

ORIGINAL

Decision No. 55843

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the rates, operations, practices and methods of HAYDEN W. CHURCH.

Case No. 5700

Cyril M. Saroyan, Commission staff attorney.
Stephen Monteleone, for respondent.
E. O. Blackman, for California Dump Truck Owners Association, interested party.

OPINION ON REHEARING

By Decision No. 54286, dated December 18, 1956, Hayden W. Church was ordered to pay certain overcharges to various carriers and subhaulers. The respondent filed a petition for rehearing and under date of April 16, 1957, this Commission issued its order granting rehearing.

A public hearing was held before Examiner Grant E. Syphers on January 10, 1958, in Los Angeles, at which time further evidence was adduced and the matter submitted subject to the filing of briefs. These briefs now have been filed and the matter is ready for decision.

In Decision No. 54286, supra, it was found that the hauling performed for respondent was subject to Minimum Rate Tariff No. 7 and as a result of the particular conditions under which the hauling was performed the zone rate provided in said tariff was applicable and should be applied. Therefore the respondent was directed to pay 95 percent of the zone rate to the subhaulers. In the rehearing the

respondent contended (1) that the zone rate was not applicable but rather that charges should be assessed between the carriers on the basis of hourly rates; (2) the Commission did not have jurisdiction to order the respondent to make reparation to the underlying carriers; (3) any claims due from respondent to the underlying carriers are barred by the statute of limitations; and (4) the respondent is entitled to set off amounts due him for certain rented equipment.

According to the evidence adduced, the respondent made arrangements with various shippers for hauling and for that service charged the so-called zone rate. To perform the actual hauling, respondent employed the services of various subhaulers. Upon these facts we affirm our previous finding made in Decision No. 54286, "that the overlying carrier must pay the underlying carrier 95 percent of the minimum charges the overlying carrier collects pursuant to the applicable portion of the tariff." The respondent cannot charge the shipper upon one rate basis and pay the subhaulers upon another.

As to the question of jurisdiction, we point out that this is a matter involving undercharges between a principal hauler and a subhauler. We hold that the payment of these charges is a matter within the jurisdiction of this Commission.

As to the statute of limitations, we now hold that such a matter is a procedural right and may either be relied upon or waived upon the election of the party entitled to avail himself thereof. In the instant proceeding the respondent did not plead the statute of limitations at the original hearing. He cannot now raise it upon rehearing.

Finally, as to the contention of respondent that he is entitled to set off amounts due him for rented equipment, we renew

our findings made in Decision No. 54286, supra. If the respondent has any claim for amounts due him for rented equipment he should pursue that claim in the proper forum. He cannot offset it against the charges for hauling performed by subhaulers.

ORDER ON REHEARING

Decision No. 54286, dated December 18, 1956, having been issued, this Commission having granted a rehearing thereon, a public hearing having been held, evidence and legal argument having been received, briefs having been filed, and the Commission being fully advised in the premises,

IT IS ORDERED that the findings and order of Decision No. 54286, supra, be and they hereby are in all respects affirmed.

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

Dated at San Francisco, California, this 16th day of MAY, 1958.

Paul Wintermeyer President
Michael J. Fox
Theodore James
Commissioners

Peter E. Mitchell
Commissioner C. Lyn Fox, being necessarily absent, did not participate in the disposition of this proceeding.