

Decision No. 50690**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
EMMETT AIKEN.

Case No. 6037

Emmett Aiken, in propria persona.
Franklin G. Campbell, for the
Commission staff.

O P I N I O N

This Commission, on January 14, 1958, issued an order of investigation into the operations, rates and practices of Emmett Aiken who is engaged in the business of transporting property over the public highways as a radial highway common carrier and as a petroleum irregular route carrier. The purpose of this investigation is to determine whether the respondent has acted in violation of 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 applicable charges prescribed by the Commission's Minimum Rate Tariff No. 2 (dealing with general commodities).

A public hearing was held on March 18, 1958 in Redding, at which time evidence was presented and the matter was duly submitted.

At the time of the hearing, representatives of the Commission's Rate Branch and Field Section testified on behalf of the Commission staff; Mr. Emmett Aiken testified on his own behalf. From the evidence produced by the staff there appear to have been numerous

violations of said Minimum Rate Tariff No. 2, as to this carrier's radial highway common carrier permit. His certificate as a petroleum operator was not involved in this proceeding. These violations resulted primarily because the respondent with respect to various shipments of lumber charged his shipper a rate based upon an on-railhead point of destination, whereas the consignees involved were, in fact, located off-railhead. On some shipments the point of origin was off-railhead but was rated as if on rail. The respondent also failed to assess the surcharge provided in Supplements 33, 36 and 38 of Minimum Rate Tariff No. 2 on certain shipments.

Based upon the evidence presented, the Commission hereby finds and concludes that the following facts exist:

(1) During the period from May through August, 1957, Emmett Aiken operated as a radial highway common carrier pursuant to a permit issued by the Commission.

(2) During this period of time, respondent had in his possession the Commission's Minimum Rate Tariff No. 2, together with all supplements and amendments thereto.

(3) During this period of time, respondent transported certain shipments of lumber which are more particularly set forth in the following table. Further relevant facts relative to these shipments, which the Commission hereby finds, together with our conclusions concerning the correct minimum charges for such shipments, are set forth as follows:

<u>Frt. Bill No.</u>	<u>Date</u>	<u>Point of Origin</u>	<u>Point of Destination</u>	<u>Wt. in Pounds</u>	<u>Charge Assessed by Respondent</u>	<u>Correct Minimum Charge</u>	<u>Under-Charge</u>
1902	5/21/57	Redding	Laguna Beach	50,600	\$303.60	\$342.86	\$39.26
5227	5/29/57	Red Bluff	Hemet	49,300	295.80	334.04	38.24
5002	5/23/57	Red Bluff	Oceanside	45,440	272.64	307.89	35.25
5328	6/11/57	Anderson	Pico	45,900	275.40	311.01	35.61
1045	7/25/57	Anderson	Apple Valley	44,470	266.82	301.32	34.50
1857	6/26/57	Anderson	Midway City	42,100	252.60	285.26	32.66
5054	6/25/57	Red Bluff	Costa Mesa	47,810	286.86	323.95	37.09
2827	5/16/57	Anderson	Pedley	39,980	240.00	271.02	31.02
5077	5/31/57	Redding	Hesperia	49,600	297.60	336.08	38.48
5083	6/21/57	Red Bluff	Rosemead	46,300	277.80	313.72	35.92
5305	6/18/57	Anderson	Spring Valley	44,900	269.40	304.23	34.83
5086	7/ 5/57	Weaverville	Bloomington	51,420	334.23	385.65	51.42
5310	7/ 9/57	Red Bluff	Palm Springs	48,250	328.10	346.23	18.13
5313	7/19/57	Red Bluff	El Cajon	45,100	270.60	305.59	34.99
5334	7/28/57	Anderson	Ontario	46,020	276.12	311.82	35.70
5007	7/19/57	Burney	Bloomington	49,780	298.68	318.59	19.91
5102	7/24/57	Anderson	Riverside	44,600	267.60	302.20	34.60
5038	7/31/57	Anderson	San Jacinto	42,640	255.84	288.91	33.07
5320	8/14/57	Anderson	Covina	43,500	261.00	294.75	33.75

Respondent conceded that the above violations occurred but claimed that he was personally unaware that the points of destinations of these shipments were off-railhead. He declared that his shippers informed him that the consignees were on rail and that he relied on such statements when assessing charges for these shipments. In some cases, he stated he relied on the declarations of his own drivers that points of destination were on railhead. In some instances, he stated he applied the correct rate for the particular shipment but was advised by the shipper that he was wrong. He corrected the freight bills upon receiving this advice. As a result of these practices the above undercharges occurred.

Based upon the foregoing facts, the Commission hereby finds and concludes that respondent violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting a lesser compensation

for the transportation of lumber than the applicable minimum rates prescribed by the Commission's Minimum Rate Tariff No. 2, resulting in total undercharges amounting to \$654.43.

The burden of ascertaining the correct rate to be charged is upon the carrier. He cannot escape this responsibility by relying upon information supplied by his shippers or even, as he declares, his drivers. Moreover, his testimony on the reason for these violations, is not convincing. This is especially true for those instances where the point of origin was off-railhead; this information would be within his immediate knowledge. However, even by resolving all doubts in favor of the respondent his conduct was grossly negligent. Furthermore, in this case evidence introduced in aggravation of the present violations disclosed that this railhead problem is not a new one for this carrier. In 1955 and 1956 he failed to provide railhead information on his freight bills and was ordered to collect undercharges on those shipments not encompassing the off-rail charge. Therefore, in view of these circumstances, respondent's operating rights will be suspended for a period of ten days and he will be ordered to collect the undercharges hereinabove found. Respondent will also be directed to examine his records from April 1, 1957 to the present time in order to determine if any additional undercharges have occurred and to file with the Commission a report setting forth the additional undercharges, if any, he has found. Respondent will also be directed to collect any such 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 the radial highway common carrier permit No. 45-737 issued to Emmett Aiken is hereby suspended for ten consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order.

(2) That Emmett Aiken 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 has been suspended by the Commission for a period of ten days.

(3) That Emmett Aiken shall examine his records for the period from April 1, 1957 to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

(4) That within ninety days after the effective date of this decision, Emmett Aiken shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph (3).

(5) That Emmett Aiken 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 (3) of this order, and to notify the Commission in writing upon the consummation of such collections.

(6) That in the event charges to be collected as provided in paragraph (5) of this order, or any part thereof, remain uncollected 120 days after the effective date of this order, Emmett Aiken 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 this Commission.

(7) The Secretary of the Commission is directed to cause personal service of this order to be made upon Emmett Aiken and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 13th day of May, 1958.

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

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