

Decision No. 57923**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates and practices of Charlie)
 P. Jeter.)

Case No. 6165

Charlie P. Jeter, on his own behalf,
 respondent.
Hugh N. Orr, 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 Charlie P. Jeter who is engaged in the business of transporting property over the public highways as a radial highway common carrier. Pursuant to said order a public hearing was held on November 19, 1958, at Redlands 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 Public Utilities Code Sections 3664, 3667, and 3737 by charging and collecting for the transportation of property a rate less than the minimum rate established under Minimum Rate Tariff No. 2.

(2) Violated Public Utilities Code Sections 3704 and 3737 by issuing shipping documents that failed to comply with the requirements of Item 255 of said Minimum Rate Tariff No. 2.

(3) Violated Section 3737 of said code by failing to collect charges within the time limits prescribed in Item 250 of said minimum rate tariff.

(4) Violated Section 3704 of said code by failing to maintain books and accounts as prescribed by the Commission's Uniform System of Accounts.

Staff's Evidence

The staff presented evidence disclosing that the respondent improperly rated 26 shipments of bulk citrus pulp that were transported between various southern California points during the period from May to August, 1957. It was alleged that violations occurred as follows:

(1) The carrier, when applying the alternative rail rate provisions of said minimum rate tariff, levied a charge based upon a \$3.50 per-ton rate on most shipments and \$4.00 and \$8.00 a ton in others. The staff adduced evidence that these rates were in error. In addition, off-rail charges were not assessed on many shipments. 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:

Frt. Bill No.	Date	Point of Origin	Point of Destination	Weight in Pounds	Charge Assessed or collected by Respondent	Correct Minimum Charge	Under-Charge
09301	6- 5-57	San Fernando	Brawley	35,900	\$ 71.80	\$126.34	\$54.54
09054	6- 6-57	San Fernando	Brawley	33,920	67.84	126.34	58.50
09259	5-30-57	Anaheim	Thermal	46,000	80.50	103.36	22.86
09062	6-25-57	Anaheim	Thermal	42,240	73.92	94.91	20.99
09065	7- 3-57	Anaheim	Thermal	46,300	81.03	104.04	23.01
09077	7-30-57	Anaheim	Thermal	47,460	83.06	106.65	23.59
09279	8- 4-57	Anaheim	Thermal	46,360	81.13	104.18	23.05
09083	8-10-57	Ontario	Mt. Signal	40,760	81.52	109.03	27.51
09270	7- 1-57	Sacramento	Norwalk	46,340	185.36	243.29	57.93
06599	5-29-57	Downey	Thermal	29,240	51.17	67.41	16.24
09253	5-15-57	San Fernando	Thermal	39,760	79.52	125.63	46.11
06592	5- 9-57	San Fernando	Santa Ynez	28,930	57.86	117.49	59.63
09267	6-25-57	Ventura	Bakersfield	36,580	73.16	119.38	46.22
06594	5-14-57	Ventura	Santa Maria	31,990	63.98	76.78	12.80
09059	6-20-57	San Fernando	Bakersfield	39,040	68.32	75.19	6.87
06550	5- 1-57	Anaheim	Thermal	42,620	85.24	95.77	10.53
09251	5- 9-57	Anaheim	Thermal	45,120	78.96	101.38	22.42
09252	5-11-57	Anaheim	Thermal	44,920	78.61	100.93	22.32
06593	5-13-57	Anaheim	Thermal	40,920	71.61	91.95	20.34
06695	5-16-57	Anaheim	Thermal	45,220	79.14	101.61	22.47
06698	5-25-57	Anaheim	Thermal	47,300	82.78	106.28	23.50
09052	6- 1-57	Anaheim	Thermal	45,220	79.14	101.61	22.47
09053	6- 4-57	Anaheim	Thermal	44,100	77.18	99.09	21.91
09064	7- 1-57	Anaheim	Thermal	45,260	79.21	101.70	22.49
09277	7-27-57	Anaheim	Thermal	44,480	77.84	99.95	22.11
09280	8- 8-57	Anaheim	Thermal	45,140	78.00	101.43	23.43

Undercharges for these shipments totaled \$733.84.

(2) Respondent failed to include on the face of its shipping documents the information required by the provisions of Item 255 of Minimum Rate Tariff No. 2. In many freight bills the addresses of the consignors or consignees were missing or were incomplete. Mr. Jeter frequently listed brokers as consignors when said brokers had not delivered the freight to the carrier. Also entries were not made in the on-rail, off-rail column of the documents.

