

ORIGINALDecision No. 58788

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 L.
BATASTINI, doing business as
Batastini Trucking.

Case No. 6040

Donald R. Batastini, for applicant.James L. Bostwick, interested party.Elmer Sjostrom, 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 Robert L. Batastini who is engaged in the business of transporting property over the public highways as a radial highway common 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 April 14, 1958, in Santa Barbara 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. Donald R. Batastini testified on behalf

of the respondent. The staff offered evidence showing that the respondent shipped frozen and fresh fish at a rate less than the rate provided by Minimum Rate Tariff No. 2. All the fish in question was transported for Hovden Food Products Corp. of Monterey, with which this carrier had a written contract. The operation was a seasonal one, extending from September through January. Shipments were transported principally from Port Hueneme to Monterey, with one shipment being picked up at Santa Barbara. The fish were unloaded from boats by suction pump through a hopper into open tanks mounted on the carrier's equipment; a scale weight is obtained on the dock, and ice is chipped and sprayed by a special machine directly into the open tank over the fish. Of the total number of shipments, most consisted of mackerel charged at a rate of \$10 per ton. In addition, there were two shipments of sardines rated at \$13.90 per ton; one shipment of sardines part of which was rated at \$13.60 per ton, and the rest at \$10 per ton and a mixed shipment of mackerel and sardines rated at \$11 per ton. The staff alleged that common carrier rail rates were not applicable between Port Hueneme and Santa Barbara, on the one hand, and Monterey, on the other hand. It was also alleged that the respondent failed to assess the surcharge provided in Supplement No. 38 to said tariff. The rates that should have been charged were set forth in Staff Exhibit No. 6 which rates consisted of Class Rates at 66 cents per 100 pounds along with the above mentioned surcharge.

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

(1) During the period from August through October, 1957, Robert L. Batastini 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 fresh and frozen fish 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>Frts. 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>
09826	9/22/57	Port Hueneme	Monterey	39,800	\$199.00	\$281.07	\$82.07
09842	9/27/57	Port Hueneme	Monterey	36,630	183.15	258.68	75.53
09520	10/ 2/57	Port Hueneme	Monterey	44,180	220.90	312.00	91.10
09524	10/31/57	Port Hueneme	Monterey	36,200	181.00	255.64	74.64
09546	10/17/57	Port Hueneme	Monterey	42,780	213.90	302.11	88.21
09971	10/18/57	Port Hueneme	Monterey	42,850	214.25	302.61	88.36
09973	10/20/57	Port Hueneme	Monterey	33,850	169.25	239.05	69.80
09974	10/21/57	Port Hueneme	Monterey	45,000	225.00	317.79	92.79
09996	10/23/57	Port Hueneme	Monterey	39,250	196.25	277.18	80.93
9136	10/29/57	Port Hueneme	Monterey	39,350	196.75	277.89	81.14
9126	10/25/57	Port Hueneme	Monterey	33,800	234.91	238.70	3.79
09850	9/28/57	Port Hueneme	Monterey	32,920	228.79	232.48	3.69
09526	10/14/57	Port Hueneme	Monterey	38,360	215.90	270.90	55.00
09981	10/22/57	Port Hueneme	Monterey	39,650	218.08	280.01	61.93
09781	8/27/57	Santa Barbara	Monterey	39,000	195.00	250.38	55.38

The witness for the respondent testified that he charged the common carrier rate per ton rather than the rate provided by the Minimum Rate Tariff No. 2 because he thought it was the correct rate to charge the shipper. He obtained the rail rate he used from the Oxnard office of the Southern Pacific Railroad after first ascertaining from the Los Angeles office of this Commission that he was authorized to apply said rate. He declared that upon first entering into his contract to haul the fish in question in April, 1957, he telephoned the Los Angeles office of the Commission in order to obtain the correct rate to be charged. He alleged that he was

informed by a woman who answered the telephone that he would be authorized to charge a rate equal to or greater than the rail rate and that he could obtain the exact rate from the local railroad agent. He then applied the rate to these shipments which was given to him over the telephone by the rail clerk in Oxnard. The staff offered evidence in rebuttal that such information would not be available in the Los Angeles office and further that the customary practice of the office was such that personnel would not attempt to answer such rate inquiries.

We do not know where the respondent obtained the rate he used. The burden is upon the carrier to obtain and apply the correct rate. No showing was made to confirm the information alleged to have been given by the Public Utilities Commission staff or the rate given by the railroad by any follow-up correspondence in writing.

The respondent's past record shows three prior minimum rate violations in 1953, 1955 and 1956; all undercharges were collected by the carrier.

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 fish than the applicable minimum rates prescribed by the Commission's Minimum Rate Tariff No. 2 resulting in total undercharges amounting to \$1,004.36.

Accordingly, the respondent's operating rights will be suspended for a period of five days and he will be ordered to collect the undercharges hereinabove found. Respondent will also be directed to examine his records from July 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. 42-1842 issued to Robert L. Batastini is hereby suspended for five consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order.

(2) That Robert L. Batastini 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 five days.

(3) That Robert L. Batastini shall examine his records for the period from July 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, Robert L. Batastini, shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph (3).

(5) That Robert L. Batastini 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, Robert L. Batastini 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 the Commission.

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

Dated at San Francisco, California, this 4th day of June, 1958.

E. P. Marshall President
Raul L. ...
...
E. Lyn Fox
Theodore Jenner Commissioners