

Decision No. 58303

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 RABB
BROTHERS TRUCKING, INC., a
corporation.)
Case No. 6133

Truman F. Campbell, for Rabb Brothers Trucking,
Inc., respondent.
Edward G. Fraser, for the Commission staff.

O P I N I O N

This Commission, on June 24, 1958, issued an order of investigation into the operations, rates, and practices of Rabb Brothers Trucking, Inc., a corporation, which is engaged in the business of transporting property over the public highways as a radial highway common carrier. Pursuant to said order, public hearings were held on November 25, 1958 and March 11, 1959 at Fresno before Examiner James F. Mastoris, at which time evidence was presented and the matter was submitted.

Purpose of Investigation

The purpose of this investigation is to determine whether:

(1) This respondent violated Sections 3737, 3664 and 3667 of the Public Utilities Code by charging and collecting a lesser compensation for the transportation of property than the applicable charges prescribed in the Commission's Minimum Rate Tariff No. 2.

(2) This respondent has acted in violation of the Public Utilities Code, Section 3737, by failing to adhere to the provisions of Item 250 of said Minimum Rate Tariff No. 2.

(3) The carrier violated other provisions of said Minimum Rate Tariff.

Staff's Evidence

Evidence was produced by the staff of the Commission indicating this carrier misrated fourteen shipments of grain products, consisting of flax, barley, rice and corn, that were transported by it during the period from July to October 1957, primarily between various points in the San Joaquin Valley. It is contended that the respondent failed to assess off-rail charges, charged inapplicable rail and minimum rate tariff rates for the commodities carried, and failed to levy certain surcharge assessments.

In addition the staff presented evidence showing that this carrier, on four occasions, failed to comply with the regulations governing the collection of charges from shippers, as required in Item 250 of said Minimum Rate Tariff No. 2. In one instance the carrier presented its statement of charges for transportation performed some six months after delivery of the freight.

Respondent's Position

Aside from one particular shipment, the rating of which is disputed, the respondent conceded that the violations of the tariff as charged had occurred. Testimony was received disclosing that the respondent's truck dispatcher, who was also in charge of the rating of shipments, inadvertently applied the wrong rate on the various movements in question. His errors were the result of fundamental mistakes in calculation and mileage computation, as well as erroneous application of the appropriate rates and the regulations. Basing a portion of his rating on a private tariff

publication of grain and grain products and upon mileage charts other than the Commission's Distance Table No. 4, said dispatcher arrived at rates varying from \$4.44 to \$41.92 below the lowest possible minimum.

Findings

Based upon the evidence of record, we find that the staff's allegations have been proved in all particulars, including the disputed shipment reflected in Freight Bill 10158 dated September 19, 1957. The staff's combination of off-rail and rail rate charges unquestionably produces the lowest lawful rate; we find no authority for the "2865" rate utilized by the carrier.

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:

<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 or Collected by Respond- ent</u>	<u>Correct Rate and Charge</u>	<u>Under- charge</u>
09940	7-30-57	San Joaquin	Richmond	7,630	\$ 17.97	\$ 55.40	\$37.43
09985	8-11-57	San Joaquin	Sanger	24,990	21.24	25.68	4.44
10016	8-16-57	Five Points	Sanger	24,140	20.52	32.29	11.77
10024	8-22-57	Ora	Easton	23,380	26.28	31.28	5.00
10030	8-23-57	Ora	Sanger	23,570	29.01	36.57	7.56
10040	8-27-57	Huron	Clovis	22,710	30.39	35.24	4.85
08915	8-29-57	Buttonwillow	Stockton	51,000	150.45	184.93	34.48
08924	8-29-57	Buttonwillow	Stockton	47,700	140.72	182.28	41.56
08925	8-30-57	Buttonwillow	Stockton	50,020	147.56	184.15	36.59
10158	9-19-57	Rolinda	San Gabriel	34,680	99.36	111.34	11.98
08963	9-25-57	Buttonwillow	Stockton	47,540	140.24	182.16	41.92
10190	9-26-57	Angiola	Bakersfield	50,140	56.36	61.70	5.34
10211	9-27-57	Buttonwillow	Dos Palos	36,810	82.71	94.52	11.81
09808	10-9-57	Buttonwillow	Dos Palos	56,240	126.37	144.00	17.63

Undercharges for these shipments amounted to \$272.36.

Accordingly we find:

(1) That the respondent violated Sections 3737, 3664 and 3667 of the Public Utilities Code by charging and receiving a rate less than the minimum.

(2) That the respondent violated Section 3737 by failing to comply with the provisions and requirements of Item 250 of said Minimum Rate Tariff No. 2.

Penalty

These errors were simple and understandable miscalculations made by a small trucker under circumstances demonstrating no intent to violate the law. It is apparent that the respondent and its employees were not familiar with the pertinent regulatory rules controlling many facets of the carrier's operations, especially with respect to the use of documents under multiple-lot pickups and the application of constructive mileage. In addition, the indiscriminate use of unreliable and unofficial private tariff publications accentuated the mistakes made. Such careless practice cannot, of course, be condoned, but, on the other hand, it does not merit disabling punishment, particularly in light of the pattern, quality and amount of the undercharges.

In view of the fact that there were no prior violations of said minimum rate tariff, and considering the nature of the respondent's operations, its radial highway common carrier permit will be suspended for a period of two days, and it will be ordered to collect the undercharges hereinbefore found. Respondent will also be directed to examine its records from July 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, it 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. 10-7594, issued to Rabb Brothers Trucking, Inc., is hereby suspended for two consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order.
2. That Rabb Brothers Trucking, Inc., shall post at its 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 its radial highway common carrier permit has been suspended by the Commission for a period of two days; that within five days after such posting, Rabb Brothers Trucking, Inc., shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.
3. That Rabb Brothers Trucking, Inc., shall examine its records for the period from July 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, Rabb Brothers Trucking, Inc., shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 3.
5. That Rabb Brothers Trucking, Inc., 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 one hundred and twenty days after the effective date of this order, Rabb Brothers Trucking, Inc., shall submit to the Commission, on the first Monday of each month, a report of the undercharges remaining to be collected, 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 Rabb Brothers Trucking, Inc., and this order shall be effective twenty days after the completion of such service upon the respondent.

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

E. J. Fox
President
W. J. [illegible]
Frederic [illegible]
Commissioners

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