

ORIGINAL

Decision No. 57495

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of A. D.
RUTHERFORD, an individual.

Case No. 6116

Edward G. Fraser, for the Commission staff.
Verne Summers, for the respondent.

O P I N I O N

This proceeding was instituted upon the Commission's own motion by the service of an order of investigation upon the respondent on June 6, 1958, to determine:

1. Whether respondent acted in violation of the Public Utilities Code, Sections 3737, 3664 and 3667, by charging, demanding and collecting or receiving a lesser compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 2;
2. Whether respondent has acted in violation of the Public Utilities Code, Section 3737, by issuing shipping documents that failed to comply with the requirements of Minimum Rate Tariff No. 2;
3. Whether respondent has acted in violation of the Public Utilities Code, Section 3737, by failing to adhere to other provisions and requirements of Minimum Rate Tariff No. 2 and supplements thereto;
4. Whether any or all of the operating authority of respondent should be canceled, revoked or suspended;

5. Whether respondent should be ordered to collect from shippers or other persons liable for freight charges the difference between charges billed or collected and charges due under Minimum Rate Tariff No. 2;

6. Whether respondent should be ordered to cease and desist from any and all unlawful operations and practices.

A public hearing was held in Bishop, California, on September 3, 1953, before Examiner Kent C. Rogers. Evidence was presented by the Commission staff and the respondent and the matter was submitted.

The evidence herein and the records of this Commission show that respondent has heretofore been investigated for tariff violations and that by Decision No. 54058, dated November 5, 1956, in Case No. 5701, respondent herein was found to have assessed and collected for certain specified shipments less than the minimum charges required by Minimum Rate Tariff No. 2, by means of known false billing; was required to collect the resulting undercharges; and his permits were suspended for a period of thirty days. The respondent testified in the instant hearing that he had received a copy of the said decision.

The evidence herein also shows the following facts which are found to be true:

Respondent since March 20, 1953, except for the period of thirty days when his permits were under suspension, as heretofore stated, had been and now is the holder of Radial Highway Common Carrier Permit No. 54-4109 as amended on May 25, 1954. He holds

no other authority from this Commission. Pursuant to said permit respondent is authorized to carry general commodities excluding livestock, property transported in dump truck equipment, property transported in tank trucks and tank trailers, and property for which a household goods carrier permit is required, throughout the State of California.

Copies of Distance Table No. 4 and Highway Carriers' Tariff No. 2 (now Minimum Rate Tariff No. 2) were served on respondent on March 27, 1953. Subsequent to said date copies of decisions affecting said minimum rate tariff were served on respondent as said decisions were issued by this Commission. The items subsequently served include Decision No. 48958, Petition No. 9, containing items 500J, 505H and 507F, in Highway Carriers' Tariff No. 2, now Minimum Rate Tariff No. 2; Decision No. 53782 containing Supplement No. 3 to Minimum Rate Tariff No. 2; Decision No. 54802 containing Supplement No. 33 to Minimum Rate Tariff No. 2; Decision No. 55175 containing Supplement No. 36 to Minimum Rate Tariff No. 2; Decision No. 55319 containing Supplement No. 38 to Minimum Rate Tariff No. 2; Decision No. 50595 containing Item No. 70D of Highway Carriers' Tariff No. 2 (now Minimum Rate Tariff No. 2); and Decision No. 50791 containing Item No. 255C and Item No. 257 of Minimum Rate Tariff No. 2.

Respondent's records were investigated by the staff in the period from December 1957 to January 30, 1958. During this investigation all shipments carried by respondent for the period from January 1, 1957 to November 30, 1957, were checked. Respondent

had 170 freight bills in the said period, but due to time and distances involved the staff checked only those hereinafter referred to.

Respondent's freight bill No. 3801, a copy of which is Exhibit No. 4 herein, reflects a shipment described as "farm tractor & plows" weighing a total of 13,186 pounds, and the rate was shown as 78 cents per 100 pounds, plus a 10 percent surcharge for the shipment which originated in Vernon and was delivered in Bishop. The commodity description is erroneous in that the shipment actually consisted of a tractor having a weight of 8,164 pounds, and plows knocked down having a total weight of 5,022 pounds. Under Item No. 255 series of Minimum Rate Tariff No. 2, the commodity description is erroneous and the commodity should have been described pursuant to the Western Classification No. 76, Items Nos. 3820 and 61400. The properly classified and rated charge for this shipment would have been \$136.45.^{1/} The respondent charged and collected a total of \$113.12, resulting in an undercharge of \$23.32.

Respondent's freight bill No. 3811, a copy of which is Exhibit No. 5 herein, reflects a shipment from Los Angeles to Bishop. The commodity description of this shipment is incorrect in that the bill states only 50 packages 2 by 6 by 20 inches. Under Item No. 255 series of Minimum Rate Tariff No. 2, the property should have been described pursuant to the Western Classification

^{1/} For correct computation of charges see Items Nos. 1, 2 and 3 of Appendix A to Exhibit No. 26.

