

ORIGINALDecision No. 56773

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates and practices of John C.)
 MOODY.)

Case No. 6050

Sheridan, Orr & Barnes, by Frank E. Orr,
 for the respondent.
Hugh Orr, for the Commission staff.

O P I N I O N

On February 4, 1958, this Commission issued an order of investigation into the operations, rates and practices of John C. Moody, who is engaged in the business of transporting property over the public highways by vacuum-type or pump-type vehicles as a radial highway common carrier, a city carrier, and as a petroleum irregular route carrier. The purpose of this investigation is to determine whether the respondent has acted in violation of Section 702 of the Public Utilities Code by failing to comply with a certain decision of the Commission regarding this petroleum irregular route carrier. Said section reads:

"Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the Commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees."

A public hearing was held on April 15, 1958, in Ventura at which time evidence was presented and the matter was duly submitted.

At the time of the hearing, a representative of the Commission Rate Section testified on behalf of the Commission staff;

Mr. John C. Moody testified on his own behalf. Documentary evidence produced by the staff discloses that by Decision No. 55584, dated September 24, 1957, in Case No. 5432, the Commission established minimum rates for the transportation of commodities in vacuum-type and pump-type tank vehicles, effective November 1, 1957. Petroleum common carriers maintaining rates, rules or regulations lower in volume or effect than those established by the above decision were required to amend their tariffs on not less than five days' notice to the Commission and to the public, said amendments to become effective not later than November 1, 1957. Said decision called for the carriers to effectuate the required amendments by making tariff publications. This carrier did not make such publications. Proper filings were eventually made on April 1, 1958, two weeks prior to the hearing on this matter. An earlier filing on March 13, 1958, was rejected by the staff because the attempted filing was not in conformity with the Commission's rules as required by Section 489 of the Public Utilities Code.

Respondent conceded that he failed to make the required tariff publications within the time specified. He offered evidence in mitigation of the violation, declaring that at the time he received the above decision he misinterpreted the language of the order. He did make, in fact, the amendments required but did not realize the decision called for a tariff publication of said amendments. On November 11, 1957, he sent the following letter to the Commission:

"R. J. Pajalich, Secretary,
Dear Sir:

All tariffs for transportation of commodities in vacuum tanks have been amended and notice made to the public and the Commission to conform to rates established by decision No. 55584 Case No. 5432.

All rates were in effect as of Nov. 1, 1957.

Yours truly

Moody Trucking Co."

The staff did not answer this letter or explain that tariff publications were required in addition to the establishment of the new rates. Instead, a letter was sent to the carrier on December 2, 1957, quoting an earlier letter requiring tariff amendments. On February 4, 1958, the order of investigation was instituted. As seen, there was no evidence to show a deliberate attempt to evade the effect of the required amendments.

Based upon the foregoing facts, the Commission hereby finds and concludes that respondent violated Section 702 of the Public Utilities Code by failing to comply with the order of Decision No. 55584. As indicated by the above circumstances this violation is a technical one. The respondent has the duty and the burden of ascertaining what the decision requires. He cannot escape his responsibility by asserting, as was done at the hearing, that he did not have the services of an attorney and thus could not understand the language of the decision. Moreover, it is no excuse that he was not operating under his certificate on November 1, 1957. On the other hand, his evidence unmistakably showed he attempted to comply with the spirit and effect of the decision and had acted in good faith. The staff possibly could have avoided this proceeding by answering the respondent's letter of November 11, 1957, explaining the defects of his action.

Accordingly it is our opinion, considering the nature of the violation and the personal as well as the business affairs and finances of the respondent, that his petroleum irregular route carrier operating right should be suspended for a period of one day. Accordingly the following order will so provide:

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 THAT:

(1) The petroleum irregular route carrier certificate of public convenience and necessity acquired by John C. Moody in Decision No. 50476, dated August 24, 1954, in Application No. 35497 is hereby suspended for one day starting at 12:01 a.m. on the second Monday following the effective date of this order.

(2) John C. Moody 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 petroleum irregular route certificate has been suspended by the Commission for a period of one day.

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

Dated at San Francisco, California, this 27th day of May, 1958.

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

Commissioners

-4- Commissioner C. Lyn Fox, being necessarily absent, did not participate in the disposition of this proceeding.