

Decision No. 59762**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,
 rates and practices of
 JOE CASELLA and CLOTILDA CASELLA,
 doing business as CASELLA LUMBER
 TRANSPORTATION.

Case No. 6295

George & Dillon, by Haradon M. Dillon,
 for respondents,
Rita L. Heiser, for the Commission staff.

O P I N I O N

On June 29, 1959, this Commission issued an order of investigation into the operations, rates and practices of Joe Casella and Clotilda Casella, doing business as Casella Lumber Transportation, who are engaged in the business of transporting lumber and lumber products over the public highway as a highway common carrier, as a radial highway common carrier and as a highway contract carrier. Pursuant to said order public hearings were held on December 9, 10 and 11, 1959, before Examiner James F. Mastoris at San Francisco.

Purpose of Investigation

The purpose of this investigation is to determine whether this carrier:

(1) Violated Section 702 of the Public Utilities Code by failing to make certain tariff filings establishing rates, charges and rules in compliance with the requirements of Decisions Nos. 57545 and 57582 of this Commission.

(2) Violated Sections 493 and 494 of said Public Utilities Code by transporting property as a highway common carrier without having a schedule of applicable rates on file with this Commission.

(3) Violated Sections 3664, 3667 and 3737 of said code by charging and collecting for the transportation of property a rate less than the minimum established under Minimum Rate Tariff No. 2.

(4) Violated Section 3737 of said code by failing to adhere to other provisions of said Minimum Rate Tariff No. 2.

Findings

Based upon the evidence of record, we hereby find and conclude:

(1) That the applicable minimum rate tariffs, supplements and tables have been served upon the respondents, including the service of Decisions Nos. 57545 and 57582. We cannot agree with the respondents' contention that evidence as to fact of service of the tariff supplements and the aforementioned decisions was insufficient and incompetent under the views expressed in People v. Alves (1954) 123 Cal. App. (2) 735. The staff's witness, the senior clerk in charge of the Rate Service Unit of the Licensing Section of the Transportation Division, in addition to the evidence of the certificate required under Section 3735 of the Public Utilities Code, testified as to the procedure used in preparing, addressing and mailing applicable decisions to carriers affected thereby. The fact that she had no individual recollection while on the witness stand of personally depositing the particular decisions in issue in the mail or that it was possible one of her subordinates may have actually mailed the decisions in issue is not disabling. We are satisfied from her testimony that the ordinary and usual procedure had been followed and that said witness, who signed the aforementioned certificate, deposited copies of the appropriate decisions, or supervised the deposit in the mail, in accordance with this procedure; there was nothing to show that the contrary existed or that a

departure from the regular routine occurred in this case. The language in the certificates and the testimony supporting such language were statements of fact and not conclusions within the prohibition of the Alves case. As we can presume that documents duly directed and mailed were received in the regular course of mail, it follows that the staff has established a prima facie case showing fact of service by mail thus shifting the burden of producing contradictory evidence upon the respondents. The carrier offered no evidence that it did not receive these documents.


(2) That the carrier violated Section 702 of said Public Utilities Code by failing to make tariff amendatory filings establishing rates, charges and rules in compliance with the requirements of the aforementioned Decisions Nos. 57545 and 57582. We cannot agree with respondents that ordering paragraph (2) on page 7 of Decision No. 57545 is too vague and ambiguous to be intelligible. The language appears to be sufficiently capable of notifying the carriers affected that they are directed to establish an increase in their tariffs. Nor can we agree that Decision No. 57545 as it applies to highway common carriers is inconsistent with Section 3663 of said code or that under Section 728 of said code the order contained in said decision cannot apply to the respondents because they were not present at the hearings establishing new rates or specifically mentioned by name in the order.

(3) That as to the shipments represented by the following freight bills, reflected in Parts 13, 14 and 16 of Exhibit 15, we find that undercharges occurred as a result of the respondents' use of the incorrect rate:

F.B. 759
F.B. 764
F.B. 836

However, the amount of undercharge is less than the amount alleged by the staff. Although the carrier's evidence as to the correct weight to be applied to these shipments is improbable and unconvincing we cannot, on the other hand, adhere to the weight assigned these shipments by the staff because the evidence pertaining to the tare weight of the trucks is insufficient to establish the correct weight on the day the transportation was performed. The weight certificates produced show that the weights of the truck were taken from one to four months from the date the shipments moved. We are, therefore, willing to resolve doubts in favor of the carrier in view of the uncontradicted testimony that weights of a truck or truck-trailer combinations varied substantially, for assorted reasons, from one month to another. No undercharge occurs as to Freight Bill 795 (Part 15 of Exhibit 15) as the rate assessed by the carrier was correct for the weight of the shipment.

(4) That as to the shipment reflected by Freight Bill No. 1059 (Part 18 of Exhibit 15) the undercharge claimed by the staff is proper. The time lapse between the date of the transportation and the date the tare weight of the truck was established is sufficiently narrow to permit the determination made. A prima facie showing was thus made which was never convincingly controverted by the respondents.



