

ORIGINAL

Decision No. 60697

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 P.)
CABRAL, doing business as)
L. A. EUREKA LINES.)

Case No. 6427
(Amended)

Arthur H. Glanz, Glanz, Russell & Schurman,
for Joe P. Cabral, L.A. Eureka Lines,
respondent.
Martin J. Porter, for the Commission staff.

O P I N I O N

Order of Investigation

On March 8, 1960, the Commission instituted its order of investigation into the operations, rates and practices of Joe P. Cabral, doing business as L. A. Eureka Lines, a highway common and radial highway common carrier, for the purpose of determining:

1. Whether said respondent has violated or is violating Section 494 of the Public Utilities Code by charging, demanding, collecting or receiving a different compensation for the transportation of property and service in connection therewith, than the applicable rates and charges specified in its schedules filed and in effect at the time.
2. Whether said respondent has violated or is violating Section 3657 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of property as a highway permit carrier than the applicable minimum rates and charges required by Minimum Rate Tariffs Nos. 2 and 8.

3. The order which should be issued by this Commission in the event it be found that any of the alleged undercharge violations has occurred.

Public Hearing

Pursuant to the order of investigation a public hearing was held in Los Angeles before Examiner Wilson E. Cline on May 27, 1960, and the matter was taken under submission at the close of the hearing.

It was stipulated that Joe P. Cabral, doing business as L. A. Eureka Lines, is engaged in the business of transporting property over the public highways for compensation; that it operates as a highway common carrier as defined by Section 213 of the Public Utilities Code; and also as a radial highway common carrier as defined in Section 3516 of the Public Utilities Code; and that respondent was served with Minimum Rate Tariffs Nos. 2 and 8 and Distance Table No. 4 and supplements thereto. Respondent's tariff of rates for its highway common carrier operations is California Common Carrier Motor Freight Local and Joint Tariff No. 1, Cal. P.U.C. 1, issued by the Interstate Freight Carriers' Conference, Inc., Agent, C. J. Sullivan, Issuing Officer.

The respondent also has a highway contract carrier permit.

Evidence Respecting Free Loads and Undercharges

The Commission staff investigation covered the period February to July, 1959.

Evidence was introduced by the Commission staff to show that in twenty-two instances respondent transported free loads of fish for consignors at Fields Landing and Eureka, and in six

instances he failed to charge various consignors his tariff and minimum rates and charges on shipments of produce, citrus and frozen foods.

The evidence offered by respondent was for purposes of mitigation of the penalties rather than as a denial of the carriage of the free loads and undercharges.

Respondent paid \$150,000 for the business when he took it over on January 1, 1957, most of which was for good-will. The practice of handling free loads of fish for the shippers was in effect before respondent acquired the business and he continued hauling the free loads in order to keep the business.

The shippers of fish from the Eureka market to Los Angeles compete with shippers in Seattle and Astoria whose shipments are in interstate commerce. Fish is an exempt commodity in interstate commerce. Practically all of the shipments of fresh fish range between 1,000 and 4,000 pounds. Most of the shipments of frozen fish range between 1,000 and 10,000 pounds. Exhibit No. 4 shows a comparison of rates from Seattle and Astoria to Los Angeles and Eureka to Los Angeles. The following are representative rates which have been taken from this exhibit.

<u>Pound</u>	<u>Fresh Fish Rates</u>		<u>Frozen Fish Rates</u>	
	<u>In Cents per 100 Pounds</u>		<u>In Cents per 100 Pounds</u>	
	<u>Seattle and Astoria to Los Angeles</u>	<u>Eureka to Los Angeles</u>	<u>Seattle and Astoria to Los Angeles</u>	<u>Eureka to Los Angeles</u>
Any Quantity	4.20	3.71	2.20	3.71
1,000	2.95	3.71	1.98	3.71
4,000	2.95	2.61½	1.98	2.61½
10,000	2.95	2.24	1.65	2.24
20,000	2.57	1.96	1.54	1.96
30,000	2.34	1.37	1.38	1.37

Respondent's wife who is in charge of the billing has been receiving instruction in the proper rating of shipments from respondent's tariff agents. All shipping orders back to January 1, 1957, which were not billed have now been billed. Tom Lazio Fish Co. Inc., which was billed for \$9,821.62 has already paid \$3,000. Hunter and Foland Fish Co. has been billed for \$16,848.75.

Respondent testified that his shippers may find it necessary to buy their own trucking equipment to handle their shipments of fish to Los Angeles because of the differential in rates for fish from Seattle and Astoria to Los Angeles and from Eureka to Los Angeles.

