

ORIGINAL

Decision No. 58185

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations, rates,
and practices of HARRY SARKISIAN.

Case No. 6183

Harry Sarkisian, in propria persona.
Edward Fraser, for the Commission staff.

O P I N I O N

This Commission, on September 29, 1958, issued an order of investigation into the operations, rates, and practices of Harry Sarkisian 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 before Examiner James Mastoris on February 4, 1959, at Eureka, 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 said Minimum Rate Tariff No. 2.

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

Staff's Evidence

The staff alleged and offered evidence in support of its allegations that the respondent improperly rated 18 shipments of lumber that were transported between various Humboldt County lumber mills and points in the San Francisco and Los Angeles areas.

It was contended:

- (1) That the carrier failed to assess off-rail charges at the points of destination on all 18 shipments.
- (2) That an improper rail rate was applied on four shipments.
- (3) That the respondent failed to assess a one cent per 100 pounds loading charge on the weight on which transportation charges were computed on seven of the above shipments. This nonassessment was claimed to be in violation of Item 240 of said Minimum Rate Tariff No. 2.

Respondent's Position

The respondent, testifying on his own behalf, claimed:

- (1) That his shippers, and in many cases his own drivers, informed him that the points of destination were on rail and, relying upon such information, he rated some 10 shipments in issue as if the consignees were on railhead. On the balance of the shipments involved he depended on data supplied him by lumber brokers and upon his general knowledge of the plants and industries in question.
- (2) That as to five shipments his trucks were unloaded by the consignees at railroad team tracks in the vicinity of consignee's plants; therefore, his failure to assess off-rail charges was not improper. On one case he knew before the shipment left Humboldt County that the point of destination was to be a railroad team track, while on the other cases his drivers were informed of this fact upon entering the city or territory where the consignee was located. He insisted his trucks did not carry the lumber from the team track to the consignee's place of business. On four of these shipments the team track was located across the street from the consignee's plant.

- (3) On one shipment he claimed he was carrying lumber as a subhauler and therefore the minimum rate tariff did not apply.
- (4) On certain shipments he relied on a rail rate taken from a local motor transportation broker's rate book. He assumed at the time of his rating that the rates mentioned therein were correct.
- (5) As to three shipments (Freight Bills 0852, 0138 and 0921) he declared he charged a board foot rate of \$1.47 per 1,000 board feet higher than the minimum between the points involved. It was alleged that if an error occurred it was one of improper freight bill documentation rather than the use of an inapplicable rate.
- (6) The accessorial service charge of 1 cent per 100 pounds for the power equipment loading of the carrier's trucks was alleged to be inapplicable because it was a well-established practice in the Eureka area that all carriers' trucks were loaded by the shippers by power equipment.

Findings and Conclusions

Based upon the evidence of record we find and conclude that:

1. The respondent violated Public Utilities Code Sections 3664, 3667 and 3737 by charging and collecting a rate less than the minimum established by the Commission with respect to shipments manifested by the following freight bills:

0255	Part 1 of Exhibit 4
0115	Part 5 " " "
0219	Part 7 " " "
0231	Part 10 " " "
0852	Part 11 " " "
0918	Part 12 " " "
0137	Part 13 " " "
0138	Part 14 " " "
0921	Part 15 " " "
0335	Part 16 " " "
0339	Part 18 " " "
0467	Part 20 " " "

The testimony of the staff's witness who physically inspected the consignees' plants supplemented by their maps and sketches controls over the respondent's evidence which emanated from

second-hand sources. The reliance by the carrier upon information supplied by his shippers and his drivers is properly a matter in extenuation of the penalty rather than as a defense to the charge that the code sections have been violated. The fact that many of these plants were close to and in the immediate physical vicinity of railhead facilities is not the same as being "on railhead". We have defined "railhead" in our Minimum Rate Tariff No. 2 to be:

"Railhead means a point at which facilities are maintained for the loading of property into or upon, or the unloading of property from, rail cars or vessels. It also includes truck loading facilities of plants or industries located at ^{1/} such rail or vessel loading or unloading point."

If hardship results to the trucker or to the shipper as a result of the application of such definition, or if a competitive disadvantage to the trucker occurs, the remedy is not to stretch the rules set forth in the tariff but to seek changes and revisions by appropriate proceedings before this Commission.

2. Although unloading a truck at a railroad team track is a most unorthodox and unusual procedure we are willing to give the benefit of the doubt to the respondent in this case by accepting his word that the consignees ordered such an unloading. The freight bills would be in error because the precise destination was not named; however, as the actual movement controls over the manifestations of the freight bills we find that there were no rate violations as to the following freight bills:

0021	Part 4 of Exhibit 4
0171	Part 6 " " "
0228	Part 9 " " "

3. We cannot accept the respondent's claim that he was subhauler as to the shipment reflected by Freight Bill No. 0115 (Part 5 of Exhibit 4). The carrier received the offer to ship

^{1/} Item 10, Minimum Rate Tariff No. 2.

lumber from a representative of the shipper and at the completion of the transportation he billed and received payment from the actual shipper. We conclude that the respondent's conduct justified a finding that he was the prime carrier. As the \$15 per 1,000 board feet rate charged by the respondent was inapplicable between the points involved we find that there was a violation of Sections 3664, 3667 and 3737 of the code with respect to this movement.

