

Decision No. 58691

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 M. P. SMITH,
dba ANTELOPE TRUCK SERVICE.

Case No. 6241

M. P. Smith, in propria persona.

Elmer Sjostrom, for the Commission
staff.

O P I N I O N

On March 17, 1959, this Commission issued an order of investigation into the operations, rates and practices of M. P. Smith, doing business as Antelope Truck Service, who is engaged in the business of transporting property over the public highways as a radial highway common carrier, as a highway contract carrier, and as a city carrier. Pursuant to said order a public hearing was held on May 20, 1959 at Sacramento before Examiner James F. Mastoris, 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 and 3667 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 Section 3737 of said Code by issuing shipping documents that failed to comply with the requirements of said Minimum Rate Tariff No. 2.

Staff's Evidence

Evidence produced by the staff of the Commission indicated that this carrier improperly rated twelve shipments of lumber that were transported primarily between northern California lumber mills and points in the San Joaquin Valley and southern California in the month of May 1958. The errors that occurred were the result of incorrect computation of mileage, failure to charge the off-rail differential, failure to charge loading and unloading charges as required under Item 240 of said minimum rate tariff, and erroneous use of the rail rate under the alternative application. In addition, freight bills received into evidence disclosed that the respondent failed to insert the correct information on said documents regarding the points of origin and destination on many of the shipments involved. On most shipments there was a wide difference between the actual point of origin and the point of origin as shown on the face of the documents. As an illustration of the disparity, one freight bill (Freight Bill 01188, dated May 17, 1958) listed Oroville as point of origin. However, the public weighmaster's certificate referred to Cloverdale. But the actual point of pickup was at Willits, over 150 miles west of Oroville.

Respondent's Position

The respondent refused to take the witness stand and testify on his own behalf or offer any evidence or explanation of the staff's charges. He made an unsworn statement declaring he did not know how the errors and mistakes occurred and that he had no excuse to offer.

Findings

Based upon the evidence of record, we find that the staff's charges have been proven as alleged. We find, therefore, that the respondent:

- (1) Violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting a compensation less than the minimum established by Minimum Rate Tariff No. 2.
- (2) Violated Section 3737 of said Code by failing to comply with the requirements of Item 255 of said minimum rate tariff.

Further relevant facts pertinent to the shipments involved, together with our conclusions concerning the correct minimum charges for such shipments, are set forth in the following table:

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charge Assessed by Respondent</u>	<u>Correct Minimum Charge</u>	<u>Undercharge</u>
01186	5/14/58	\$157.63	\$167.48	\$ 9.85
01234	5/14/58	223.78	295.31	71.53
01307	5/14/58	224.75	266.36	41.61
01235	5/16/58	148.42	157.69	9.27
01188	5/17/58	182.52	234.00	51.48
01191	5/26/58	236.79	330.01	93.22
01139	5/ 8/58	194.22	206.74	12.52
01305	5/ 8/58	217.70	258.26	40.56
01189	5/21/58	180.93	211.54	30.61
01236	5/22/58	121.15	137.60	16.45
01148	5/25/58	152.00	167.70	15.70
02051	5/28/58	290.16	352.21	62.05

Total undercharges amount to \$454.85.

Penalty

It is apparent the mistakes that took place were caused by gross carelessness and negligence on the part of the respondent and on the part of his wife who rated these shipments and who was the bookkeeper for the firm. Although the marked disagreement between the documents and the actual pickup point is a suspicious circumstance, there was insufficient evidence to infer an intent to circumvent the minimum rate tariff. The record does disclose, however, that this carrier suffers from an alarming lack of knowledge of the rudimentary rules governing Minimum Rate Tariff No. 2. This, of course, is no excuse as the burden is upon the carrier to ascertain, learn, and apply these rules correctly.

Considering the size of this trucker and the type of violations involved, respondent's radial highway common carrier and highway contract carrier permits will be suspended for a period of five days and he will be ordered to collect the undercharges hereinabove found. Respondent will also be directed to examine his records from June 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 the Radial Highway Common Carrier Permit No. 34-3108 and the Highway Contract Carrier Permit No. 34-3430, issued to M. P. Smith, doing business as Antelope Truck Service, are hereby suspended for five consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order.

2. That M. P. Smith 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 and his highway contract carrier permit have been suspended by the Commission for a period of five days; that, within five days after such posting, respondent 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 respondent shall examine his records for the period from June 1, 1958 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, respondent shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 3.

5. That respondent 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 and twenty days after the effective date of this order, respondent 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 M. P. Smith, doing business as Antelope Truck Service, and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 29th day of June, 1959.

E. J. Fox
President
W. H. Smith
Theodore J. Smith
Ernest J. Fox
Commissioners

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