

ORIGINAL

Decision No. 5005A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
rates and practices of FRANK V.) Case No. 6219
COSTA.)

George E. Atkinson, Jr. for Frank V. Costa,
Respondent.
Hugh N. Orr, for Commission staff.

O P I N I O N

This Commission, on January 27, 1959, issued an order of investigation into the operations, rates and practices of Frank V. Costa, who is engaged in the business of transporting livestock over the public highways of this state as a radial highway common carrier. Pursuant to said order a public hearing was held on June 3, 1959 at Los Angeles 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 the respondent:

- (1) Violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting a lesser compensation for the transportation of livestock than the applicable charges prescribed by Minimum Rate Tariff No. 3-A;
- (2) Violated the above sections by otherwise failing to comply with various rules and requirements provided in said Minimum Rate Tariff No. 3-A;
- (3) Has cancelled or reduced freight bills for transportation actually performed; and

(4) Failed to record all charges for transportation performed or failed to report all revenues received and to pay fees required by Section 5003 of the Public Utilities Code.

Staff's Position

The Commission's staff offered evidence that the respondent, while performing transportation of dairy cattle between central and southern California points during the period from November 1957 to April 1958, improperly rated some 42 shipments contrary to the provisions of said minimum rate tariff. Testimonial and documentary evidence was produced indicating that this carrier:

- (1) Improperly consolidated separate shipments;
- (2) Failed to indicate split pick-up and split deliveries on shipping documents and failed to assess charges for such shipments;
- (3) Failed to present freight bills to the debtors within the time prescribed by said tariff;
- (4) Performed transportation although agreement for carriage required by Item 250 of said tariff had not been signed or executed by the carrier and consignor or other party responsible for the tender of the shipment;
- (5) Assessed a charge based upon a "per head" basis rather than an unit of measurement (weight) basis prescribed by the tariff;
- (6) Failed to obtain public weighmasters' certificates for shipments consisting of more than 10 head of cattle, and to notify the Commission of instances where such certificate had not been obtained. In addition he failed to use applicable specified weights designated in the tariff in absence of such certificates;
- (7) Failed to show on his shipping documents the points of origin, points of destination, description of the kind of livestock carried, weight of the shipment or the rate assessed; and

(8) Failed to collect charges within the credit period authorized.

In addition to the foregoing and the fact that the carrier mis-rated many shipments because of an erroneous use of the distance commodity rates he failed to record charges for transportation performed and thus failed to report all his revenue and pay the required fees prescribed by Section 5003 of the Public Utilities Code.

Respondent's Evidence

The staff's charges and evidence were not disputed or contested by the respondent. He conceded that the many and varied violations occurred as described but insisted that there was no attempt to circumvent the Commission's rates or regulations or to disobey the law. Considerable evidence was presented with respect to the peculiar personal background of the respondent and the circumstances surrounding the rating of these shipments in order to explain how the errors and mistakes happened.

Recently the respondent indicated he has entered into an agreement with a professional traffic consultant authorizing the consultant's firm to handle all rating and accounting activities of his business.

Finding

Based upon the foregoing evidence, we find 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. 3-A.

(2) Violated Section 5003 of the Public Utilities Code by failing to report all revenues received and failing to pay the appropriate fee required by said section.

There was insufficient evidence to prove that the respondent cancelled or reduced freight bills for transportation actually performed.

