

ORIGINAL

Decision No. 57899

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA.

Investigation on the Commission's
own motion into the operations,
rates, and practices of WILFRED
and ELMER PATTERSON, doing busi-
ness as PATTERSON BROS. TRANSPORTA-
TION.

Case No. 6166

Elmer Patterson, in propria persona.
Karl K. Roos, for the Commission staff.

O P I N I O N

This Commission, on August 5, 1958, issued an order of investigation into the operations, rates and practices of Wilfred Patterson and Elmer Patterson, doing business as Patterson Bros. Transportation, who are engaged in the business of transporting property over the public highways as a radial highway common carrier and as a household goods carrier. Pursuant to said order a public hearing was held on November 20, 1958 at Yucaipa before Examiner James F. Mastoris at which time evidence was presented and the matter submitted.

Purpose of Investigation

The purpose of this investigation is to determine whether the respondent:

(1) violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting a lesser compensation for the transportation of property than the applicable charges prescribed by the Commission's Minimum Rate Tariff No. 2,

(2) violated Section 3704 of said code by failing to properly keep and maintain books and accounts required by the Commission,

(3) violated Section 3737 of said code by failing to adhere to other provisions of Minimum Rate Tariff No. 2.

Staff's Evidence

Evidence was produced by the staff showing that ten shipments, involving lumber and building materials, transported primarily from northern California lumber mills to points in southern California during the period from April to August 1957, were in violation of various and assorted provisions of said Minimum Rate Tariff No. 2 as follows:

(1) The respondent charged and received a compensation for four shipments less than the specific charges computed under the requirements of Items 690-J, 505-H and supplement surcharge provisions. In addition the evidence indicates this carrier failed to assess applicable off-rail charges. Further relevant facts relative to these shipments together with the staff's evidence concerning the correct minimum charges for such shipments, are set forth in the following table:

Frts. Bill No.	Date	Point of Origin	Point of Destination	Weight in Pounds	Charge Assessed by Respondent	Correct Minimum Charge	Undercharge
10392	8-12-57	Willows	San Bernardino	51,900	\$280.25	\$378.38	\$ 98.13
10443)							
10440)							
10447)	Unknown	San Bernardino	Elsinore	43,925	Not Shown	102.36	102.36
10286	5-24-57	Compton	Elsinore	39,140	76.71	114.51	37.80
00928	4-29-57	Redlands	Petaluma	46,940	126.74	230.30	103.56

Undercharges for these shipments totaled \$341.85.

(2) The carrier failed to rate certain shipments separately as required under Item 60-B.

(3) The carrier failed to insert all information necessary to rate the shipments on its freight bills as required under Item No. 255-C, subsections (f) and (h).

(4) The carrier failed to rate a split delivery shipment under the split-delivery provisions of Item 170 and failed to assess the appropriate split-delivery charges.

(5) In violation of Items 70 and 257 the respondent failed to assess charges based upon the gross weight of the shipments it carried. For example, it rated shipments of lumber on board foot measure rather than weight.

In addition, freight bills filed separately among the carrier's records, covering the foregoing transportation, had not been entered in the carrier's accounting records. The aforementioned evidence further discloses that six freight bills were not ratable because the weights of the shipments were not obtained by the carrier.

Respondent's Evidence

Mr. Elmer Patterson, co-partner and operations manager, testifying on behalf of the respondent, conceded that the violations alleged by staff occurred but offered evidence in mitigation as follows:

(1) His wife, who kept and maintained the firm's books in its office in the witness's home, occasionally misfiled freight document information with the result that the carrier's books were incomplete and thus not in accordance with the Commission's requirements. Moreover said wife frequently rated shipments and negligently must have applied the wrong rates.

(2) He himself inadvertently applied incorrect rates in assessing charges for some of the shipments.

(3) He was not familiar with the Commission's rules regarding the assessment of off-rail charges.

(4) He declared he utilized board feet as a unit of measurement rather than gross weight when carrying lumber because northern California lumber mills quoted prices to him in board feet and requested that shipments move and be invoiced in board feet as an accounting convenience. In order to accommodate the shipper and thus obtain the transportation the carrier complied with the request.

(5) Lastly Mr. Patterson stated he accepted many shipments from northern California lumber companies upon conditions set by the mills knowing full well that in all probability minimum rate or other violations might occur. He agreed to the shipper's "take or leave it" offers because during the period of time in which the lumber was transported the 1957 business recession was seriously injuring his operations in southern California and it was necessary to obtain long-haul transportation in order to meet the firm's financial commitments. He stated he lost \$75 on every shipment but that the revenue received enabled him to meet his \$900 monthly payments on his equipment.

However, evidence produced by the staff in rebuttal disclosed this carrier had been warned in the past about rate and document violations with respect to northern California lumber shipments. Prior infractions were similar to the offenses in this case and occurred under similar circumstances.

Findings and Conclusions

Based upon the foregoing we find and conclude that Patterson Bros. Transportation violated Sections 3664, 3667, 3704 and 3737 of the Public Utilities Code.

Penalty

This carrier presently transports lumber and building materials in the southern California desert territory daily primarily for one particular lumber company. This shipper also holds the carrier's note covering a substantial portion of the carrier's business. The respondent owns two trucks and trailers, employs one driver; it has no terminal facilities. Its gross revenue for four quarters ending the third quarter of 1957 was \$35,764.65; in October 1958 its gross revenue amounted to approximately \$3,000 with approximately ten per cent of said amount constituting net profit.

In view of the evidence of record giving due weight to the respondent's mitigating testimony along with the staff's rebuttal evidence, it is our opinion that the respondent's radial highway common carrier permit should be suspended for a period of eight days. In addition, the respondent will be ordered to collect the undercharges established by the staff's evidence. Moreover, respondent will also be directed to examine its records from April 1, 1957 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, it has found. Respondent will also be directed to collect any such additional undercharges.

O R D E R

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED:

1. That Radial Highway Common Carrier Permit No. 36-1912 issued to Wilfred Patterson and Elmer Patterson is hereby suspended for eight consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order.

2. That Wilfred Patterson and Elmer Patterson shall post at their principal place of business 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 their radial highway common carrier permit has been suspended by the Commission for a period of eight days.

3. That Wilfred Patterson and Elmer Patterson shall examine their records for the period from April 1, 1957 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, Wilfred Patterson and Elmer Patterson shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 3.

5. That Wilfred Patterson and Elmer Patterson are 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 one hundred twenty days after the effective date of this order, Wilfred Patterson and Elmer Patterson 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, until such charges have been collected in full or until further order of this Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Wilfred Patterson and Elmer Patterson and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 20th day of January, 1959.

E. J. Fox
President
W. J. Mitchell
W. J. DeLoach
Theodore DeLoach
Commissioners