

ORIGINAL

Decision No. 58302

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates and practices of O. E.  
PRITCHARD, doing business as  
H & W PRODUCE TRANSPORT.

Case No. 6210

In the Matter of the Application of  
O. E. PRITCHARD and ROY E. FORD a  
partnership doing business as H. &  
W. Produce Transport to operate a  
Highway Common Carrier Service.

Application No. 36154

A. R. Kerstetter, for respondent.

Edward G. Fraser, for the Commission staff.

O P I N I O N

On December 16, 1958, this Commission issued an order of investigation into the operations, rates and practices of O. E. Pritchard, doing business as H & W Produce Transport, who is engaged in the business of transporting property over the public highways under a certificate authorizing operations as a highway common carrier; in addition this carrier holds permits to operate as a radial highway common carrier and as a highway contract carrier. The purpose of this investigation is to determine whether the respondent has acted in violation of Section 702 of the Public Utilities Code by failing to comply with certain decisions of the Commission regarding his tariffs.

A public hearing was held in Fresno on March 12, 1959, before Examiner James F. Mastoris, at which time evidence was presented and the matter duly submitted.

Documentary evidence presented by the staff discloses that by Decision No. 51648, dated July 5, 1955, this respondent was

granted a certificate to transport as a highway common carrier fresh or green fruits and vegetables "between Fresno, on the one hand, and San Jose and Los Angeles, on the other hand", but denied authorization to serve intermediate points as a highway common carrier. When the respondent's tariff was published it specified therein certain rates between San Jose and Los Angeles. As a result the staff contends such publication was in contravention of the authority granted because transportation between said points was outside the scope of the certificate.

The balance of the staff's case consisted of evidence showing that by Decision No. 56770, in Case No. 5438, dated May 27, 1958, this Commission amended the minimum rates and charges established in Minimum Rate Tariff No. 8, and directed highway common carriers, including respondent, to set forth in their tariffs the revised rates necessary to conform with said amendment. It is claimed that this carrier failed to amend his tariff as required by said decision and as a consequence said tariff contained improper rules and regulations governing split pickup and delivery charges, accessorial charges and distance commodity rates.

The staff produced various letters sent by it to the respondent warning the respondent that the tariff was defective and needed revision and that noncompliance with the Commission's orders would result in formal investigation proceedings. This action was commenced after such warnings went unheeded.

The respondent offered no defense to the staff's charges and conceded that the allegations were true and correct. However, as evidence of mitigation, testimony was offered showing that non-compliance with the Commission's decisions and orders was the result of a misunderstanding between the respondent and his transportation consultant as to the action required under said decisions and orders.

Immediately following the receipt of his certificate (Decision No. 51648, dated July 5, 1955, in Application No. 36154) respondent determined that his operations did not merit highway common carrier carriage and in order to prevent reoccurring losses he decided to take steps to revoke said certificate. Instead of proceeding by formal application to cancel said operating rights a series of letters were exchanged with the Commission's staff. Said letters attempted to resolve the difficulties surrounding the cost of the aforementioned tariff revisions, but because of a general misconception of what was required nothing was done to amend said tariff or to revoke the certificate. At no time did this carrier operate or apply rates between San Jose and Los Angeles, nor did he charge rates other than the rates prescribed by Minimum Rate Tariff No. 8 as established in said Decision No. 56770.

In view of the foregoing evidence we find that the respondent violated Section 702 of the Public Utilities Code as charged. However, we are satisfied that this carrier did not intend to circumvent the law or to charge rates lower than the minimum set in Minimum Rate Tariff No. 8 or to assess rates between unauthorized points. The noncompliance with the Commission's decisions can be attributed to a series of careless misinterpretations and oversights. The respondent has already suffered a pecuniary loss of \$250 in defending himself in this proceeding; further action by this Commission, especially with respect to suspension of his permitted operating rights, does not appear to be warranted under the circumstances. This trucker has no prior record of violations before this Commission.

Subsequent to the hearing the respondent petitioned the Commission to revoke his certificate. In view of the allegations of said petition, filed herein, and in light of the testimony adduced at said hearing, the Commission deems it advisable to consolidate both

matters and thus grant the relief requested. Accordingly, the respondent's certificate will be revoked in the order that follows:

O R D E R

A public hearing having been held in the above-entitled matter and the Commission being fully informed therein,

IT IS ORDERED that the certificate of public convenience and necessity granted by Decision No. 51648, dated July 5, 1955, in Application No. 36154, to O. E. Pritchard, doing business as H & W Produce Transport, to operate as a highway common carrier, is hereby revoked. All effective tariffs on file with the Commission in the name of O. E. Pritchard, doing business as H & W Produce Transport, are hereby revoked and canceled.

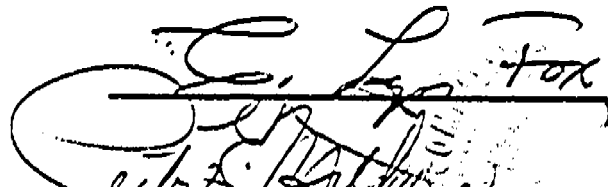
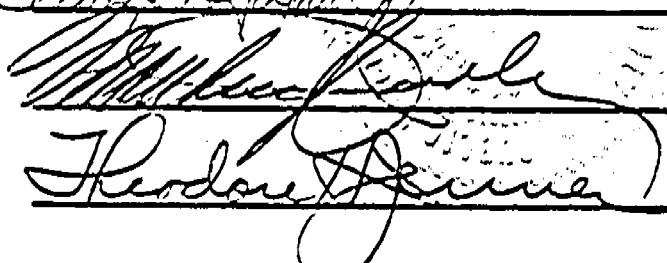
IT IS FURTHER ORDERED that Case No. 6210 be and it is hereby discontinued. ✓

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The Secretary of the Commission is hereby directed to cause a certified copy of this order to be served upon O. E. Pritchard in the manner prescribed by law.

The effective date of this order shall be the twentieth day after lawful service thereof.

Dated at San Francisco, California, this 21st day of April, 1959.

  
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President  
  
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Theodore Deane  
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Commissioners

Commissioner Everett C. McKee, being necessarily absent, did not participate in the disposition of this proceeding.