

ORIGINAL

Decision No. 58967

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of KENJI, MACK
and HIDEO NISHIMOTO, doing business
as NISHIMOTO BROTHERS.

Case No. 6274

Carroll & Anderson, by John P. Carroll, for
Nishimoto Brothers, respondents.
Edward G. Fraser, for the Commission staff.

O P I N I O N

This Commission, on May 22, 1959, issued an order of investigation into the operations, rates and practices of Kenji, Mack and Hideo Nishimoto, doing business as Nishimoto Brothers, who are engaged in the business of transporting property over the public highways of this State as a highway common carrier and as a radial highway common carrier. Pursuant to said order a public hearing was held on July 9, 1959 at Indio 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 respondents:

- (1) Violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging and collecting a lesser compensation for the transportation of general commodities than the applicable charges prescribed by Minimum Rate Tariff No. 2.
- (2) Violated the above sections by charging and collecting a lesser compensation for the transportation of fresh fruits

and vegetables than the charges set forth in Minimum Rate Tariff No. 8.

(3) Violated Section 3737 of said code by failing to adhere to other provisions and requirements of said Minimum Rate Tariffs Nos. 2 and 8.

Staff's Evidence

Evidence was offered by the staff of the Commission that the respondents, while performing transportation of various general commodities and fresh fruits and vegetables primarily between Coachella Valley points and Los Angeles during the period from February to May 1958, improperly rated some 44 shipments contrary to the provisions of the aforementioned minimum rate tariffs. The number and type of violations involved were many and varied, ranging from improper consolidation of separate shipments and incorrect use of split delivery rules to failure to provide sufficient information on freight bills, failure to assess charges on the gross weight of the freight carried and failure to assess charges on a unit of measurement prescribed by said tariffs. In addition, the carrier assessed the incorrect rate on many shipments moving between the aforementioned points.

Respondents' Position

The respondents conceded that all the shipments in question were misrated as alleged by the Commission's staff. Considerable evidence in mitigation was presented explaining the reasons for the violations and the circumstances accompanying them. Many mistakes occurred on back-haul movements from Los Angeles to Indio and, it was claimed, because 95 percent of all their carriage consists of fresh fruit and vegetables these errors were the result of the

respondents' unfamiliarity with dry freight tariff rules and rating methods. In addition, bookkeeping and dispatcher's errors accounted for many of the undercharges.

On produce shipments the carrier stated it was necessary to use an "estimated weight" rather than the gross weight provided in Minimum Rate Tariff No. 8, in order to survive competitively with other carriers in this region. It was declared that shippers were demanding the use of this type of weight in accordance with the customs and practices of the produce business.

Many shipments, especially transportation involving lumber, were improperly rated because the actual rating was turned over to, and then performed by, the shipper. The respondents engaged in this practice because they believed the shippers possessed information and data in the form of tables and charts that would enable them to correctly rate these movements. The misratings that followed were the consequence of the carrier's misguided trust.

Findings

Based upon the foregoing evidence, we find that the respondents:

1. Violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging and collecting a compensation less than the minimums established by Minimum Rate Tariffs Nos. 2 and 8.
2. Violated Section 3737 of said code by failing to adhere to the requirements of Items 60, 170, 255 and 257 of Minimum Rate Tariff No. 2 and Items 60, 65 and 255 of Minimum Rate Tariff No. 8.

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 Respondents</u>	<u>Correct Minimum Charge</u>	<u>Undercharge</u>
5065	4/30/58	\$ 41.13	\$ 95.88	\$ 54.75
5066	5/ 1/58	15.90	57.24	41.34
5068	5/ 2/58	31.95	79.24	47.29
5069	5/ 3/58	106.44	190.30	83.86
5071	5/ 5/58	68.57	94.00	25.43
5073	5/ 6/58	17.56	33.73	16.17
3952	5/12/58	45.75	72.25	26.50
3953	5/13/58	67.00	94.91	27.91
3955	5/13/58	63.65	88.00	24.35
3954	5/13/58	12.00	39.50	27.50
3964	5/22/58	12.96	24.48	11.52
3963	5/23/58	18.24	37.92	19.68
3965	5/24/58	77.52	104.83	27.31
13256	4/ 4/58	11.04	30.74	19.70
13257	4/ 4/58	12.66	32.40	19.74
13258	4/ 8/58	6.00	14.20	8.20
3812	2/18/58	26.25	43.00	16.75
13260	4/11/58	37.33	54.00	16.67
13264	4/17/58	5.86	8.45	2.59
13261	4/11/58	5.60	19.08	13.48
13259	4/10/58	6.09	8.76	2.67
13263	4/15/58	5.00	14.20	9.20
13262	4/15/58	21.50	29.85	8.35
13265	4/25/58	12.50	30.24	17.74
13266	5/ 2/58	50.00	98.40	48.40
13267	5/ 6/58	6.53	19.00	12.47
4657	2/21/58	15.48	18.21	2.73
4654	2/22/58	53.00	68.00	15.00
4668	2/26/58	25.00	57.00	32.00
4664	3/ 3/58	13.35	22.28	8.93
12634	3/27/58	10.84	49.00	38.16
12641	4/ 3/58	6.12	31.01	24.89
12646	4/15/58	8.75	34.50	25.75
13353	4/28/58	53.00	54.12	1.12

Total undercharges amount to \$778.15

Penalty

The careless and negligent procedures followed by the respondents in rating the transportation involved in this proceeding cannot be condoned. There was no legitimate excuse for inaccurate ratings on dry freight. Considering the many years these respondents have been in the trucking business there is slight justification for improperly evaluating separate shipments or split delivery movements and for failing to supply sufficient information on freight bills.

In addition, if the carrier permits the shippers to rate its shipments it must bear the risk of improper charges. This function cannot be delegated.

Therefore, after careful consideration of all the evidence of record it is our opinion that the respondents' operating authority should be suspended for 7 days. The order that follows shall so provide. In addition, the respondents will be ordered to collect the undercharges hereinbefore found. Respondents will also be directed to examine their 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, they have found. They 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 Certificate of Public Convenience and Necessity to operate as a highway common carrier and the Radial Highway Common Carrier Permit heretofore issued to Kenji, Mack and Eideo Nishimoto, doing business as Nishimoto Brothers, are hereby suspended for seven consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order.

2. That respondents shall post at their 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 their Certificate of Public Convenience and Necessity and their Radial Highway

Common Carrier Permit have been suspended by the Commission for a period of seven days; that within five days after such posting respondents 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 respondents shall examine their 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, respondents shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 3.

5. That respondents are 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 twenty days after the effective date of this order, respondents 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 results 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 Kenji, Mack and Hideo Nishimoto and this order shall be effective twenty days after the completion of such service upon the respondents.

Dated at San Francisco, California, this 1st day of September, 1959.

[Signature]
President

[Signature]

[Signature]

[Signature]

Theodore Deussen
Commissioners