(5) As to the shipments of lumber between Willits and Daly City and the claimed violations in connection therewith, we find that such issue is too insubstantial to warrant consideration in a proceeding of the nature herein concerned, in light of the many other substantial violations of law proven to have been committed by the respondents herein.

(6) That as to the balance of shipments in issue we find and conclude that the respondents assessed and collected charges less than the prescribed minimum resulting in the undercharges set forth in the aforementioned table described in Appendix A. Consequently, we find that the respondents have violated Sections 3664, 3667 and 3737 of said Public Utilities Code. The contention that the absence of a time limitation in which to record loading or unloading information on the face of the shipping document under Item 240 of said Minimum Rate Tariff No. 2 means that such data can be placed on the documents at any time after the transportation is performed is untenable. Such language must be construed as if such information should be placed on the shipping document within a reasonable time after the freight is delivered. Under no circumstances would the entry of such facts as required by said Item No. 240 be reasonable when they are written on the face of the pertinent freight bills at the time of the hearings on the investigation, as was done here. To

find otherwise would circumvent the entire purpose of the documentation regulations of said minimum rate tariff. As the face of the freight bills determines the violation of the tariff the actual circumstances of the loading or unloading are immaterial.

We make no findings as to violations of Item No. 257 of said minimum rate tariff as charges were not preferred in the order instituting investigation.

Prior Violations

On August 13, 1957, following a Commission investigation into the rates, operations and practices of this carrier, the certificate and the permits of the respondents were suspended for a period of ten days. In that investigation the respondents were charged and found to be in violation of Sections 458 and 494 of the Public Utilities Code, to have maintained a dual system of records and to have violated Sections 3667 and 3668 of said code by false billing and by charging less than the applicable tariff rate.

Penalty

Many of the violations that occurred resulted from the carrier's unjustifiable reliance upon data and information concerning rates furnished by its shippers. In addition, the carrier frequently obtained the erroneous rail rate used from the tariff clerk in Southern Pacific's Oakland freight office. However, the burden of ascertaining the correct rate is always upon the carrier and it must suffer the consequences if such information proves unreliable. In this case the respondents should have been particularly vigilant in obtaining the applicable rates in view of the findings of the first investigation.

Therefore, in light of the violations so found, the type, degree and manner in which these shipments were rated, the nature and scope of the respondents' operation and considering the fact of the carrier's prior violations and suspension, respondents' certificate of public convenience and necessity, radial highway common carrier permit and highway contract carrier permit will be suspended for a period of fifteen days. In addition, the respondents will be ordered to collect the undercharges described in the aforementioned table set forth in Appendix A, attached to the order that follows. Respondents will also be directed to examine their records from October 1, 1958 to the present time in order to determine whether any additional undercharges have occurred, to file with the Commission a report setting forth the additional undercharges, if any, they have found. Respondents will also be directed to collect any such additional undercharges. ✓✓

In the event further violations of the Commission's minimum rate tariffs occur it may be necessary to take steps to institute proceedings to revoke this carrier's entire operating authority.

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 issued to Joe Casella and Clotilda Casella, doing business as Casella Lumber Transportation, in Decision No. 51812, dated August 9, 1955, in Application No. 36347, Radial Highway Common Carrier Permit No. 1-4609 and Highway Contract Carrier Permit No. 1-6191, issued to said individuals, are hereby suspended for fifteen 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, radial highway common carrier permit and highway contract carrier permit have been suspended by the Commission for a period of fifteen 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 October 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 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 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 Joe Casella and Clotilda Casella, doing business as Casella Lumber Transportation, and this order shall be effective twenty days after such service upon the respondents.

Dated at San Francisco, California, this 9th
day of March, 1960.

Ernest W. Peay
 President
 E. J. Woodhill
 Matthew D. Dool
 E. J. Fox
 Theodore J. Dennis
 Commissioners

APPENDIX A

TABLE OF UNDERCHARGES

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charge Assessed by Respondents</u>	<u>Correct Minimum Charge</u>	<u>Undercharge</u>
383	2-11-58	\$272.74	\$311.37	\$38.63
384	2-11-58	340.70	388.94	48.24
391	2-11-58	321.84	367.42	45.58
394	2-20-58	332.20	354.21	22.01
401	2-24-58	314.69	335.53	20.84
468	3-10-58	318.67	363.78	45.11
446	3-11-58	336.31	383.94	47.63
465	3-13-58	303.46	346.43	42.97
504	3-28-58	304.73	347.87	43.14
555	3-31-58	299.08	341.45	42.37
512	4-1-58	309.90	353.79	43.89
759	6-6-58	108.88	147.55	38.67
764	6-10-58	159.02	175.58	16.56
836	6-26-58	121.16	131.46	10.30
959	8-4-58	95.27	116.14	20.87
1059	8-28-58	266.60	281.36	14.76
1155	9-25-58	40.56	107.54	66.98
796	6-16-58	122.11	124.70	2.69
1011	8-15-58	112.69	124.70	<u>12.01</u>

Total undercharges amount to

\$623.25