AG

ORIGINAL

Decision No. 59792

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of ROBERT L., DONALD R., and ALBERT U. BATASTINI, copartners, doing business as BATASTINI BROTHERS.	)	Case No. 6373

W. D. Allison, for respondents.
Elmer J. Sjostrom, for the Commission staff.

O P I N I O N

On October 27, 1959, this Commission issued an order of investigation into the operations, rates and practices of Robert L., Donald R., and Albert U. Batastini, copartners doing business as Batastini Brothers, who are engaged in the business of transporting property over the public highways for compensation as a radial highway common carrier. In accordance with said order a public hearing was held on February 3, 1960, at Santa Barbara, 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 respondents assessed and collected less than the prescribed minimum charges set forth in Minimum Rate Tariff No. 2.

Staff's Evidence

Evidence was presented, upon stipulation, by the staff of the Commission that the respondents, while performing transportation

of various general commodities between Santa Barbara and points in Los Angeles County, during the period from July, 1958, to January, 1959, incorrectly rated some nineteen shipments contrary to the provisions of the aforementioned minimum rate tariff. Violations resulted from the improper consolidation of separate shipments, not assessing charges on the gross weight of the shipments, failure to assess charges on back-haul movements of empty cases and containers, and erroneous calculation of constructive mileage.

Respondents' Position

The respondents conceded that all the shipments in question were misrated as alleged by the Commission's staff. Evidence in mitigation was presented explaining the reasons for the violations and the circumstances accompanying them. It was claimed that most of the mistakes were caused by the incorrect application of the tariff provisions by the respondents' bookkeeper, who personally rated about 95 per cent of all the for-hire transportation performed by the respondents, and because the carrier could not accurately ascertain the precise weight of shipments of chemicals moving out of Van Nuys.

Findings

Based upon the evidence of record, we find that respondents violated Section 3667 of the Public Utilities Code by charging and collecting a compensation less than the minimum established in Minimum Rate Tariff No. 2.

Further relevant facts pertinent to the shipments involved, together with our conclusions concerning the correct minimum charges for such shipments, are described in the table set forth in Appendix A attached to the order that follows.

Prior Violations

There is no record of prior violation by this partnership. However, one of the partners, Robert L. Batastini, was the subject of a previous Commission investigation, Case No. 6040, covering rate violations in the transportation of fresh fish from Port Hueneme to Monterey. His radial highway common carrier permit was suspended for five days as a consequence of Minimum Rate Tariff No. 2 violations found in that proceeding.[1/]

Penalty

From the evidence of record it is our opinion that this carrier was guilty of inexcusable negligence. Unwarranted reliance was placed upon the firm's bookkeeper who apparently spends the vast majority of her time keeping books and accounts for the respondents' coexisting excavation business. The partners are responsible for the errors and mistakes of their employees. Moreover, respondents' attempts to determine the correct weight of the aforementioned chemical shipments were half-hearted and cursory. In particular, partner Robert L. Batastini should have been more circumspect in view of his past rating violations of the aforementioned tariff.

Therefore, in view of the nature and type of the violations and the scope of the carrier's operations, the respondents' radial permit will be suspended for a period of ten days. In addition, the respondents will be ordered to collect the undercharges set forth in Appendix A. Respondents will also be directed to examine their records from February 1, 1959, 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

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1/ Decision No. 56788 dated June 4, 1958.

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. 42-1842 issued to Robert L., Donald R., and Albert U. Batastini, copartners, doing business as Batastini Brothers, is hereby suspended for ten 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 radial highway common carrier permit has been suspended by the Commission for a period of ten 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 February 1, 1959 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 Appendix A to this decision, 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 Robert L., Donald R., and Albert U. Batastini and this order shall be effective twenty days after the completion of such service upon the respondents.

Dated at San Francisco, California, this 15th day of March, 1960.

President

Commissioners

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

APPENDIX A

TABLE OF UNDERCHARGES

Freight Bill No.	Date	Charge Assessed by Respondents	Correct Minimum Charge	Undercharge
6511	12/10/58	$ 80.85	$169.79	$ 88.94
6558	1/13/59	110.34	247.84	137.50
2873	8/16/58	111.00	145.33	34.33
2951	9/ 8/58	111.00	122.38	11.38
2965	9/13/58	111.00	136.81	25.81
2983	10/ 1/58	111.00	139.46	28.46
6512	10/17/58	111.00	127.77	16.77
6515	11/ 8/58	111.00	132.60	21.60
2862	7/30/58	111.00	113.39	2.39
6621-8462	8/11/58	No charges	26.00	26.00
6678	8/15/58	No charges	18.07	18.07
6878	9/ 5/58	No charges	29.83	29.83
6950	9/13/58	No charges	26.00	26.00
7113	10/ 1/58	No charges	26.00	26.00
7237	10/16/58	No charges	37.00	37.00
7445	11/17/58	No charges	34.85	34.85
2974	9/16/58	80.00	84.00	4.00
6504	10/ 2/58	252.94	266.99	14.05
6505	10/23/58	123.77	130.64	6.87
		Total undercharges amount to		$589.85