

**ORIGINAL**Decision No. 59351

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own )  
 motion into the operations, rates, and )  
 practices of MARIE DAVI, doing business )  
 as DAVI BROS. TRUCKING. )

Case No. 6327

Joseph Davi, for respondent.J. Calvin Simpson, for the Commission staff.O P I N I O N

This Commission, on August 4, 1959, issued an order of investigation into the operations, rates and practices of Marie Davi who has received and now holds Radial Highway Common Carrier Permit No. 12-2166, dated June 25, 1953 (T-50659) as defined in Section 3516 of the Public Utilities Code. The purpose of this investigation is to determine whether during the period of January 18, 1958 to May 2, 1958, both inclusive, respondent has acted in violation of Sections 3664 and 3667 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of property than the applicable charges prescribed by the Commission's Minimum Rate Tariff No. 2; whether there have been violations under Section 3737 of said Code, and whether respondent has violated Section 3575 or Section 3737 of said Code by engaging subhaulers without having filed with the Commission a good and sufficient bond in compliance with the requirements of General Order No. 102-A (Appendix A to Decision No. 55670 in Case No. 5670).

Public hearing was held in Eureka on October 21, 1959, before Examiner Rowe, at which time evidence both oral and documentary was adduced and the matter submitted for decision.

Based upon the evidence presented, including statements made by Joseph Davi, respondent's son, while he represented her as counsel, the Commission hereby finds and concludes as follows:

(1) That respondent has never exercised any rights under the above permit but has been solely a dummy for her said son, Joseph Davi, who has, in fact, been operating the business on his own behalf.

(2) During all of the time involved, respondent and said Joseph Davi had in their possession the Commission's Minimum Rate Tariff No. 2 and Distance Table No. 4, together with all supplements and amendments thereto.

(3) During the period of time hereinabove stated, respondent and said Joseph Davi actually and on his own behalf transported certain shipments of lumber and one shipment of steel which are more particularly set forth in the following table. Further facts relevant to these shipments, which the Commission finds, together with our conclusions concerning the correct minimum charges for such shipments, are set forth as follows:

<u>Freight Bill No.</u>	<u>Date</u>	<u>Weight in Pounds</u>	<u>Charge Assessed by Respondent</u>	<u>Correct Minimum Charge</u>	<u>Undercharge</u>
07643	Jan. 18, 1958	51,460	\$319.05	\$358.97	\$39.92
07683	Jan. 23, 1958	49,100	230.81	260.23	29.42
07642	Jan. 15, 1958				
07685	Jan. 28, 1958	45,020	278.14	314.04	35.90
07647	Jan. 28, 1958	50,560	313.47	352.70	39.23
07686	Jan. 30, 1958	49,000	209.77	221.09	11.32
07741	Feb. 10, 1958	48,020	182.77	188.41	5.64
07742	Feb. 12, 1958	47,600	247.52	289.21	41.69
07695	Feb. 19, 1958	42,300	219.96	224.19	4.23
06359	Feb. 20, 1958	43,240	224.84	229.17	4.33
07744	Feb. 21, 1958	41,540	216.00	252.39	36.39
07640	Jan. 17, 1958				
06361	Mar. 3, 1958	48,340	299.71	337.21	37.50
07749	Mar. 7, 1958	46,540	228.42	282.76	54.34
7501	Mar. 14, 1958	48,700	173.47	197.31	23.84
7502	Mar. 17, 1958	48,520	257.15	311.68	54.53
06310	Mar. 18, 1958	43,120	185.42	189.73	4.31
06369	Mar. 20, 1958	47,060	221.18	257.69	36.51
7506	Mar. 28, 1958	47,940	254.08	307.94	53.86
06371	Mar. 29, 1958	47,800	186.42	193.66	7.24
7511	Apr. 21, 1958	45,300	172.77	183.54	10.77
7512	Apr. 22, 1958	47,540	181.99	192.61	10.62
7514	Apr. 25, 1958	45,300	194.79	217.88	23.09
06326	May 2, 1958	7,000	50.00	77.70	27.70

(All of the above represent charges for lumber except Freight Bill No. 06326 which was issued for the transportation of steel.)

