

ORIGINAL

Decision No. 30627

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's) own motion into the operations, rates, and practices of ROBERT H. SELL.

Case No. 6022

Robert Sell, in propria persona.

Franklin G. Campbell and A. J. Lyon, on behalf of the Commission staff.

O P I N I O N

On December 10, 1957, the Commission issued an order of investigation on its own motion into the operations, rates and practices of Robert H. Sell for the purpose of ascertaining whether the respondent has 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.

A public hearing was held on January 28, 1958, at Redding, 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 hereinafter referred to took place, respondent was operating pursuant to a radial highway common 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 10, 1956 through December 26, 1956, respondent transported 13 shipments of lumber for the Lewis Lumber Company from Redding Forest Products in Redding to the Forest Lumber Company in Palmdale, an unincorporated area in California. In assessing his charges for these shipments, respondent considered that the point of origin and the point of destination were both located on railhead and therefore assessed charges based solely upon the rail rates between these two points.

4. Redding Forest Products at Redding has spur track facilities located on its property.

5. Forest Lumber Company at Palmdale is located on property leased from the Southern Pacific Company. This property is situated on the Southern Pacific Company's right-of-way. There are no spur track facilities located on the property leased by the lumber company. The leased property is located 60 feet away from a team track of the Southern Pacific Company. There is a fence and gate separating the leased property from the team track.

6. During the period of time the shipments in question took place, the Forest Lumber Company used the area between its leased property and the team track for the purpose of receiving lumber from rail cars and from highway carrier trucks. Lumber destined for the Forest Lumber Company has been unloaded directly from rail cars into this area. Likewise, respondent has unloaded lumber destined for

the Forest Lumber Company into this area and within five feet of the tracks where lumber was unloaded from the rail cars.

7. On January 29, 1957 the respondent transported a shipment of lumber weighing 46,000 lbs. from Redding Forest Products at Redding to the Peoples Lumber Company at Santa Susana. For this transportation respondent assessed charges in the amount of \$277.20. In assessing his charges, respondent considered that both points of origin and destination were located on railhead and therefore assessed charges based solely upon the rail rates between these two points. The Peoples Lumber Company at Santa Susana has no rail facilities of any type on its property.

8. On August 15, 1956 respondent transported a shipment of lumber weighing 46,100 lbs. from the Redding Forest Products at Redding to Fleming & Hightower at 3250 San Fernando Road in Los Angeles. For this transportation respondent assessed charges in the amount of \$276.60. In assessing his charges, respondent considered that both the points of origin and destination were located on railhead and therefore assessed charges based solely upon the rail rates between these two points. Fleming & Hightower have spur track facilities. On his freight bill respondent showed the address of the consignee as being 6520 San Fernando Road.

9. On March 13, 1957 respondent transported a shipment of lumber weighing 49,700 lbs. from Redding Forest Products at Redding to the Standard Lumber Company in San Marcos. For this transportation respondent assessed charges in the amount of \$334.95. Respondent assessed these charges on the basis that the point of destination was not located on railhead. Standard Lumber Company in San Marcos is not served by rail facilities of any type.

10. Respondent was served with an informal undercharge letter in 1956 relative to transportation occurring prior to the shipments in question. This undercharge letter warned respondent against assessing transportation charges on the basis that the points of destination are located on railhead when, in fact, they are not.

11. Respondent operates one truck and trailer and uses his residence as an office. He has no employees and his carrier operations are limited primarily to shipments of lumber for one shipper.

Positions of the Parties

With respect to the shipments referred to in paragraphs 3, 7 and 8, it is the position of the Commission staff that the points of destination were not located on railhead when the transportation took place and that the charges assessed by respondent, based solely on the rail rates, were improper. The staff maintains that an additional charge must be assessed based upon rates from railhead to the actual points of destination. Respondent, on the other hand, maintains that these points of destination are being served directly by the railroads and therefore that his use of the rail rates was proper.

With respect to the shipment referred to in paragraph 9, both respondent and the Commission staff agree that the point of destination is not located on railhead. However, the Commission staff maintains that there were arithmetical errors in the charge assessed by the respondent for this transportation resulting in an undercharge of \$1.80.

Applicable Tariff Provisions

In order to ascertain whether rate violations have occurred with respect to the shipments in question, certain provisions of the Commission's Minimum Rate Tariff No. 2 must be examined.

Item 200-E of this tariff provides, in part:

"(a) Common carrier rates, except rates of coastwise common carriers by vessel, may be applied in lieu of the rates provided in this tariff, when such common carrier rates produce a lower aggregate charge for the same transportation than results from the application of the rates herein provided."

