of Item 257 of Highway Carriers' Tariff No. 2, which item related to the assessing of charges based upon improper units of measurement.

6. Respondent owns three trucks but at the time of the hearing was not engaged in any carrier operations whatsoever.

Conclusions

Item 257 of Minimum Rate Tariff No. 2 (formerly Highway Carriers' Tariff No. 2) states that rates shall not be quoted or

assessed by carriers based upon a unit of measurement different from that in which the minimum rates and charges in this tariff are stated. Minimum rates and charges for the transportation of lumber in Minimum Rate Tariff No. 2 are stated in cents per 100 pounds, but not upon a certain rate per loaded mile. Therefore, based on the facts hereinabove found in paragraph 3, the Commission finds and concludes that respondent violated Item 257 of this tariff with respect to the 19 shipments referred to therein. Inasmuch as the weights of the lumber transported in these shipments were not available, the correct minimum charges for the shipments cannot be ascertained.

With respect to the 15 shipments hereinabove referred to in paragraph 4, it is apparent that respondent was relying upon Item 200-E of Minimum Rate Tariff No. 2 which authorizes the use of common carrier or rail rates when such rates produce a lower aggregate charge for the same transportation than results from the application of the rates provided in that tariff. However, inasmuch as the points of destination of these 15 shipments were not located on railhead and therefore were not the same transportation as would have been performed by a railroad, applicant is precluded from using this item with respect to these shipments. It is the Commission's conclusion that the correct minimum charges for the 15 shipments in question are those set forth in the following table:

<u>Frt. Bill No.</u>	<u>Correct Minimum Charge</u>	<u>Frt. Bill No.</u>	<u>Correct Minimum Charge</u>
06754	\$325.37	7362	\$355.72
07273	334.04	07262	153.58
07264	352.07	2554	329.44
07266	187.76	2555	330.59
07265	313.72	2557	296.98
07267	156.82	7359	353.70
07268	350.99	07331	324.56
07275	323.89		

In view of the foregoing, the Commission hereby finds and concludes that respondent violated Sections 3664 and 3667 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of lumber than the minimum charges prescribed in the Commission's Minimum Rate Tariff No. 2, resulting in undercharges amounting to \$538.05.

Respondent's operating authority will be suspended for a period of five days and he will be ordered to collect the undercharges hereinabove found. Respondent will also be ordered to examine his records for the period from January 1, 1956 to the present time for the purpose of ascertaining whether additional undercharges exist.

The evidence at the hearing indicated that respondent is not strictly complying with the Commission's rules relative to retention of shipping documents. Respondent is hereby directed to comply with these rules in the future.

O R D E R

Public hearing having been held in the above-entitled matter and the Commission being fully informed therein, now, therefore,

IT IS ORDERED that:

1. George T. Dunlap shall cease and desist from all future violations of the Commission's Minimum Rate Tariff No. 2.

2. The Radial Highway Common Carrier Permit and Highway Contract Carrier Permit issued to George T. Dunlap is suspended for a period of five days commencing on the second Monday after the effective date of this order.

3. George T. Dunlap 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 Radial Highway Common Carrier Permit and his Highway Contract Carrier Permit have been suspended by the Commission for a period of five days.

4. George T. Dunlap shall examine his records for the period from January 1, 1956 to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

5. George T. Dunlap is hereby directed to take such action as may be necessary to collect the amounts of undercharges set forth in the preceding opinion together with any additional undercharges found after the examination required by paragraph 4 of this order and to notify the Commission in writing upon the consummation of such collections.

6. 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, George T. Dunlap shall submit to the Commission on the first Monday of each month 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 to be made upon George T. Dunlap and this order shall be effective twenty days after the completion of such service.

Dated at San Francisco, California, this 15th day of April, 1958.

[Signature]
President
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Commissioners