

ORIGINAL

Decision No. 56775

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
 motion into the operations, rates and)
 practices of HARRY WENDELL, doing)
 business as HARRY WENDELL'S FREIGHT)
 LINES.)

Case No. 6047

Harry Wendell, in propria persona.
Edward G. Fraser, 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 Harry Wendell, doing business as Harry Wendell's Freight Lines, who is engaged in the business of transporting property over the public highways as a highway common carrier, a radial highway common carrier, and a highway contract 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 certain decisions of the Commission regarding his highway common carrier tariff.

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 8, 1958 in Clear Lake Highlands at which time evidence was presented and the matter was duly submitted.

At the time of the hearing, a representative of the Commission's Rate Branch testified on behalf of the Commission staff;

Mr. Harry Wendell testified on his own behalf. Documentary evidence produced by the staff discloses that by Decision No. 55319 dated July 30, 1957 in Case 5432, the Commission ordered and directed common carriers to remove from their tariffs, the expiration date of the increased rates and charges established pursuant to certain previous decisions of the Commission. Common carriers maintaining rates, rules or regulations lower in volume or effect than those established by said Decision No. 55319 were required to amend their tariffs on not less than one day's notice to the Commission and to the public, to become effective no later than September 1, 1957.

Decision No. 55704 dated October 15, 1957 in Case No. 5432 amended the minimum rates and charges set forth in Minimum Rate Tariff No. 2, and directed common carriers to establish in their tariffs the increases necessary to conform with the amendments no later than November 18, 1957. The respondent did not file the required amendments or comply with the above-mentioned decisions within the allotted time. The necessary filings were made on April 7, 1958, one day prior to the hearing in this matter.

Respondent conceded that he failed to make the required tariff publications within the times specified. He offered evidence in mitigation of the violations, indicating that he erroneously concluded that another common carrier, with which he shared a joint rate, would file for him, or assist him in filing the required tariff amendments. He also explained that he was uncertain as to what was required of him by the decisions and that the pressure of his business during the winter months was such that he permitted the time required for filing to lapse. 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 orders of Decisions Nos. 55319 and 55704. This carrier is essentially a one-man operation with the owner driving the one truck available and keeping his own books. Approximately all of his operations consist of transporting general commodities on a five-day week basis from Calistoga, on a joint-rate arrangement, to the cities bordering the lower portion of Clear Lake. It is our opinion, considering the nature of the violations and the personal as well as the business affairs and finances of the respondent, that his highway common carrier operating rights 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 highway common carrier certificate of public convenience and necessity acquired by Harry Wendell in Decision No. 49649 dated February 9, 1954, in Application No. 35000 is hereby suspended for one day starting at 12:01 a.m. on the second Monday following the effective date of this order.

2. Harry Wendell, doing business as Harry Wendell Freight Lines, 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 highway common carrier certificate has been suspended by the Commission for a period of one day.

3. During the period of suspension of Harry Wendell's certificate of public convenience and necessity as provided in ordering

paragraph 1 hereof, the carrier shall not transport any shipments under his permits between points covered by his certificated operative rights and shall not lease his equipment.

4. The Secretary of the Commission is directed to cause personal service of this order to be made upon Harry Wendell 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]
 Theodore J. J...

Commissioners

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

WALTER H. B. ...
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