

ORIGINAL

Decision No. 57957

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)  
 own motion into the operations, }  
 rates, and practices of WARREN }  
 W. BECK. }

Case No. 6035

W. W. Eschwig, for respondent.  
James S. Eddy, for the Commission staff.

O P I N I O N

This Commission, on January 14, 1958, issued an order of investigation into the operations, rates and practices of Warren W. Beck who is engaged in the business of transporting property over the public highways as a radial highway common 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 March 4, 1958 in Paso Robles 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. Warren W. Beck testified on his own behalf. From the evidence produced by the staff there appears to have been numerous violations of said Minimum Rate Tariff No. 2. These violations resulted primarily because the respondent with respect to

various shipments of lumber charged his shipper a rate based upon an on-railhead point of destination whereas the consignees involved were in fact located off-railhead. The respondent also failed to assess the surcharge provided in Supplement No. 33 to said tariff as well as improperly designating two shipments.

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

(1) During the period from January through July 1957, Warren W. Beck operated as a radial highway common carrier pursuant to a permit 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 additions 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
6075	7/9/57	Fortuna	El Rio	51,500	\$296.13	\$328.35	\$ 32.22
6341	7/9/57	Fortuna	Los Angeles	52,840	303.83	336.89	33.06
6335	6/28/57	Fortuna	Los Angeles	52,500	301.88	334.72	32.84
6062	6/18/57	Fortuna	South Gate	53,400	307.05	340.47	33.42
6325	6/14/57	Fortuna	Claremont	50,620	291.07	322.74	31.67
6054	6/7/57	Fortuna	Bellflower	51,320	295.09	327.20	32.11
6298	6/6/57	Fortuna	Los Angeles	52,120	299.69	332.31	32.62
6398	5/27/57	Fortuna	Laguna Beach	50,400	289.80	321.34	31.54
6397	5/24/57	Fortuna	Bellflower	51,160	294.17	326.19	32.02
6392	5/15/57	Fortuna	San Diego	51,740	323.38	329.88	6.50
6287	5/7/57	Fortuna	Van Nuys	50,100	287.58	319.42	31.84
6388	5/7/57	Fortuna	El Rio	36,400	209.30	252.24	42.94
6278	4/16/57	Fortuna	Inglewood	51,110	293.88	325.86	31.98
6276	4/10/57	Fortuna	Pomona	51,400	295.55	327.72	32.17
6258	3/1/57	Fortuna	Inglewood	51,700	297.28	329.62	32.34
6357	2/28/57	Fortuna	Paramount	53,020	304.87	338.04	33.17
6257	2/26/57	Fortuna	San Gabriel	51,200	294.40	326.44	32.04
6256	2/21/57	Fortuna	National City	50,300	314.38	320.70	6.32
6129	2/10/57	Fortuna	Santa Barbara	48,900	281.18	311.77	30.59
06126	1/31/57	Fortuna	Pedley	52,700	303.03	336.00	32.97
6380	4/23/57	Fortuna	Merced	17,660	205.39	216.47	11.08
6251	2/12/57	Fortuna	Tulare	50,300	256.43	266.59	10.16

Respondent conceded that the above violations occurred but claimed that he was, in effect, required to charge on-railhead rates when he knew point of delivery was off-spur because the shipper involved would not ship lumber on his trucks if he assessed the proper rate under the Minimum Rate Tariff. He explained that his practice was to charge a rate determined by the shipper. It appears that the respondent transported lumber primarily for one lumber company and it was his procedure to periodically turn over copies of his freight bills to the company for the purpose of assessing a rate which, it was alleged, would "average out" to an amount equal to or greater than the proper minimum rate. He stated he knowingly but reluctantly entered into this arrangement because he believed such practices to be widespread in permitted carrier operations and that he would lose the shipper's business to another carrier unless he agreed to such proposals. As a result of this economic pressure from his principal shipper he asserted that under the circumstances he permitted the above undercharges to occur.

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 \$625.60. Although we may personally sympathize with this carrier's distress we cannot and will not condone such a flagrant violation of the law. Moreover, as in criminal courts it is no excuse for the defendant to say "Everybody else is doing it." The defendant takes a calculated risk that he will not be caught. This carrier took such a risk and lost. Furthermore, in this case evidence introduced in aggravation

of the present violations disclosed that the respondent had committed similar violations in 1954 and 1955 involving similar undercharges under similar circumstances. We would be derelict in our duty to enforce the law if lenient treatment were given in this case. Accordingly, respondent's operating rights will be suspended for a period of fifteen days and he will be ordered to collect the undercharges hereinabove found. Respondent will also be directed to examine his records from January 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 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. 49-1541 issued to Warren W. Beck is hereby suspended for fifteen consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order.

(2) That Warren W. Beck 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 fifteen days.

(3) That Warren W. Beck shall examine his records for the period from January 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, Warren W. Beck, shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph (3).

(5) That Warren W. Beck 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 120 days after the effective date of this order, Warren W. Beck 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 the Commission.

(7) The Secretary of the Commission is directed to cause personal service of this order to be made upon Warren W. Beck 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 February, 1959.

[Signature]  
President  
[Signature]  
[Signature]  
[Signature]  
Commissioners