

ORIGINAL

Decision No. 57917

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. LeROY DAVIS,
doing business as DAVIS TRUCKING
COMPANY.

Case No. 6190

H. LeRoy Davis, in propria persona.James S. Eddy, for the Commission staff.O P I N I O N

On October 15, 1958, this Commission issued an order of investigation on its own motion into the operations, rates and practices of H. LeRoy Davis, doing business as Davis Trucking Company, who is engaged in the business of transporting property over the public highways for compensation as a radial highway common carrier. Pursuant to said order a public hearing was held in Redding on December 10, 1958, at which time evidence was presented and the matter submitted.

Purpose of Investigation

The purpose of this investigation was to determine:

- (1) Whether the respondent has acted in violation of the Public Utilities Code, Sections 3664 and 3667, by charging and collecting a compensation for the transportation of property less than applicable charges prescribed in Minimum Rate Tariff No. 2.
- (2) Whether respondent violated Section 3704 of said code and Item 257 of said Minimum Rate Tariff No. 2 by failing to quote rates based upon the unit of measurement required by the provisions of Item 257.
- (3) Whether respondent violated Sections 3664, 3667 and 3704 of said code by failing to adhere to the provisions of Item 690-H and Supplement No. 32 of said tariff.

Staff's Evidence

The staff alleged and offered evidence to show that this carrier in transporting some 25 shipments of lumber from northern California lumber mills to various points of destination in southern California in November 1957 and January 1958 violated Minimum Rate Tariff No. 2 in the following particulars:

(1) That as to some eighteen shipments charges less than the minimum rate were levied and collected because the carrier failed to assess off railhead charges at the various points of delivery.

(2) Four shipments were improperly rated because the carrier applied an incorrect rail rate when utilizing the alternative rail rate provisions of the Item 210 Series of said tariff.

(3) As to one shipment the carrier failed to apply the surcharge required by Supplement No. 41 to said Minimum rate tariff.

(4) The remaining two shipments involved document violations in that the carrier's freight bills failed to show the information required by Item 255 and were not in accordance with the requirements of Items 70 and 257 of said tariff. It is contended that said documents demonstrate on their face that board feet measurement rather than the weight of the lumber was used by the carrier in rating the shipments.

Respondent's Contentions

Mr. H. LeRoy Davis testifying on behalf of the respondent conceded that the staff's evidence proved one violation (Freight Bill 2994, Exhibit 6); however, he denied that there had been violations as to the balance of the shipments in issue. The respondent advanced the following contentions and offered evidence in support thereof:

(1) With respect to the off railhead shipments he declared he relied exclusively upon information regarding point of delivery supplied to him by his own truck drivers, and by agents and brokers of the shippers, consignors and consignees. Said persons notified him that the points of destination in issue were served by a railroad spur track. He accepted such declarations and billed the shipper based upon such information because he believed the drivers and the shippers had too much to lose by supplying him with false information. He argued that his drivers were compensated on a percentage of the gross revenue per shipment basis and therefore would stand to make more money if the point of delivery

were off rather than on rail. It was alleged the shippers would suffer if the information supplied by them was incorrect because of the possibility that the Commission would order the carrier to collect undercharges.

(2) The carrier contended the transportation not involving off railhead errors was correctly rated because under the circumstances there had been, in effect, substantial compliance with the requirements of the tariff. Mr. Davis stated he applied a 60¢ per hundred pounds rate for two January 20, 1958 shipments when unknown to him the rate had been changed on that date to 67¢ per hundred pounds. Two shipments were transported under a rail rate less than the minimum 20,000 board feet because the shipper refused to pay at the minimum rate.

Slight, if any, evidence was presented by the respondent on the remaining three shipments in question.

Findings

The evidence of the staff on all allegations is clear and convincing and we find such to be controlling in this matter. Testimony of a staff witness who physically inspected the point of destination sites was certainly more persuasive than respondent's testimony, emanating from second-hand sources, that the consignees were on rail. Further relevant facts relative to the rate violation shipments, which the Commission hereby finds, together with our conclusions concerning the correct minimum charges for such shipments, are set forth as follows:

