

ORIGINALDecision No. 56847

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates, and practices of MILTON D.) Case No. 6057
 CONN.)

Milton D. Conn, in propria persona.
Elmer J. Sjostrom and Frank J. O'Leary,
 for the Commission staff.

O P I N I O N

On February 10, 1958, the Commission issued an order instituting an investigation on its own motion into the operations, rates, and practices of Milton D. Conn for the purpose of determining whether respondent has violated Section 3667 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of property than the applicable rates prescribed by the Commission's Minimum Rate Tariff No. 2^{1/} or by failing to adhere to other provisions and requirements of that tariff or its supplements.

A public hearing was held on March 26, 1958 at Weott before Examiner William L. Cole at which time the matter was taken under submission.

Facts

Based upon the evidence introduced at this hearing, the Commission finds the following facts to exist:

1. During the period from July 1956 through June 1957, respondent transported 31 shipments of lumber, among others, between

1/ Section 3667 provides: "No highway permit carrier shall charge, demand, collect, or receive for the transportation of property, or for any service in connection therewith, rates or charges less than the minimum rates and charges or greater than the maximum rates and charges applicable to such transportation established or approved by the commission; nor shall any such carrier directly or indirectly pay any commission or refund, or remit in any manner or by any device any portion of the rates or charges so specified, except upon authority of the commission."

various points in California. On all but three of these shipments, respondent assessed his transportation charges using rates based upon board foot measure. On the other three shipments respondent used rates based upon weight. At the time the shipments took place, the respective points of origin were all located off railhead. During this period of time some of the points of destination were located on railhead and some were located off railhead.

2. During the same period of time, respondent had been issued, and had in force, a highway contract carrier's permit. This permit was issued on November 21, 1951 and was limited to the transportation of lumber and logs within a 50-mile radius of Weott. On April 2, 1957, respondent was also issued a radial highway common carrier permit. The Commission takes official notice of the fact that, prior to the issuance of these permits, respondent had also been issued a highway contract carrier's permit in 1949 which was revoked by the Commission on June 13, 1951.

3. The Commission mailed a copy of Highway Carriers' Tariff No. 2^{2/} and Distance Table No. 3 to respondent on August 16, 1949. On January 14, 1952, the Commission mailed a copy of Distance Table No. 4 and copies of various decisions of the Commission which amended Highway Carriers' Tariff No. 2. These decisions set forth the amendments made to the tariff from June 2, 1951 through January 14, 1952. Since 1952, the Commission has also mailed to respondent amendments to Item 690^{3/} of the tariff and Supplements 30, 32, and 33 thereto.

4. At the time of the hearing, respondent had two line-haul trucks, one bobtail truck and three employees.

Service of Tariff

Section 3737 of the Public Utilities Code provides that, upon the issuance of a permit to operate as a highway carrier, the

^{2/} Highway Carriers' Tariff No. 2 was renamed Minimum Rate Tariff No. 2 on October 20, 1954.

^{3/} Item 690 sets forth the commodity rates for lumber and forest products.

Commission shall serve without charge upon the carrier a copy of each tariff, decision, or order previously issued that is then applicable to the class or classes of transportation service the carrier intends to perform. The section provides further that each carrier shall observe any tariff, decision, or order applicable to it after service thereof. Section 3733 of the Code authorizes this service to be made by mail.

There would appear to be no question but that it was the Legislature's intent that a highway permit carrier was not to be held responsible for the violation of any tariff that was not served upon him pursuant to Section 3737.

As shown from the facts found above, respondent was first issued a highway contract carrier's permit in 1949. At that time, a complete copy of the Commission's Highway Carriers' Tariff was mailed to him.^{4/} In June of 1951, this permit was revoked by the Commission. In November of 1951, a new highway contract carrier's permit was issued. In January of 1952, the Commission mailed to respondent copies of the amendments to Highway Carriers' Tariff No. 2 which were made during the period from June 1951 to November 1951, the period during which respondent had no permit. There is no evidence in the record which shows that respondent was mailed a complete tariff at any time during the period from the issuance of his second highway contract carrier's permit until after the shipments in question took place. Under this set of facts, it must be decided whether the requirement of Section 3737 has been complied with.

The literal reading of this section leaves no doubt that a new complete tariff should have been served on respondent when his second highway contract carrier's permit was issued in 1951.

^{4/} It should be noted, however, that respondent testified that he had never received a complete copy of Highway Carriers' Tariff No. 2 (Minimum Rate Tariff No. 2) until after the shipments in question took place.

In view of the foregoing considerations, and based upon the facts hereinabove found, it is the Commission's conclusion that it cannot find that respondent was properly served with a copy of Highway Carriers' Tariff No. 2 (Minimum Rate Tariff No. 2) as required by Section 3737 of the Code, insofar as the shipments in question are concerned.

Conclusions

In view of the Commission's conclusion concerning the lack of service of the tariff in question, it cannot find that respondent violated various items of that tariff with respect to the shipments in question. For this reason any discussion of the facts surrounding these shipments is superfluous.

O R D E R

Public hearing having been held in the above-entitled matter and the Commission being fully informed therein, now therefore,

IT IS ORDERED that the investigation in Case No. 6057 is hereby discontinued.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Milton D. Conn and this order shall be effective twenty days after such service.

Dated at San Francisco, California, this 17th day of June, 1958.

[Signature]
President

[Signature]

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Commissioners