4. In view of the fact that the only competent evidence shows that the point of destination as to the shipment reflected in Freight Bill No. 0247 (Part 19 of Exhibit 4) is on railhead, we find that the undercharge is less than alleged by the amount attributed to the off-rail charge.

5. Respondent's freight bills disclose that this carrier did not show on the face of said documents the fact that the lumber was loaded or unloaded by power equipment in accordance with the provisions of subparagraph (c) to Note 1 of Item 240 of said minimum rate tariff. Accordingly, we find that the respondent was in violation of Section 3737 of the Public Utilities Code as charged. In this situation the face of the freight bill determines the violation and not the actual circumstances of the loading.

6. Despite the respondent's rate of \$16.50 per 1,000 board feet as to shipments indicated by Freight Bills 0852, 0138 and 0921, which rate he alleges to be above the minimum, undercharges did, nevertheless, occur because of the failure to levy the off-rail assessment. Therefore we cannot accept his argument that there were no rate violations on these shipments.

7. The evidence further demonstrates that the carrier violated Public Utilities Code Section 3737 by issuing shipping documents that failed to comply with the requirements of Items 255 and 257 of said Minimum Rate Tariff No. 2. Such document errors occurred even on those shipments wherein no rate violations were found.

In view of the foregoing conclusions, we find that undercharges resulted from the transportation performed by the respondent as set forth in the following table:

<u>Frt. Bill No.</u>	<u>Date</u>	<u>Point of Origin</u>	<u>Point of Destination</u>	<u>Weight in Pounds</u>	<u>Charge Assessed by Respondent</u>	<u>Correct Minimum Charge</u>	<u>Undercharge</u>
0255	8/24/57	Alton	Newark	45,240	\$176.44	\$190.55	\$14.11
0115	9/26/57	Carlotta	Bakersfield	49,040	279.81	312.66	32.85
0219	10/ 2/57	Arcata	Bakersfield	50,400	282.24	321.34	39.10
0231	11/12/57	Arcata	Lynwood	50,000	311.82	318.79	6.97
0852	11/22/57	Blue Lake	La Habra	50,000	316.80	318.79	1.99
0918	11/23/57	Arcata	Canoga Park	51,000	310.28	330.27	19.99
0137	11/23/57	Arcata	Wilmington	52,000	320.20	336.74	16.54
0138	12/ 3/57	Blue Lake	La Habra	51,500	316.80	328.35	11.55
0921	12/16/57	Blue Lake	La Habra	51,000	316.80	325.17	8.37
0335	12/22/57	Samoa	Grass Valley	50,040	210.17	250.67	40.50
0339	1/ 6/58	Korbel	Torrance	50,100	308.81	344.47	35.66
0247	1/14/58	Arcata	Culver City	50,180	300.60	305.62	5.02
0467	2/24/58	Arcata	No.Hollywood	48,090	300.60	340.28	39.68
0910	10/24/57	Eureka	Brawley	50,000	363.56	380.00	16.44
0394	10/29/57	Eureka	Brawley	50,520	360.06	383.95	22.89

Total undercharges amount to \$312.66

Penalty

Truckers utilizing the alternative rail rate provisions of Minimum Rate Tariff No. 2 are no doubt faced with a dilemma in attempting to ascertain whether a plant or industry located at the opposite end of the State is on railhead. In many situations, especially when they are not personally familiar with the precise point of destination, they must rely on their shippers and their

drivers. On many occasions said shippers and drivers are honestly mistaken on their observation of rail facilities. However, as long as the trucker chooses this alternative method the burden of ascertaining whether the plant fits within the aforementioned definition must remain with him. He must suffer the consequences if his information proves unreliable. Such is the case here. In addition this particular carrier relied upon unauthorized and obsolete rail rate data.

In view of the circumstances therefore, and considering the scope and nature of the respondent's operations, respondent's radial highway common carrier permit will be suspended for a period of four days; however, the imposition of said suspension will be deferred and suspended for a period of one year. If at the end of the one-year period the Commission is satisfied that respondent is complying with all such orders, rules and regulations, the deferred portion of said suspension will be vacated without further order of the Commission. However, if the Commission finds at any time during the one-year period that respondent is failing to comply with all such orders, rules and regulations, the four-day period of suspension will be imposed, together with whatever additional penalty the Commission deems necessary. In addition, this carrier will be ordered to collect the undercharges hereinbefore found. Furthermore respondent will also be directed to examine his records from January 1, 1958 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. 10-7136 issued to Harry Sarkisian is hereby suspended for four consecutive days; however, execution of said suspension will be deferred and suspended pending further order of the Commission. If no further order of the Commission is issued affecting said suspension within one year from the date of issuance of this decision, said suspension shall be vacated.
2. That Harry Sarkisian shall examine his records for the period from January 1, 1958 to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.
3. That within ninety days after the effective date of this decision, Harry Sarkisian shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 2.
4. That Harry Sarkisian 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 2 of this order, and to notify the Commission in writing upon the consummation of such collections.

5. That, in the event charges to be collected as provided in paragraph 4 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order, Harry Sarkisian 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 Harry Sarkisian and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 24th day of March, 1959.

E. L. Fox
President
Walter B. ...
Matthew ...
Theodore ...
Ernest ...
Commissioners