<u>Frt. Bill No.</u>	<u>Date</u>	<u>Point of Origin</u>	<u>Point of Destination</u>	<u>Wt. in Pounds</u>	<u>Charge Assessed by Respondent</u>	<u>Correct Minimum Charge</u>	<u>Under-Charge</u>
3079	11/20/57	Anderson	Los Angeles	46,900	\$281.40	\$317.78	\$36.38
3027	11/21/57	Anderson	Ventura	48,340	290.04	327.54	37.50
3031	11/25/57	Susanville	Los Angeles	43,650	261.90	295.77	33.87
2919	1/ 3/58	Lewiston	San Clemente	45,540	323.33	358.66	35.33
2921	1/ 8/58	Anderson	Chino	53,100	355.77	396.97	41.20
2994	1/ 8/58	Lewiston	Beaumont	47,040	348.09	384.58	36.49
2997	1/16/58	Anderson	Solano Beach	50,340	337.28	376.34	39.06
3087	1/17/58	Lewiston	Claremont	48,250	342.58	380.01	37.43
2998	1/18/58	Anderson	Midway City	47,600	318.92	355.85	36.93
3151	1/20/58	Anderson	Van Nuys	47,200	283.20	316.24	33.04
3012	1/20/58	Anderson	Van Nuys	50,420	302.52	337.81	35.29
3104	1/21/58	Arcata	Victorville	18,244' B.M.	301.03	309.13	8.10
3088	1/22/58	Anderson	Joshua Tree	49,240	403.76	404.92	1.16
3044	1/22/58	Anderson	Los Angeles	42,920	287.56	320.86	33.30
2784	1/22/58	Arcata	Hemet	18,432' B.M.	304.13	355.42	51.29
3105	1/24/58	Arcata	San Diego	17,093' B.M.	281.20	322.29	41.09
3153	1/24/58	Anderson	El Monte	42,580	302.32	318.32	16.00
3129	1/25/58	Anderson	Corona	47,620	319.05	355.99	36.94
3203	1/29/58	Anderson	Carlsbad	51,400	344.38	384.26	39.88
3055	1/30/58	Blue Lake	Lancaster	17,600' B.M.	290.40	337.91	47.51
3131	1/31/58	Burney	San Diego	45,800	306.86	342.39	35.53
3090	1/31/58	Hilt	Pomona	50,020	335.13	373.93	38.80
2785	1/31/58	Arcata	Northridge	16,912' B.M.	279.05	303.80	24.75

Undercharges for these shipments totaled \$776.87.

Respondent's claim with reference to his use of the alternative rail rates cannot be accepted because if the carrier chooses to utilize such alternative he does so at his own risk. The burden is upon him to ascertain that the rate he uses is appropriate and current. Moreover, it is no excuse that the shipper refuses to accept a 20,000 board feet minimum rate; the carrier can only accept freight for transportation at the lawful rate. It must assume the consequences if it elects to carry freight at the unlawful rate.

We further find that this respondent failed to apply the correct surcharge as alleged and failed to comply with the requirements of Items 70, 255 and 257 of Minimum Rate Tariff No. 2. The face of documents demonstrates these violations clearly and unequivocally.

We find it unnecessary to resolve the staff's contention that Item 70 requires that gross weight must be indicated on the freight bills even when Item 210 is utilized and for that reason express no views thereon. Moreover, it is not necessary at this time to re-examine the definition of "railhead".

In view of the foregoing we find that H. LeRoy Davis, doing business as Davis Trucking Company, violated Sections 3664 and 3667 of the Public Utilities Code.

Penalty

Based upon the evidence of record it is the Commission's opinion that the respondent's radial highway common carrier permit should be suspended for a period of five days. In addition, the respondent will be ordered to collect the undercharges hereinabove found. Moreover, respondent will also be directed to examine his records from November 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, he has found. Respondent will be also directed to collect any such additional undercharges.

O R D E R

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

IT IS ORDERED:

1. That Radial Highway Common Carrier Permit No. 45-882 issued to H. LeRoy Davis is hereby suspended for five consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order.
2. That H. LeRoy Davis 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 has been suspended by the Commission for a period of five days.

3. That H. LeRoy Davis shall examine his records for the period from November 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, H. LeRoy Davis shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 3.

5. That H. LeRoy Davis is hereby directed to take such action as may be necessary, including court proceedings, 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, H. LeRoy Davis 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 H. LeRoy Davis and this order shall become effective twenty days after the completion of such service upon the respondent.

Dated at Los Angeles, California, this 27th day of January, 1959.

[Signature: L. L. Fox]
President
[Signature: E. L. D. Hill]
[Signature: Matthew J. D. Hill]
[Signature: Theodore J. Hill]
Commissioners