Based upon the foregoing facts, the Commission finds that respondent and Joseph Davi violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting a lesser compensation for the transportation of lumber, and in one instance steel, than the applicable minimum rates prescribed by the Commission's Minimum Rate Tariff No. 2, resulting in total undercharges amounting to \$592.38.

Shipping documents including freight bills numbered 07642 and 07640 show and the Commission finds that Section 3737 of the Public Utilities Code was violated by respondent and said Joseph Davi because complete document information was not listed therein as required under Item 255 of Minimum Rate Tariff No. 2.

It is further found that in the transportation of the shipments involved in freight bills numbered 07643 and 07647 to Forest Lumber Co., in Lancaster, California; in freight bill numbered 07685, to Independent Lumber Co. in Ventura, California; in freight bill numbered 06361 to Pomona Lumber Co., Pomona, California; in freight bill numbered 07686 to Bulldog Pallet Co. in Newark, California; in freight bill numbered 07741 to Albany Mill in Richmond California; in freight bills numbered 07742 and 07749, and 07744 to Sierra Lumber Co., in Pinedale, California; in freight bills numbered 7501 and 7511 to Piedmont Lumber Co., in Oakland, California; in freight bills numbered 7502 and 7506 to Oakhurst Lumber Co., Oakhurst, California; in freight bill numbered 06369 to Tynan Lumber Co., Monterey, California; in freight bill numbered 06371 to Pioneer Pallet Co., in Oakland, California; and in freight bill numbered 7514 to Diamond Gardner, Modesto, California, respondent and Joseph Davi violated Sections 3664 and 3667 by improperly charging for deliveries to a railhead as defined in Minimum Rate Tariff No. 2, whereas each of the points of destination above enumerated is found not to be such a railhead.

Further, it is found that in the case of the freight movements represented by freight bills numbered 07643, 07647, 07685 and 06361, respondent and Joseph Davi violated Sections 3575 and 3737 of the Public Utilities Code by engaging subhaulers without having filed with the Commission a good and sufficient bond in compliance with the requirements of General Order No. 102-A (Appendix A to Decision No. 55670 in Case No. 5670) in that in each such instance said respondent

and Joseph Davi so hired Mel Silva, doing business as Mel's Trucking Service, and he actually carried said freight between said points, when no such bond was on file with the Commission.

Because of the above violations, the radial highway common carrier permit issued to Marie Davi will be suspended for a period of three days and she will be required to collect the undercharges found. Also, as it appears Joseph Davi is actually the owner and operator of the business carried on under the permit issued to Marie Davi, we will direct Marie Davi to transfer such permit to Joseph Davi within 30 days after the expiration of such period of suspension or the Commission will revoke the permit in question.

O R D E R

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

IT IS ORDERED:

1. That Radial Highway Common Carrier Permit No. 12-2166 dated June 25, 1953, (T-50659) is hereby suspended for a period of three consecutive days commencing at 12:01 a.m. on the second Monday after the effective date of this order.

2. That Marie Davi and Joseph Davi are each required to post at their terminal and terminal 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 this radial highway common carrier permit has been suspended by the Commission under this order for a period of three days;

that within five days after such posting Marie Davi and Joseph Davi 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 and Joseph Davi shall examine the books of this carrier for the period from May 2, 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 and Joseph Davi shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 3.

5. That respondent and Joseph Davi are hereby directed to take such action, including legal proceedings, 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 twenty days after the effective date of this order, respondent and Joseph Davi 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.

7. That Marie Davi is directed to transfer Radial Highway Common Carrier Permit No. 12-2166 to Joseph Davi within thirty days after the expiration of the period of suspension prescribed by paragraph 1 of this order; in the event said transfer is not consummated as above contemplated, Marie Davi is hereby placed on notice that said permit will be revoked by this Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Marie Davi and Joseph Davi, and this order shall be effective twenty days after the completion of such service upon respondent and said Joseph Davi.

Dated at San Francisco, California, this 7<sup>th</sup> day of December, 1959.

Walter W. Page  
 President

Walter W. Page

Walter W. Page

Walter W. Page

Theodore J. J. J.  
 Commissioners