

**ORIGINAL**Decision No. 60492

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of RAY and EARL SUMMERS, copartners, doing business as NORTH COAST TRANSPORT.

Case No. 6368

Ray E. Summers, for respondents.Elmer J. Sjostrom, for the  
Commission staff.O P I N I O N

This is an investigation on the Commission's own motion into the operations, rates and practices of Ray Summers and Earl Summers, copartners, doing business as North Coast Transport.

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis on March 30, 1960 at Eureka.

The purpose of this investigation is to determine, with respect to certain specified transportation, whether respondents violated Section 3667 of the Public Utilities Code by demanding, collecting or receiving a lesser compensation for the transportation of property than the applicable rates prescribed in the Commission's Minimum Rate Tariff No. 2.

Evidence was presented at the hearing by the Commission staff and by the respondents. Based upon the evidence of record in this matter the Commission makes the following findings and conclusions:

1. At all times herein mentioned, respondents held, and respondents now hold, Radial Highway Common Carrier Permit No. 12-2396.

2. Respondents currently operate approximately 12 pieces of operating equipment.

3. At all times here involved, respondents had been served with the Commission's Minimum Rate Tariff No. 2 and all supplements thereto as well as the Commission's Distance Table No. 4 and all supplements thereto.

4. During the year 1959, respondents transported under authority of their radial highway common carrier permit, shipments between various points in the State of California upon which improper charges were assessed. A list of said shipments, including the charges actually assessed, as well as the charges the Commission finds should have been assessed as required by law, is as follows:

<u>Frt. Bill No.</u>	<u>Date of Shipment</u>	<u>Weight</u>	<u>Charge Assessed by Respondents</u>	<u>Correct Charge</u>	<u>Amt. of Undercharge</u>
5124	12/ 5/58	20,000*	\$300.60	\$339.31	\$ 38.71
5274	1/ 2/59	60,000	300.00	330.36	30.36
5275	1/ 2/59	45,800	114.50	128.24	13.74
5297	1/10/59	44,237	128.29	145.98	17.69
5343	1/16/59	43,000	133.30	150.50	17.20
5362	1/20/59	44,000	110.00	123.20	13.20
5378	1/22/59	57,696	132.70	138.47	5.77
5426	1/30/59	48,000	120.00	134.40	14.40
5495	2/10/59	45,800	114.50	183.20	68.70
5503	2/10/59	46,150	143.07	152.30	9.23
5490	2/11/59	49,680	79.49	101.84	22.35
5507	2/12/59	49,235	103.58	118.38	14.80
5537	2/17/59	47,578	33.30	39.25	5.95
5544	2/20/59	55,200	215.28	220.80	5.52
5570	2/25/59	51,693	201.60	206.77	5.17
5604	3/ 4/59	52,400	68.12	81.22	13.10
5621	3/ 7/59	43,460	126.03	164.93	38.90
5635	3/ 8/59	46,080	156.67	175.10	18.43
5763	3/30/59	46,820	93.64	112.37	18.73
5843	4/14/50	48,690	102.25	116.86	14.61
5840	4/16/59	50,230	100.46	125.58	25.12

\* Board Measure Footage

Total Undercharges \$411.68

5. Each of the aforesaid undercharges resulted from one or more of the following types of conduct by respondents:

(a) Using as the point of origin or destination for the purpose of calculating the proper rate a point several miles distant from the actual point of origin; (b) Using rail rates without applicable off-rail charges where a point of origin or destination was, in fact, not on rail; and (c) Improperly calculating mileage in using Distance Table No. 4.

6. Respondents violated Public Utilities Code Section 3664 by charging, demanding, collecting or receiving a lesser compensation for the transportation of property as a radial highway common carrier than the minimum charges prescribed in the Commission's Minimum Rate Tariff No. 2.

At the hearing Ray Summers, one of the respondents, testified that the above-mentioned violations occurred inadvertently; that some of the violations occurred because respondents used old-superseded rates and that in some instances they did not properly rate shipments because they were misled by either consignors, consignees or drivers into believing that a point actually off rail was on rail. This evidence, directed to the question of what penalty should be herein assessed against respondents, is not very persuasive. The Commission takes official notice of the fact that Decision No. 55980 in Case No. 5973, dated December 16, 1957, held that respondents had committed violations similar to some of those hereinabove found. It appears that respondents have not reformed their practices. It is respondents' obligation to properly rate shipments in accordance with law. If respondents as individuals cannot properly rate shipments they should hire competent personnel who can. Based upon the evidence of record the Commission further finds and concludes that:

7. Respondents' operating authority should be suspended for a period of eighteen days with the execution of ten of said days deferred for a period of one year. If at the end of the period of one year the Commission is satisfied that respondents are complying with the orders, rules and regulations of this Commission the deferred portion of said suspension will be vacated without further order of this Commission. However, if the Commission finds at any time during the one-year period that respondents are failing to comply with all such orders, rules and regulations, the additional ten-day period of suspension will be imposed together with whatever additional penalty the Commission deems necessary.

8. Respondents should be ordered to collect the undercharges hereinabove found and to examine their records from July 1, 1959 to the present time for the purpose of ascertaining whether additional undercharges exist.

#### O R D E R

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED that:

1. Radial Highway Common Carrier Permit No. 12-2396 issued to Ray Summers and Earl Summers is hereby suspended for a period of eighteen consecutive days; provided, however, that the execution of ten days of said suspension is hereby deferred pending further order of this Commission. If no further order of this Commission is issued affecting said suspension within one year from the date of issuance

of this decision, the unexecuted portion of the suspension shall be automatically vacated. The executed period of suspension will commence at 12:01 a.m. on the second Monday following the effective date of this order; and respondents 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 such equipment or facilities to be used to circumvent the suspension.

2. 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 eight days. 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. Respondents shall examine their records for the period from July 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. Within ninety days after the effective date of this decision, respondents shall complete the examination of their records hereinabove required by paragraph 3 and file with the Commission a report setting forth all undercharges found pursuant to that examination.

5. Respondents are 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. 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 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 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 Ray Summers and Earl Summers and this order shall be effective twenty days after the completion of such service upon the respondents.

Dated at San Francisco, California, this 2nd day of August, 1960.

Creighton B. Leary  
President  
Earl E. Ritchie  
Walter J. Leary  
E. J. Fox  
Theodore J. Jensen  
Commissioners