

ORIGINAL

Decision No. 57565

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of H. J. FEHELY, an individual, doing business as H. J. FEHELY TRANSPORTATION COMPANY.

Case No. 6090

Arthur C. Jenkins, for Respondent.
Elmer Sjostrom, for the Commission staff.

O P I N I O N

This Commission, on April 15, 1958, issued an order of investigation into the operations, rates and practices of H. J. Fehely, doing business as H. J. Fehely Transportation Company, who is engaged in the business of transporting property over the public highways as a radial highway common carrier, a highway contract carrier and as a city 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 September 23, 1958 in Arcata, 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. H. J. Fehely testified on his own behalf. From the evidence produced by the staff there appears to have been

twenty violations of said Minimum Rate Tariff No. 2, as to this carrier's radial highway common and highway contract carrier permits. These violations apparently resulted because the respondent, with respect to various shipments of lumber, charged his shipper a rate which in some instances was based upon improper class rating for lumber for the weight and distance involved while in other cases based upon failure to include off-railhead mileage at point of origin and at various points of destination in the San Francisco Bay area and in Southern California.

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

(1) During the period from August, 1956 through July, 1957, H. J. Fehely 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 Tariff No. 2, together with all supplements and amendments thereto.

(3) During this period of time, respondent transported certain shipments of lumber 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:

Frt. Bill No.	Date	Point of Origin	Point of Destination	Wt. in Pounds	Charge		
					Assessed by Respondent	Correct Minimum Charge	Under-Charge
1737	8-1-56	Thorn	Sonora	46,700	\$214.87	\$299.81	\$84.94
1739	8-6-56	Thorn	Stockton	46,420	188.75	258.28	69.53
1741	8-8-56	Thorn	Inglewood	47,320	318.99	375.11	56.12
2283	8-15-56	Thorn	San Carlos	43,240	175.81	235.73	59.92
2286	8-20-56	Thorn	San Francisco	49,920	191.29	232.70	41.41
2288	8-20-56	Thorn	San Jose	48,080	205.78	249.05	43.27
2290	8-22-56	Thorn	Redwood City	48,500	197.20	269.85	72.65
2291	8-23-56	Thorn	Los Angeles	47,780	322.08	341.70	19.62
2293	8-29-56	Thorn	Santa Rosa	45,040	142.17	173.47	31.30
2302	9-4-56	Thorn	Corte Madera	48,300	167.97	217.06	49.09
2305	9-10-56	Thorn	Indio	45,700	358.96	371.67	12.71
2308	9-11-56	Thorn	Merced	44,120	188.83	283.25	94.42
2310	9-12-56	Thorn	Cloverdale	46,400	124.12	166.32	42.20
2682	9-17-56	Thorn	Modesto	45,800	196.02	264.63	68.61
2684	10-1-56	Thorn	Belmont	48,340	196.55	268.97	72.42
3001	10-17-56	Thorn	Vallejo	46,320	161.08	208.16	47.08
3005	11-1-56	Thorn	Los Altos	45,980	196.79	255.84	59.05
3006	11-5-56	Thorn	Pacific Grove	46,800	225.34	305.48	80.14
3007	11-8-56	Thorn	Palo Alto	47,000	191.10	261.51	70.41
3008	11-27-56	Thorn	Oakland	46,108	177.61	232.92	55.31

Respondent conceded that the above violations occurred but claimed that all the charges assessed by his company were calculated by a former bookkeeper and not by himself. He stated he personally handled all the operations of the company in the field but left the rating of the shipments entirely to said bookkeeper. It was alleged said bookkeeper represented when he was employed that he was familiar with and capable of properly rating lumber shipments in accordance with the Minimum Rate Tariffs of the Commission. Relying upon said representations Mr. Fehely permitted said employee to rate the above shipments without supervision. He claimed he was personally unaware that these shipments were being rated erroneously. As a result of these errors Mr. Fehely discharged said bookkeeper and at present rates his shipments with the assistance of a public accountant.

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 lumber than the applicable minimum rates prescribed by the Commission's Minimum Rate Tariff No. 2, resulting in total undercharges amounting to \$1,130.20.

The burden of ascertaining the correct rate to be charged is upon the carrier. Mr. Fehely is responsible, as a principal, for the acts, errors and negligence of his employees and agents. Their mistakes are imputed to him and his company. There is no evidence that the misratings that occurred were with intent to violate the law or to gain an economic advantage; however, we cannot disregard the obvious lack of supervision of an essential part of the transportation business by an individual who has been hauling lumber and forest products for over 20 years.

This carrier's operations are substantial as to log hauling in Siskiyou, Shasta, Tehama, Trinity, Del Norte, Humboldt and Mendocino counties but infrequent as to the long-haul carriage of finished lumber to points south of these counties. The shipments in question were of this latter character. The respondent operates approximately 21 trucks with over 40 pieces of transportation equipment; it employs 27 drivers and dock personnel. Its operating gross revenue amounted to over \$400,000 in 1957 although it lost approximately \$12,000 for the year. It has lost approximately \$30,000 for the first two quarters of 1958, however, in August 1958 its gross revenue for the month amounted to approximately \$60,000 with expenses totaling \$55,000. It owns part and leases part of its half-block yard facilities in Arcata.

The respondent offered testimony to the effect that the shipper involved in these proceedings has since ceased lumber operations because of financial difficulties. Some \$4,000 is still due the respondent as a result of transportation performed during 1956 and 1957. Legal steps in the form of attachment proceedings have

been taken by the respondent's lawyer against the shipper but the amount due presently remains unsatisfied. However, there was no evidence that the company has dissolved or that it doesn't possess assets capable of covering creditor's claims.

It is the Commission's conclusion in view of the foregoing circumstances, that a reasonable penalty for the violations found is a suspension of a portion of this carrier's operating rights. Accordingly, respondent's radial highway common carrier and highway contract carrier permits will be suspended for a period of five days except that said suspension will not apply to the respondent's log-hauling operations in the aforementioned counties. Respondent will also be directed to examine his records from August 1, 1956, 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. 8-354 and Highway Contract Carrier Permit No. 8-355 issued to H. J. Fehely, doing business as H. J. Fehely Transportation Company, is hereby suspended for five consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order, except that said suspension will not apply to H. J. Fehely's transportation of logs in vehicles specially equipped to carry logs in the following counties: Siskiyou, Shasta, Tehama, Trinity, Del Norte, Humboldt, Mendocino.

(2) That H. J. Fehely 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 and his highway contract carrier permit have been suspended by the Commission for a period of five days as indicated in paragraph (1).

(3) That H. J. Fehely shall examine his records for the period from August 1, 1956, 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, H. J. Fehely shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph (3).

(5) That H. J. Fehely 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 180 days after the effective date of this order, H. J. Fehely 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 this Commission.

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

Dated at San Francisco, California, this 3rd day of November, 1958.

E. Lynn Fox
President
Arthur E. Baker
Raul L. Listerman
William J. ...
Leonard J. ...
Commissioners