

Decision No. 60485

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's) own motion into the operations, rates, and practices of DALE A. BULLER, doing business as NAPA DRAYAGE AND WAREHOUSE CO.

Case No. 6414

B. Scott Foster, for respondent.

Martin J. Porter, for the Commission staff.

O P I N I O N

On February 1, 1960, the Commission issued an order instituting an investigation on its own motion into the operations, rates and practices of Dale A. Buller, doing business as Napa Drayage and Warehouse Co., who is engaged in the business of transporting property over the public highways as a radial highway common carrier. Pursuant to said order, a public hearing was held on May 5, 1960, at Santa Rosa, before Examiner Edward G. Fraser, at which time evidence was presented and the matter was taken under submission.

Purpose of Investigation

The purpose of this investigation is to determine whether this respondent has violated Section 3667 of the Public Utilities Code by charging and collecting for the transportation of property as a highway permit carrier a rate less than the minimum established under Minimum Rate Tariff No. 2.

Findings

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

That respondent is engaged in the transportation of property over the public highways for compensation as a radial highway

common carrier pursuant to Radial Highway Common Carrier Permit No. 28-658 issued by this Commission.

That respondent assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate Tariff No. 2, which resulted in undercharges as follows (from Exhibits Nos. 1 and 2):

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charge Assessed or Collected by Respondent</u>	<u>Correct Charge</u>	<u>Undercharge</u>
0621	7/8/59	\$363.89	\$382.00	\$18.11
0622	7/8/59	347.40	377.44	30.04
0624	7/9/59	427.13	434.02	6.89
0627	7/11/59	306.32	367.58	61.26
0628	7/11/59	303.26	329.48	26.22
0629	7/11/59	398.11	430.02	31.91
0635	7/14/59	362.88	381.77	18.89
0637	7/14/59	409.81	428.59	18.78
0634	7/15/59	342.00	371.57	29.57
0645	7/18/59	327.60	355.93	28.33
0636	7/20/59	357.12	380.48	23.36
0663	7/20/59	364.03	382.04	18.01
0665	7/21/59	393.12	435.83	42.71
0647	7/22/59	387.51	426.56	39.05
0666	7/22/59	372.67	383.98	11.31
0667	7/22/59	359.71	381.06	21.35
0678	7/25/59	345.60	375.48	29.88
0692	7/28/59	330.26	374.00	43.74
0696	7/29/59	337.46	366.64	29.18
0705	7/30/59	307.13	324.19	17.06
0701	7/31/59	336.55	346.12	9.57
0677	8/4/59	381.89	424.73	42.84
0715	8/5/59	377.05	422.87	45.82
0717	8/6/59	380.25	419.31	39.06
0727	8/8/59	377.70	429.44	51.74
0716	8/10/59	380.79	419.48	39.69
0728	8/12/59	384.54	425.59	41.05
0730	8/12/59	394.05	423.65	29.60

Undercharges for these shipments amounted to \$845.02.

That respondent has acted in violation of Section 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 in Minimum Rate Tariff No. 2.

The Commission having found the facts as hereinabove set forth and concluding that respondent has violated Section 3667 of the Public Utilities Code makes its order as follows:

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. 28-658 issued to Dale A. Buller is hereby suspended for 3 consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order; and that he shall not lease the equipment or other facilities used in operations under this permit for the period of the suspension or directly or indirectly allow his equipment or facilities to be used to circumvent the suspension.

2. That Dale A. Buller 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 3 days; that within five days after such posting respondent 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 Dale A. Buller shall examine his records for the period from January 1, 1959, to date, 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, Dale A. Buller shall complete the examination of his records hereinabove required by paragraph 3 and file with the Commission a report setting forth all undercharges found pursuant to that examination.

5. That Dale A. Buller is hereby directed to take such action, including legal 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, Dale A. Buller shall institute legal proceedings to effect collection and 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 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 Dale A. Buller and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 12th day of July, 1960.

[Signature]
 President

[Signature]

[Signature]

[Signature]
 Commissioners

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