No. 76, Item No. 58040. This shipment consisted of lumber, had a weight of approximately 3,000 pounds, but was billed as 4,000 pounds. The rate assessed by the respondent was 95 cents per 100 pounds with a surcharge of 10 percent, giving a total charge of \$41.80. The correct charges for this shipment should have been \$44.00, resulting in a \$2.20 undercharge.^{2/} This freight bill was dated January 19, 1957, but payment for the shipment was received by the respondent on February 20, 1957, in violation of Item No. 250 series of Minimum Rate Tariff No. 2.

Respondent's freight bill No. 3823, a copy of which is Exhibit No. 7 herein, reflects a shipment from Los Angeles to Bishop. The commodity description of this freight bill is incorrect in that the bill shows only "760 ft. 8 by 10". Under Item No. 255 series of Minimum Rate Tariff No. 2, the property should have been described pursuant to Western Classification No. 76, Item No. 58040. The rate assessed by the respondent was \$1.46 per 100 pounds with a surcharge of 10 percent, giving a total charge of \$36.60 for the shipment which weighed 2,280 pounds. The correct charge for this shipment should have been \$37.87, resulting in a \$1.27 undercharge.^{3/} The freight bill was dated February 21, 1957, but payment for the shipment was received on March 15, 1957, in violation of Item No. 250 series of Minimum Rate Tariff No. 2.

Respondent's freight bill No. 01562, a copy of which is Exhibit No. 8 herein, reflects a shipment of steel from Los Angeles

^{2/} Item Nos. 3 and 4 of Appendix A to Exhibit No. 26.

^{3/} Items Nos. 3 and 11 of Appendix A to Exhibit No. 26.

to Bishop. The commodity description of the shipment is incorrect in that the bill states only "R.L. steel". Under Item No. 255 series of Minimum Rate Tariff No. 2 the property should have been described pursuant to the Western Classification No. 76, Item No. 53770. The rate assessed by the respondent was 72 cents per 100 pounds for a shipment of 10,083 pounds, plus a 10 percent surcharge, giving a total charge of \$79.84. The correct charge for the shipment should have been \$84.94, resulting in an undercharge of \$5.10.^{4/}

Respondent's freight bill No. 01599, a copy of which is Exhibit No. 9 herein, and freight bill No. 01566, a copy of which is Exhibit No. 10 herein, reflects shipments of brick from Los Angeles to Bishop. In the shipment reflected by Exhibit No. 9 the item is listed as 4,000 bricks at a weight of 18,000 pounds carried as 20,000 pounds, and in the shipment reflected by Exhibit No. 10 the item is listed as 4,000 bricks at a weight of 20,000 pounds. Exhibits Nos. 9A and 10A herein, show that in each instance the shipments "were banded" or tied in bundles. Exhibit No. 11 shows that the weight of a "band" is 2,300 pounds and consists of 400 bricks making the weight of each shipment shown in Exhibits Nos. 9 and 10, 23,000 pounds, inasmuch as each consisted of 10 "bands". Respondent in each instance assessed a charge of 63 cents per 100 pounds, plus a surcharge of 10 percent giving a total freight charge on each shipment of \$138.60. The correct charge for each

^{4/} Items Nos. 7 and 12 to Appendix A to Exhibit No. 26.

shipment should have been \$146.38 resulting in an undercharge of \$7.78 for each shipment.^{5/}

Respondent's freight bill No. 3659 shown as Exhibit No. 12 herein, freight bill No. 2719, shown as Exhibit No. 13 herein, freight bill No. 3908, shown as Exhibit No. 14 herein, freight bill No. 01606, shown as Exhibit No. 15 herein, freight bill No. 01620, shown as Exhibit No. 16 herein, and freight bill No. 01634, shown as Exhibit No. 17 herein, each reflects a shipment of pumice aggregate from a point of origin described as Bishop to a point of destination described as Santa Ana. The commodity shipped was in each instance the same but was various described as "sacks aggregate", "SX granule pumice", "SX pumice", and "SX granules". Under Item No. 255 series of Minimum Rate Tariff No. 2 the property carried should have been described pursuant to the Western Classification No. 76, Item No. 80120. In addition, the respondent showed incorrect mileages for the reason that the point of origin was 10 miles north of Bishop and the point of destination was 2.5 miles south of Santa Ana. The assessed and correct charges for each of said shipments are listed below:

^{5/} Items Nos. 7 and 9 of Appendix A to Exhibit No. 26.