Exhibit No. 5 which is a schedule of contracts and monthly payments of respondent shows that he owes a total of \$293,685.61 on the contracts and that the monthly payments including interest amount to \$8,631.52. Exhibit No. 6 shows that as of May 26, 1960, respondent had open accounts payable of \$13,254.18.

Respondent has eight line-haul drivers and four local drivers. Exhibit No. 7, which is a letter from the business representative of Line Drivers Union Local No. 224, dated May 26, 1960, to respondent, states in part:

"Regarding our telephone conversation today with your company as to whether it would be possible for us to establish 10 or 11 men on other jobs. The way things are presently in the trucking industry and due to business conditions not being what they normally are, it would be next to impossible for us to find jobs for these men in the near future. In other words, we might eventually be able to find jobs for some of them, but the lapse of time involved between the time they leave your company and the time we would be able to find jobs for them would cause a financial hardship to the men involved and their families."

Merchants Express serves the points served by respondent.

Callison interlines with Willig between these points.

Findings and Conclusions

Upon the evidence of record the Commission finds that:

Respondent is engaged in the transportation of property over the public highways for compensation as a highway common carrier and as a radial highway common carrier and has operative rights as a highway contract carrier.

The respondent transported free loads of fish which should have been charged at respondent's tariff rates set forth in California Common Carrier Motor Freight Local and Joint Tariff No. 1, Cal. P.U.C. No. 1, issued by the Interstate Freight Carriers'

Conference, Inc., Agent, C. J. Sullivan, Issuing Officer, as follows (from Exhibit No. 3):

<u>No. of Shipping Order</u>	<u>Date</u>	<u>Amount of Tariff Charge</u>
17626	6/13/59	\$ 11.83
17679	7/4/59	122.44
17681	7/6/59	145.22
17683	7/6/59	26.99
17713	7/18/59	241.00
18085	5/11/59	10.75
18086	5/12/59	3.74
18134	5/18/59	19.42
18158	5/19/59	44.52
18185	5/25/59	13.78
18198	5/25/59	33.84
18232	5/29/59	183.40
18255	6/1/59	74.20
18308	6/8/59	64.61
18355	6/15/60	23.77
18409	6/27/59	37.84
18431	6/30/59	87.79
18460	7/7/59	48.97
18482	7/11/59	105.28
18485	7/13/59	120.88
18569	7/25/59	105.30
18571	7/25/59	147.80

The total tariff charges for the above free loads amount to \$1,673.37.

Respondent assessed and collected other charges less than applicant's applicable tariff rates or less than the applicable rates set forth in Minimum Rate Tariffs Nos. 2 and 8 and Distance Table No. 4 and supplements thereto which resulted in undercharges

as follows (from Exhibit No. 3):

<u>No. of Freight Bill</u>	<u>Date</u>	<u>Amount of Undercharge</u>
E3382	2/25/59	\$209.77
E3410	3/2/59	122.14
L25543	5/12/59	78.41
E3513	5/25/59	35.09
E3537	6/3/59	255.29
E3571A	6/24/59	52.72

The total undercharges for the above shipments amount to \$753.42.

In the performance of the various transportation services hereinabove set forth (1) respondent has violated Section 494 of the Public Utilities Code by charging, demanding, collecting and receiving a different compensation for the transportation of property and service in connection therewith, than the applicable rates and charges specified in its schedules filed and in effect at the time, and (2) respondent has violated Section 3667 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of property as a highway permit carrier than the applicable minimum rates and charges required by Minimum Rate Tariffs Nos. 2 and 8.

The Commission having found the facts as hereinabove set forth and concluding that respondent has violated Sections 494 and 3667 of the Public Utilities Code makes its order as follows.

O R D E R

Public hearing having been held and the Commission basing its decision on the findings and conclusions set forth in the

foregoing opinion,

IT IS ORDERED that:

1. All operating authorities of Joe P. Cabral, respondent herein, are hereby suspended for ten 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 such operating authorities for the period of the suspension or directly or indirectly allow such equipment or facilities to be used to circumvent the suspension.

2. Joe P. Cabral 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 highway common carrier certificate, radial highway common carrier permit and highway contract carrier permit have been suspended by the Commission for a period of ten days; that within five days after such posting Joe P. Cabral shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

3. Joe P. Cabral shall examine his records for the period from August 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, Joe P. Cabral 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. Joe P. Cabral 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. 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, Joe P. Cabral 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 P. Cabral 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 SEPTEMBER, 1960.

Theodore H. Jenner
Commissioner... Matthew J. Dooley being
necessarily absent, did not participate
in the disposition of this proceeding.

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President
[Handwritten signature]

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Commissioners