

ORIGINAL

Decision No. 57595

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
rates, and practices of DE WAYNE F.)
TITUS, doing business as GOLDEN)
PACIFIC TRUCK LINES.)

Case No. 6134

Marquam C. George, for respondent. ✓
Edward G. Fraser, for the Commission staff.

O P I N I O N

On June 24, 1958, the Commission issued an order institut-
ing investigation into the operations, rates and practices of
De Wayne F. Titus, doing business as Golden Pacific Truck Lines, for
the purpose of determining:

1. Whether respondent has acted in violation of Public
Utilities Code Sections 3737, 3664 and 3667 by charging, demanding
and collecting or receiving a lesser compensation for the transpor-
tation of property than the applicable charges prescribed in Minimum
Rate Tariff No. 2 and Pacific Southcoast Freight Bureau Tariffs
Nos. 272 and 300.

2. Whether respondent has acted in violation of the Public
Utilities Code, Section 5003, by failing to pay the quarterly fee
based on business conducted during the first three months of 1958.

3. Whether respondent has acted in violation of Public
Utilities Code Section 3575 and General Order No. 102-A by failing
to file a bond to insure payment of subhaulers as required by said
Code Section and General Order.

4. 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 General Order 102.

5. Whether any or all of the operating authority of respondent should be canceled, revoked or suspended.

6. 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 and Pacific Southcoast Freight Bureau Tariffs Nos. 272 and 300.

A public hearing was held before Examiner Thomas E. Daly, at San Francisco, on October 8, 1958, and the matter was submitted.

The record discloses that respondent and his brother, Orville Titus, at one time were sole stockholders of Danny Boy Truck Company, Inc., and that by Decision No. 55118, dated June 11, 1957, in Case No. 5863, the permitted authority of said carrier was revoked for violation of the minimum rates and failure to pay quarterly fees. On July 2, 1957, respondent filed Application No. 39194 requesting the issuance of a radial highway common carrier permit and a city carrier permit. By Decision No. 55257, dated July 10, 1957, the Commission found that although respondent acquiesced in such violations he had not been contemptuous or in flagrant disregard of the Commission's rules and regulations and therefore authorized the issuance of the permits.

The record further discloses that the Commission by resolution on September 29, 1958, revoked respondent's permitted authority for (1) failure to pay quarterly fees in the amount of \$97.86 for the period January 1, 1958 to March 31, 1958, and (2) failure to file a quarterly report and pay fees for the period

April 1, 1958 to June 30, 1958, pursuant to Section 5007 of the Public Utilities Code.

In the instant proceeding it was developed that at a time during respondent's absence from the business his company, on four occasions, transported shipments under a subhaul arrangement without having on file a bond to insure payment of subhaulers as required by Public Utilities Code Section 3575 and General Order 102-A. Although respondent raised some question as to whether he had been served with a copy of General Order 102-A, the Commission records, in the form of a Certificate of Service (Exhibit 22), indicate that respondent was served by mail with a copy of said General Order 102-A.

Particular reference was made to alleged misapplications of Item 85-A of Minimum Rate Tariff No. 2 relating to shipments transported in multiple lots.

Nine freight bills and supporting documents were received in evidence. Under each freight bill respondent consolidated lots tendered with separate bills of lading. This practice was apparently followed in reliance on Item 85-A of Minimum Rate Tariff No. 2. The staff, however, contends that the consolidated shipments failed to comply with Item 85-A and, therefore, each lot should have been treated as a separate shipment. If rated as separate shipments a total undercharge of \$598.24 results.

Item 85-A of Minimum Rate Tariff No. 2 reads as follows:

SHIPMENTS TRANSPORTED IN MULTIPLE LOTS

(a) When a carrier is unable to pick up an entire shipment, including a split delivery shipment, at the time of the initial pickup, or when a carrier at its option and for its operating convenience picks up a shipment in more than one vehicle or at more than one time,

the following provisions shall apply in addition to other applicable rules and regulations:

1. The entire shipment shall be tendered at one time and shall be available to the carrier for immediate transportation at the time of the first pickup.
2. A single shipping document for the entire shipment tendered shall be issued prior to or at the time of the first pickup.
3. The date, quantity, kind and weight of the property in each pickup shall be shown on the single shipping document as it is separately picked up, or in lieu thereof, an additional shipping document may be issued for each pickup which shall give reference to the single shipping document covering the entire shipment and shall be attached to and become a part thereof.
4. The entire shipment shall be picked up by the carrier within a period of two days computed from 12:01 a.m. of the date on which the first pickup commences, excluding Saturdays, Sundays and legal holidays. (See Exception.)
5. The separate pickups made in accordance with the foregoing provisions shall constitute a composite shipment which shall be subject to the rates named or provided for in this tariff, including Items Nos. 200, 210, 220, and 230 series, in effect on the date of the first pickup, for the transportation of a single shipment of like kind and quantity of property picked up or transported on a single vehicle.

(b) Any property separately picked up without complying with the foregoing provisions shall constitute a separate shipment and shall be subject to the rates, rules and regulations applicable thereto.

Exception: - Will not apply to split pickup shipments. See paragraph (1) of Item No. 11 series.

A review of the exhibits discloses that in each instance respondent failed to pick up the entire shipment within the required two-day period.

On two other occasions respondent failed to observe the minimum rates on shipments of reinforcing steel between San Francisco and Oakland. Each shipment resulted in an undercharge of \$6.13.

After consideration the Commission is of the opinion and finds as follow:

1. That respondent was served with Minimum Rate Tariff No. 2 and General Order 102-A.

2. That respondent violated Section 3667 of the Public Utilities Code by charging and collecting a lesser compensation for the transportation of property than the applicable rates prescribed in Minimum Rate Tariff No. 2.

3. That respondent violated Section 3575 of the Public Utilities Code and General Order 102-A by failing to file a bond to insure payment of subhaulers as required by said Code and General Order.

4. That respondent violated Section 5003 of the Public Utilities Code by failing to pay the quarterly fee for the period January 1, 1958 to and including March 31, 1958.

Although respondent's permitted authority was revoked by Commission resolution for violation of Section 5003 of the Public Utilities Code, Section 5007 of said Code provides for the reinstatement of his permits upon the payment of fees and penalties due. Because of respondent's past history and continued violation of the Public Utilities Code, as well as the Commission's rules and regulations, it is the opinion of the Commission that respondent's permits should be revoked without right of reinstatement.

O R D E R

The Commission having instituted investigation herein,
public hearing having been held and the Commission being informed in
the premises,

IT IS ORDERED that Radial Highway Common Carrier Permit No. 1-9130, City Carrier Permit No. 1-9131, issued to De Wayne F. Titus, doing business as Golden Pacific Truck Lines, and revoked by Commission resolution on September 29, 1958, pursuant to Section 5007 of the Public Utilities Code, are hereby permanently revoked.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 10th day
of November, 1958.

E. L. Fox
President
Ed. E. Mitchell
Secretary
Samuel L. L. L.
Commissioners
Thos. H. L. L.
Commissioners