Frts. Bill No.	Exhibit No.	Weight	Rate Charged	Total Charge	Correct Rate.	Correct Charge ^{6/}	Under Charges
3659	12	50,000#	\$.40	\$200.00	\$.40 plus 7% Surcharge	\$200.00 14.00 160.00	14.00
2719	13	40,000#	.40	160.00	.40 plus 7% surcharge	160.00 11.20 160.00	11.20
3908	14	40,000#	.38 Plus 7% surcharge	152.00 10.64 152.00	.40 plus 7% surcharge	160.00 11.20 160.00	8.56
01606	15	40,000#	.38 plus 10% surcharge	152.00 15.20 152.00	.40 plus 7% surcharge	160.00 11.20 160.00	4.00
01620	16	40,000#	.38 plus 10% surcharge	152.00 15.20 152.00	.40 plus 7% surcharge	160.00 11.20 160.00	4.00
01634	17	40,000#	.38 plus 10% surcharge	152.00 15.20 152.00	.40 plus 7% surcharge	160.00 11.20 160.00	4.00

Respondent's freight bill No. 01573, a copy of which is Exhibit No. 18 herein, reflects a shipment of plywood and lumber from Arcata to Bishop.^{7/} The freight bill shows weights for the shipment estimated by the respondent at 24,000 pounds for the plywood and 20,000 pounds for the lumber. From the evidence presented by an expert witness, an employee of the consignee, the respective weights for the shipment should be approximately 27,806 pounds for the plywood and 22,604 pounds for the lumber. The employee used the invoice^{8/} for the shipment in figuring the estimated weights. The use of estimated weights in this instance

^{6/} Items 3, 10, 13 and 14 of Appendix A to Exhibit No. 26.

^{7/} From the map it would appear that this shipment was probably an interstate shipment as the only route without going through Tehachapi, approximately 150 miles off route, would be through Nevada.

^{8/} Exhibit No. 19.

violates Item No. 70 series and Item No. 680 series of Minimum Rate Tariff No. 2, and results in an undercharge. In addition, the freight bill is violative of Item No. 255 series of Minimum Rate Tariff No. 2 in that the property should have been described pursuant to the Western Classification No. 76, Item No. 58030.

Respondent's freight bill No. 3871, Exhibit No. 20 herein, freight bill No. 3869, Exhibit No. 21 herein, freight bill No. 3873, Exhibit No. 22 herein, freight bill No. 3874, Exhibit No. 23 herein, freight bill No. 3708, Exhibit No. 24 herein, and freight bill No. 3720, Exhibit No. 25 herein, each reflects a shipment of lumber to Lone Pine, California, from a designated point in California. Each freight bill reflects the quantity of lumber moved described in board feet. The descriptions are violative of Items Nos. 70 series, 255 series and 257 series of Minimum Rate Tariff No. 2.

The Commission having considered the evidence of record, and having found the facts as hereinbefore set forth to be true, concludes that respondent A. D. Rutherford has violated the provisions of Sections 3737, 3664 and 3667 of the Public Utilities Code by assessing and collecting for the transportation of property less than the minimum rates and charges provided in Minimum Rate Tariff No. 2; has acted in violation of Public Utilities Code Section 3737 by issuing shipping documents that failed to comply with the requirements of Minimum Rate Tariff No. 2; and has acted in violation of Public Utilities Code Section No. 3737 by failing to collect charges for the

transportation of property within the time prescribed by Item No. 250 series of Minimum Rate Tariff No. 2. The Commission further finds that respondent willfully committed the acts of omission or commission set forth in the preceding opinion and thereby willfully violated the law.

O R D E R

A public hearing having been held on the above entitled matter and continued proceeding, the matter having been submitted for decision, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED:

1. That Radial Highway Common Carrier Permit No. 54-4109 held by A. D. Rutherford, and all amendments thereto, be, and they hereby are, suspended for a period of 60 consecutive days commencing with the effective date of this order.

2. That A. D. Rutherford shall post at his terminal and station facilities used for receiving freight from the public for transportation, not less than five days prior to the commencement 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 60 days.

3. That A. D. Rutherford shall examine his records for the period from January 1, 1957 until the effective date of this order for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

4. That A. D. Rutherford is hereby directed to take such action as may be necessary to collect the amount of the undercharges set forth in the preceding opinion, together with any additional undercharges found during the examination ordered by Paragraph 3 of this order, and to notify the Commission in writing of the receipt of such collections.

5. That in the event the charges to be collected, as provided in Paragraph 4 of this order, or any part thereof, remain uncollected 80 days after the effective date of this order, respondent 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 results of such action until such charges have been collected in full, or until further order of the Commission.

6. That A. D. Rutherford shall hereafter issue all shipping documents in strict compliance with Item No. 255 series of Minimum Rate Tariff No. 2.

7. That A. D. Rutherford shall cease and desist from any and all unlawful activities in connection with his operations pursuant to authority from this Commission. Further deliberate and willful violations of respondent's operating authority will result in the permanent cancellation of his operating authority.

The Secretary of the Commission is directed to cause personal service of this order to be made on the respondent herein, and this decision shall be effective 20 days after the date of said service.

Dated at San Francisco, California,
this 21st day of October, 1958.

E. Lynn Fox
President
John E. Mitchell
Paul J. Alexander
William D. Dale
Richard J. Jenner
Commissioners