

ORIGINAL

Decision No. 57877

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations, rates
and practices of MIKE PHILLIPS, an
individual.)

) Case No. 6078
)
)

Edward G. Fraser and A. J. Lyon, for the
Commission staff.

No appearance for the respondent.

O P I N I O N

On March 25, 1958, the Commission issued an order of investigation, on its own motion, into the operations, rates and practices of Mike Phillips. This investigation was for the purpose of ascertaining whether respondent violated Sections 3774, 3667 and 3737 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of lumber than the applicable charges prescribed in the Commission's Minimum Rate Tariff No. 2 and for failing to adhere to other provisions and requirements of that tariff.

A public hearing was held on May 15, 1958, at Sacramento before Examiner W. L. Cole, at which time the matter was submitted.

Facts

Based upon the evidence introduced at this hearing and facts of which the Commission takes official notice, the Commission hereby finds that the following facts exist:

1. That a certified copy of the order instituting the investigation into the operations, rates and practices of Mike Phillips was personally served on the respondent on April 7, 1958, at 1020 South River Road, West Sacramento, California.

2. That a notice setting forth that the hearing on this matter was set for Thursday, May 15, 1958, at Room 414 of the Old Capitol Building at Sacramento, was mailed by registered mail on April 10, 1958, addressed to the respondent at 1020 South River Road, West Sacramento, California.

3. That on April 14, 1958, respondent received the notice of hearing hereinabove described in Paragraph 2.

4. That during the period of time shipments hereinbelow referred to took place, the respondent had a valid permit issued by this Commission authorizing him to operate as a radial highway common carrier.

5. That prior to this period of time, respondent had been served with the Commission's Minimum Rate Tariff No. 2, the applicable amendments and supplements thereto, and the Commission's Distance Table No. 4.

6. That during the period from January 1, 1957, through March 30, 1957, respondent transported 15 shipments of lumber, among others, from various points of origin to various points of destination in the State of California. Respondent assessed his transportation charges for these shipments on the basis that the point of origin and point of destination of each shipment were both located on railhead and, therefore, assessed charges based only upon the rail rates between the points of origin and destination. The points of origin of the shipments in question were located on railhead at the time the shipments took place. However, the various points of destination of these shipments were not located on railhead during that period

of time. Further facts relative to these 15 shipments are set forth in the following table:

<u>Frt. Bill Number</u>	<u>Date of Frt. Bill</u>	<u>Point of Origin</u>	<u>Point of Destination</u>	<u>Weight</u>	<u>Charges Assessed</u>
5221	1/14/57	Anderson	Palm Springs	43,420	277.89
5226	1/30/57	Anderson	San Bernardino	46,180	277.08
5229	2/11/57	Burney	Rialto	47,360	284.16
7272	2/11/57	Cottonwood	Rialto	38,500	260.00
5230	2/14/57	Quincy	Palm Springs	47,620	300.00
7276	2/21/57	Burney	Rialto	47,050	282.30
5232	2/20/57	Cottonwood	Rialto	43,820	261.92
7273	2/13/57	Anderson	Chula Vista	50,390	322.50
5227	2/ 4/57	Anderson	Lemon Grove	46,170	295.49
7280	2/ 2/57	Quincy	Palmdale	51,380	308.28
7288	3/30/57	Quincy	Lemon Grove	43,530	274.24
5237	3/ 5/57	Quincy	Hesperia	50,320	301.92
5239	3/11/57	Cottonwood	Rialto	44,520	267.12
7285	3/15/57	Feather Falls	Banning	52,270	313.62
7286	3/23/57	Cottonwood	Rialto	41,900	260.00

7. The freight bills on all but 2 of the 15 shipments referred to in Paragraph 6 set forth that the points of destination were located on railhead. With respect to the remaining two shipments, the freight bills did not set forth any information as to whether or not the points of destination were located on railhead.