Item 210-D provides, in part:

"(b) When point of origin is located at railhead or an established depot and point of destination is located beyond railhead or an established depot, add to the common carrier rate applying from point of origin to any team track or depot the rate provided in this tariff for the distance from the team track or depot to which the common carrier rate used applies to point of destination."

"Same Transportation" is defined in Item 10-J as:

"(j) Same Transportation means transportation of the same kind and quantity of property between the same points, and subject to the same limitations, conditions and privileges, but not necessarily in an identical type of equipment."

"Railhead" is defined in Item 10-J, in part, as:

"(h) Railhead means a point at which facilities are maintained for the loading of property into or upon, or the unloading of property from, rail cars or vessels."

"Point of Destination" is defined in Item 10-J as:

"(g) Point of destination means the precise location at which property is tendered for physical delivery into the custody of the consignee or his agent. All points within a single industrial plant or receiving area of one consignee shall be considered as one point of destination. An industrial plant or receiving area of one consignee shall include only contiguous property which shall not be deemed separate if intersected only by public street or thoroughfare."

Conclusion

It appears that respondent applied the rail rate in assessing charges for the shipments in question pursuant to the

provisions of Item 200-E on the basis that the transportation being performed by him was the same transportation as that which would have been performed by a railroad operating between the same points of origin and destination. This would be true only if the points of origin and destination were located on railhead. Since there is no question but that the points of origin were located on railhead, the question to be decided is whether the points of destination were on railhead at the time the shipments took place.

In ascertaining whether the Forest Lumber Company, the principal point of destination involved here, was on railhead, it is necessary to determine whether this point of destination was limited to the property leased by that company or whether the point of destination included, not only the leased area, but also the area between the team track and the leased area. As has already been found, the Forest Lumber Company used the area immediately adjacent to the team track for the purpose of receiving lumber not only from rail cars, but also from trucks. In view of this and inasmuch as they were contiguous, it would appear that the leased area and the area immediately adjacent to the team track constituted one single receiving area of the Forest Lumber Company. By definition therefore, this combined area became a single point of destination.

Inasmuch as this combined area had the use of a team track and therefore had facilities for the unloading of property from rail cars, it is the Commission's conclusion that the Forest Lumber Company was located on railhead at the time of the shipments in question. It follows, then, that the transportation performed by respondent was the same transportation which would have been performed by a railroad operating between the same points. Based upon these

conclusions and the provisions of Item 200-E, the Commission further concludes that respondent's use of rail rates in assessing his charges for the transportation referred to in paragraph 3, was not improper.

With respect to the shipment of lumber transported to the Peoples Lumber Company in Santa Susana, the facts hereinabove found indicate, and the Commission hereby concludes, that this point of destination was not located on railhead. Therefore, the transportation performed by the respondent in this instance was not the same as that which would have been performed by a railroad. Respondent's charges, based solely upon the rail rates, therefore, were improper. It is the Commission's conclusion that the applicable minimum charge for this transportation is \$313.05.

With respect to the shipment of lumber to Fleming & Hightower in Los Angeles, the facts hereinabove found indicate, and the Commission hereby concludes, that this point of destination was on railhead. Therefore, the transportation charges assessed by respondent were not improper. Respondent is admonished, however, that in the future he show the correct addresses of all consignees on his shipping documents.

With respect to the shipment of lumber to San Marcos, it is the Commission's conclusion that the respondent made arithmetical errors in calculating the transportation charge and that the applicable minimum charge is \$336.75.

Based upon the facts hereinabove found and the conclusions heretofore reached, the Commission hereby finds and concludes that, with respect to the two shipments referred to in paragraphs 7 and 9, respondent violated Sections 3664 and 3667 of the

Public Utilities Code by assessing and collecting charges for the transportation of lumber less than the minimum charges established by the Commission. These violations resulted in undercharges totaling \$37.65.

Respondent will be ordered to cease and desist from any future violations of the Commission's Minimum Rate Tariff No. 2 and he will be ordered to collect the undercharges hereinabove found.

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 Robert H. Sell shall cease and desist from all future violations of the Commission's Minimum Rate Tariff No. 2.
2. That Robert H. Sell is hereby directed to take such action as may be necessary to collect the amounts of undercharges as set forth in the preceding opinion.
3. The Secretary of the Commission is directed to cause personal service of this order to be made upon Robert H. Sell and this order shall be effective twenty days after such service.

Dated at San Francisco, California, this 6th day of May, 1958.

President

Commissioners

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