Further relevant facts pertinent to the shipments involved, other than those movements reflected in Parts 43 to 49 of Exhibit 6 received into evidence at this proceeding, 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 Or Collected By Respondent</u>	<u>Correct Minimum Charge</u>	<u>Undercharge</u>
5206	11/ 5/57	\$ 92.34	\$ 93.96	\$ 1.62
5316	12/ 8/57	30.00	38.34	8.34
5355	12/15/57	20.00	34.02	14.02
2745	12/11/57	11.00	21.60	10.60
5449	1/15/58	18.36	21.42	3.06
5475	1/18/58	25.00	27.90	2.90
5474	1/18/58	25.00	30.60	5.60
5553	1/21/58	36.72	39.78	3.06
2975	1/18/58	22.50	30.00	7.50
2973	1/16/58	15.00	21.06	6.06
5554	1/21/58	36.72	42.84	6.12
3015	1/23/58	76.50	82.62	6.12
5560	1/24/58	13.32	16.38	3.06
5516	2/10/58	19.44	25.92	6.48
3218	2/18/58	6.40	11.88	5.48
5575	2/18/58	73.90	96.00	22.10
5579	2/19/58	81.00	90.00	9.00
5577	2/19/58	82.62	88.74	6.12
3293	2/16/58	40.37	41.64	1.27
3131	3/ 4/58	157.04	211.50	54.46
5533	3/ 7/58	30.00	33.00	3.00
3074	3/ 4/58	21.25	24.00	2.75
5711	3/11/58	20.40	23.76	3.36
3094	3/10/58	15.00	19.44	4.44
5718	3/18/58	190.63	274.32	83.69
3394	3/20/58	63.00	68.04	5.04
3140	3/14/58	1.60	3.00	1.40
5753	3/18/58	33.00	34.84	1.84
5724	3/20/58	110.34	117.70	7.36
5548	3/20/58	182.60	192.56	9.96
3442	3/24/58	20.40	23.76	3.36
5725	3/24/58	19.98	21.06	1.08

(continued)

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charge Assessed Or Collected By Respondent</u>	<u>Correct Minimum Charge</u>	<u>Undercharge</u>
5681	3/24/58	\$197.78	\$208.01	\$ 10.23
5851	3/26/58	160.52	241.92	81.40
5905	3/27/58	26.64	28.08	1.44
3725	3/28/58	12.50	16.20	3.70
3517	4/ 9/58	18.00	21.00	3.00
3544	4/17/58	5.00	9.72	4.72
3615	4/21/58	21.25	24.00	2.75
3640	4/23/58	21.25	24.00	2.75
3755	4/27/58	17.00	21.60	4.60
5407	12/11/57	174.00	313.20	139.20

Total undercharges amount to \$564.02

On shipments evidence in the above-mentioned Parts 43 to 49 undercharges could not be determined because we cannot with any degree of certainty correlate and identify testimony and documents concerning the presentation and collection of charges with documents disclosing that transportation was performed. We have given due consideration to other violations involved in these shipments in imposing penalty that follows.

Penalty

The determination of an appropriate penalty to be administered in this case in the light of all the salient facts is not without some difficulty. Respondent's negligence is clear and unquestioned. His apparent misguided trust placed in his associate's competence is no excuse. Aware of his personal limitations and knowing, or being bound to know, that he may be held responsible for rules and regulations that he could not read or comprehend, the measures taken by him nevertheless fall far short of being reasonable under the circumstances. The range and scope of his violations have a disruptive impact upon other livestock carriers in the Los Angeles territory. The staff argues, in effect, that despite an impulse to

extenuating circumstances
sympathize with him because of ~~his lack of even fundamental schooling~~
the punishment should be such as to clearly indicate that the Commission will not condone rate violations, irrespective of the apparent ameliorating circumstances that may appear.

Respondent freely admitted his mistakes and conceded his carelessness. He is now taking reasonable steps to correct the evils disclosed in this matter.

After carefully considering all of the evidence presented it is our opinion that the respondent's radial permit should be suspended for a period of five days. The order that follows shall so provide. In addition the respondent will be ordered to collect the undercharges hereinbefore found. Respondent will also be directed to examine his records from May 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. He 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. 19-34452 issued to Frank V. Costa is 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 Frank V. Costa 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 five days; that within five days after such posting Frank V. Costa 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 Frank V. Costa shall examine his records for the period from May 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, Frank V. Costa shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 3.

5. That Frank V. Costa 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 collection.

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 twenty days after the effective date of this order, Frank V. Costa 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 Frank V. Costa and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 4th day of August, 1959.

Ernest H. Boyle
President
William H. Doyle
E. L. T. T. T.
Theodore H. Jenner
Commissioners

Peter E. Mitchell
Commissioner....., being
necessarily absent, did not participate
in the disposition of this proceeding.