

ORIGINALDecision No. 56827

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates, and practices of)
 ERLE BUSH, d.b.a. BUSH TRUCKING)
 COMPANY.)

Case No. 6065

Erle Bush, for Bush Trucking Company, Respondent.
Franklin G. Campbell, for the Commission Staff.

O P I N I O N

This Commission, on February 25, 1958, issued an order of investigation into the operations, rates and practices of Erle Bush, doing business as Bush Trucking Company, who is engaged in the business of transporting property over the public highways as a radial highway common carrier and as a highway contract 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 Tariffs Nos. 2 and 10.

A public hearing was held on May 13, 1958 before Examiner James F. Mastoris 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. Erle Bush 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; Minimum Rate Tariff No. 10 was involved as to one shipment. Such evidence discloses that this carrier transported 13 shipments consisting of building materials and allied commodities, as well as lumber, at charges lower than the applicable minimum rates. ^{1/} Undercharges for these shipments totaled \$426.83.

The respondent conceded that such violations took place but declared that the lower rates were not applied with the intention of violating the law. He explained that many of the undercharges occurred primarily because he relied on the computation of rates given to him by his shippers which computation later proved to be erroneous. He claimed that although he has been in the transportation business for 40 years he nevertheless finds rate calculation to be a difficult matter and as a result he has permitted certain of his shippers who employ "rate experts" to compute the charges on the commodities he carried. He believed that such experts knew more about such computations than he did. The respondent stated he was aware the responsibility for determining the correct rate was upon the carrier. On many occasions he testified that said shipper's experts notified him that his computation was erroneous and should be changed. He usually complied with such request and accepted "corrected rate statement".

In addition Mr. Bush declared the other undercharges occurred because of mistakes made by his own personal calculations and by computations made by his bookkeeper, his daughter-in-law. An analysis of the 13 shipments in question shows that 10 shipments involved an error in computing constructive mileage, one was rated in violation of the mixed shipment rule, and two consisted of lumber

1/ Exhibit No. 2.

charges at a rate of \$8.00 a ton. Neither the staff nor the respondent could explain the source of this lumber rate.

Based upon the above and other evidence the Commission hereby finds and concludes as follows:

(1) During the period from May through July 1957, Erle Bush operated as a radial highway common carrier and as a highway contract carrier pursuant to permits issued by the Commission.

(2) During this period of time, respondent had in his possession the Commission's Minimum Rate Tariffs Nos. 2 and 10, together with all supplements and additions.

(3) During this period of time, respondent transported certain shipments of building materials and lumber receiving a lesser compensation for the transportation of these commodities than the applicable charges prescribed by the Commission's Minimum Rate Tariffs Nos. 2 and 10.

(4) Based upon the foregoing, the Commission hereby finds and concludes that respondent violated Sections 3664 and 3667 of the Public Utilities Code.

It is our opinion that there is little evidence to show a deliberate attempt to charge less than the minimum rates; however, this carrier's practices disclosed an indifference to the requirements of the Commission's tariffs. His conduct in accepting corrected rate statements from his shippers and his office procedures indicate that he was negligent in determining the proper charge for the commodities he carried. Because of the consistency and duration of such practices, both permits held by this carrier will be suspended for a period of five days and he will be ordered to collect the undercharges found in Exhibit No. 2, received at the hearing. 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. 43-1120, effective April 8, 1940 and highway contract carrier permit No. 43-1259, effective February 5, 1941 issued to Erle Bush, doing business as Bush Trucking Company, are 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 Erle Bush shall post at his terminal and station facilities used for receiving property, or at his office, 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 and his highway contract carrier permit have been suspended by the Commission for a period of five days.

3. That Erle Bush 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, Erle Bush shall file with the Commission a report setting

forth all undercharges found pursuant to the examination hereinabove required by paragraph 3.

5. That Erle Bush 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, Erle Bush 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 Erle Bush and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 9th day of June, 1958.

Robert E. Mitchell
President
E. L. Fox
Theodore J. Jansen

Commissioners