(3) Item 250 of said tariff was alleged to be violated because the carrier failed to collect charges for the property carried within the time limits established by this section. The face of the documents disclosed payment in most instances 16 days after the date of the shipment.

(4) Evidence was offered indicating that the carrier did not maintain his books and records in the manner prescribed by the Commission's Uniform System of Accounts.

Respondent's Position

Mr. Charlie Jeter, testifying on behalf of the respondent, denied the staff's allegations and testified as follows:

(1) When utilizing the alternative rail rate provisions, he applied a rail rate for citrus pulp given to him by the local railroad. He relied upon such rate and believed it to be correct. Prior to the obtaining of such information he testified that he and a local field representative from the Commission attempted to determine a proper commodity classification for bulk citrus pulp. Failing in this he accepted without question the rail rate for this commodity between the points involved. Mr. Jeter insists that orange pulp is not a grain and does not become a feed until chemically processed, and that the staff's rate which was based upon the assumption that the pulp is a grain, was therefore improper.

It was conceded, however, that he had failed to consider and thus assess off-rail charges on many shipments.

(2) Item 255 was not violated because this section does not require information of such a precise nature as contended by the staff. The precise street addresses of the consignor and consignee are not necessary, particularly in the Imperial Valley areas where many business establishments have only post office addresses. Moreover, it is contended that frequently brokers are in fact the consignors, especially where the persons delivering the goods to the carrier are acting as warehousemen, agents, or as employees for the broker.

(3) The respondent claimed that he did all that was expected of him as far as collecting money due him for transportation performed. He states he should not be found in violation of Item 250 if the shipper refuses to pay within the time prescribed in this section.

(4) It was admitted that he failed to keep and maintain books and accounts as required by the Commission's Uniform System of Accounts. He declared at the hearing that: "I didn't know what was expected of me."

Findings

It is not necessary to resolve all of the many contentions advanced at the hearing. Based upon the evidence of record, we find as follows:

(1) The evidence clearly establishes that the 26 shipments in question were unlawfully rated. There was no excuse for the carrier not to assess off-rail charges, nor can the use of the wrong rail rate be justified. It is axiomatic that the trucker uses the alternative rail rate provisions at his own risk; the burden is upon him to find, compute, and assess a rail rate which is appropriate and current for the freight handled between the points involved. The ^{1/}product shipped - lemon and orange pulp - is specifically classified^{1/} and thus the staff's rating was applicable and correct.

(2) The failure to insert on-rail, off-rail information on its freight bills constitutes a violation of subsection (h) of Item 255, as such data is essential to an accurate determination of the applicable minimum rate and charge.

(3) There has been, we believe, substantial compliance with the provisions of Item 250 of said tariff. It is our opinion that the requirements of this section have been met when the carrier has done everything reasonably possible to collect the charges assessed within the period prescribed. The evidence shows that Mr. Jeter mailed his statements immediately following the delivery of the freight. He made many demands upon his debtors to pay their bills. On one occasion he dispatched a truck to travel 50 miles in order to collect charges due.

^{1/} Western Classification No. 76, Item 41555. Item 140, Commodity list 9. Pacific Southcoast Freight Bureau Tariff 240-J.

Under such circumstances any other finding would penalize a carrier because of conditions beyond his control. Accordingly, we find that there was no violation of this section.

(4) Undisputed evidence unequivocally discloses that the respondent failed to keep and maintain his books and records as required by the Uniform System of Accounts.

In view of the foregoing we find and conclude that the respondent violated Sections 3664, 3667, 3704, and 3737 of the Public Utilities Code.

Penalty

In view of the scope of operations of this carrier and of the nature of the violations so found, respondent's radial highway common carrier permit will be suspended for a period of 12 days and he will be ordered to collect the undercharges hereinabove found. Respondent will also be directed to examine his records from May 1, 1957, to the present time in order to determine whether 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 and based upon the evidence therein adduced,

IT IS ORDERED:

1. That Radial Highway Common Carrier Permit No. 13-3211 issued to Charlie P. Jeter is hereby suspended for twelve consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order.

2. That Charlie P. Jeter 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 twelve days.

3. That Charlie P. Jeter shall examine his records for the period from May 1, 1957, to the present time for the purpose of ascertaining whether any additional undercharges have occurred, other than those mentioned in this decision.

4. That within ninety days after the effective date of this decision, Charlie P. Jeter shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 3.

5. That Charlie P. Jeter 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, Charlie P. Jeter 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 Charlie P. Jeter and

this order shall be effective twenty days after the completion of such service upon the respondent.

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

[Signature]
President
[Signature]
[Signature]
Theodore J. Deane
[Signature]
Commissioners