8. Freight bills numbered 5237, 5239, 7285 and 7286 set forth consignees and points of destination different from the consignees and points of destination to which the four respective shipments of lumber were actually sent.

9. On January 15, 1957, respondent transported a shipment of lumber weighing 43,990 pounds from Anderson to La Mesa and assessed transportation charges in the amount of \$277.13. At this time the point of origin and the point of destination were both located on railhead.

10. During the period the shipments hereinabove took place respondent operated one truck and trailer using his home as an office.

Conclusions

With respect to the 15 shipments hereinabove referred to in Paragraph 6, it is apparent that respondent was relying upon Item 200-E of Minimum Rate Tariff No. 2, which authorizes the use of common carrier or rail rates when such rates produce a lower aggregate charge for the same transportation than results from the application of the rates provided in that tariff. However, inasmuch as the points of destination of these 15 shipments were not located on railhead and therefore were not the same transportation as would have been performed by a railroad, applicant is precluded from using this item with respect to these shipments. It is the Commission's conclusion that the correct minimum charges for the 15 shipments in question are those set forth in the following table:

<u>Frts. Bill No.</u>	<u>Correct Minimum Charge</u>	<u>Frts. Bill No.</u>	<u>Correct Minimum Charge</u>
5221	\$311.57	5227	\$312.83
5226	312.90	7280	348.14
5229	320.90	7288	294.95
7272	269.86	5237	340.95
5230	341.71	5239	301.66
7276	318.80	7285	361.16
5232	296.91	7286	283.91
7273	341.43		

With respect to the shipment referred to in Paragraph No. 9 it is the Commission's conclusion that the applicable minimum charge is \$281.54. In view of the foregoing the Commission hereby finds and concludes that respondent violated Sections 3664 and 3667 of the Public Utilities Code by charging, demanding, collecting and receiving a lesser compensation for the transportation of lumber than the minimum charges prescribed in the Commission's Minimum Rate Tariff No. 2, resulting in undercharges totalling \$475.57.

Item 255-C of Minimum Rate Tariff No. 2 requires the carrier to issue a shipping document to the shipper for each shipment received for transportation and further requires that this shipping

document shall show the point of destination and the name of the consignee and such other information as may be necessary to an accurate determination of the application of the minimum rate and charge. As hereinabove found, respondent on certain of his freight bills set forth incorrectly points of destination, incorrect consignees, and incorrect and misleading information relative to railhead conditions at points of destination. Based upon these facts it is the Commission's conclusion that respondent violated Item 255-C of its Minimum Rate Tariff No. 2 and Section 3737 of the Public Utilities Code.

As hereinabove indicated, respondent made no appearance at the hearing in this matter, notwithstanding the fact that notice was given him of such hearing.

In view of the foregoing, respondent's operating authority will be suspended for a period of five days and he will be required to collect the undercharges hereinabove found. Respondent will also be ordered to examine his records from the period January 1, 1956, to the effective date of this decision to ascertain if any additional undercharges have occurred and, if so, to collect such undercharges.

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:

1. Mike Phillips shall cease and desist from all future violations of the Commission's Minimum Rate Tariff No. 2.
2. Radial Highway Common Carrier Permit No. 36-2956 issued to Mike Phillips is suspended for a period of five days commencing at

12:01 a.m. on the second Monday following the effective date of this order.

3. Mike Phillips shall post at his terminal and station facilities 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.

4. Mike Phillips shall examine his records for the period from January 1, 1956, to the effective date of this decision for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

5. Mike Phillips 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 4 of this order and to notify the Commission in writing upon the consumption of such collections.

6. In the event charges to be collected as provided in Paragraph 5 of this order, or any part thereof, remain uncollected eighty days after the effective date of this order, Mike Phillips 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 Mike Phillips and this order shall become effective twenty days after such service.

Dated at San Francisco, California, this 29th day of July, 1958.

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

Commissioner Matthew J. Dooley, being necessarily absent, did not participate in the disposition of this proceeding.