

ORIGINALDecision No. 60499

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of JOE F. COSTA,
dba JOE F. COSTA TRUCKING CO. }

Case No. 6431

E. N. Griffiths, for respondent.Hugh N. Orr, for the Commission staff.O P I N I O N

On March 8, 1960, this Commission issued an order of investigation into the operations, rates and practices of Joe F. Costa, doing business as Joe F. Costa Trucking Co., who is engaged in the business of transporting property over the public highways as a radial highway common carrier and as a highway contract carrier. Pursuant to said order a public hearing was held on April 23, 1960 at Arcata before Examiner James F. Mastoris at which time evidence was presented by the staff of the Commission and by the carrier.

Purpose of Investigation

The purpose of this investigation is to determine whether the respondent:

- (1) Violated Public Utilities Code Sections 3664, 3667 and 3737 by charging and collecting for the transportation of property rates less than the minimum rates established under Minimum Rate Tariffs Nos. 2 and 10.
- (2) Violated Section 3737 of said code by otherwise failing to comply with the requirements of Minimum Rate Tariff No. 2, or by failing to comply with the requirements of Decision No. 56046 in Case No. 5366.

Staff's Evidence

The staff of the Commission alleged and offered proof in support thereof that this carrier improperly rated fourteen shipments of lumber and cement that were transported between northwestern California and points in the Los Angeles and San Francisco Bay areas during the period from January to June 1959. It was claimed that rating errors occurred as the result of the respondent's failure to assess the appropriate truck and rail rates and to charge the off-rail differential.

Respondent's Position

In effect the carrier conceded that six of the fourteen shipments were misrated but disputed the staff's contentions on the balance. It was contended that certain points of destination were on, rather than off, railhead, that rates assessed were correct for the actual movement of the freight involved despite improper documentation and that certain shipments were not in violation of Minimum Rate Tariff No. 10 because of the absence of a multiple weight requirement in said tariff at the time of the transportation. On one shipment the respondent claimed that he was the subhauler for another carrier and thus minimum rate tariffs had no application to the charges assessed.

Findings and Conclusions

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

1. That as to shipments reflected in Parts 8 and 9 of Exhibit 5 received into evidence at the hearing, the point of destination in Oakland was off railhead as charged by the staff and, as a result, the off-rail assessment should have been levied.

2. That as to shipments represented by Parts 10 through 13 in said Exhibit 5 the staff's determination of the applicable charges governs. The lack of a specific multiple lot rule in said Minimum Rate Tariff No. 10 at the time of the movement of the cement in question is not disabling to the appropriate rating on these hauls. We are convinced from the evidence that separate truckload shipments only moved between the points in issue in each instance and that each transaction was not a component part of a composite shipment.
3. That as to the shipment disclosed in Part 14, no violation occurred. As we are satisfied that the respondent was not the prime carrier in the movement represented, Minimum Rate Tariff No. 10 did not apply to the subhaul transportation.
4. That in view of the above, it is not necessary to this decision to express a finding with respect to the transportation reflected in Part 1 of the aforementioned Exhibit 5.
5. That as to transportation performed on the balance of the shipments in issue the staff's charges have been proven as alleged.
6. That as a result of the foregoing, the respondent violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging and collecting a compensation less than the minimum established by Minimum Rate Tariffs Nos. 2 and 10. As a result undercharges occurred as set forth in the Table of Undercharges, described in Appendix A attached to the order that follows this decision.

Prior Violations

On January 7, 1958, following a Commission investigation into the rates, operations and practices of this carrier the permits of the respondent were suspended for a period of five days. In that investigation the respondent was charged and found to be in violation of Section 3667 of the Public Utilities Code by charging less than the minimum rates prescribed in Minimum Rate Tariffs Nos. 2 and 10. The offenses involved in that case were similar to the

violations heretofore found in this matter. In particular as to shipments of sacked cement between Redwood City and Permanente, on the one hand, and Eureka and Crescent City, on the other hand, the respondent performed transportation and rated his shipments represented in Finding No. 2 herein in the same manner between the same points and for the same reason as indicated in the circumstances of the first investigation.

Penalty

The violations of the minimum rate tariffs in this case cannot be excused. Respondent's negligence was without apparent justification. Although we appreciate the problems surrounding the acquisition of railhead information, the fact remains, and we have so stated in the past, the carrier has the burden of ascertaining the precise data needed for the correct assessment of rates. Furthermore, he acts at his peril if he relies upon shipper information or unauthorized "rate pamphlets", as was done here. The respondent's rating of the aforementioned cement shipments in light of the circumstances of the first investigation demonstrates an indifference to Commission rules and regulations.

Considering the scope and nature of this trucker's operations, the type of violations involved and the fact of the respondent's prior offenses and suspension, respondent's radial highway common carrier and highway contract carrier permits will be suspended for a period of eleven days and he will be ordered to collect the undercharges described in the aforementioned table set forth in Appendix A. In addition, the respondent will also be directed to examine his records from June 1, 1958 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, he has found. Respondent will also be 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. 12-2109 and Highway Contract Carrier Permit No. 12-2672 issued to Joe F. Costa are hereby suspended for eleven consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order; and that respondent 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 respondent 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 and highway contract carrier permit have been suspended by the Commission for a period of eleven 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 respondent shall examine his records for the period from June 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, respondent 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 respondent is hereby directed to take such action as may be necessary, including court proceedings, 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 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 Joe F. Costa and this order shall be effective twenty days after the completion of such service upon the respondent.

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

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners

APPENDIX A

<u>No. of Freight Bill</u>	<u>Date</u>	<u>Rate and Charge Assessed by Respondent</u>	<u>Correct Minimum Charge</u>	<u>Under- Charge</u>
D-3622	2-6-59	\$322.40	\$341.47	\$19.07
D-3728	3-3-59	238.53	262.29	23.76
D-3907	4-2-59	211.21	221.58	10.37
D-3934	4-6-59	302.93	338.96	36.03
4125	5-4-59	310.00	329.30	19.30
D-4163	5-9-59	174.45	214.95	40.50
D-4355	6-1-59	204.91	215.15	10.24
D-4528	6-19-59	218.95	229.89	10.94
D-4593	6-25-59	166.25	206.63	40.38
D-3484	1-2-59	251.94	279.11	27.17
D-3507	1-8-59	249.90	263.38	13.48
D-3610	2-2-59	186.20	210.68	24.48
Total Undercharges				<u>\$275.72</u>