

ORIGINAL

Decision No. 60747

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
own motion into the operations )  
rates and practices of GERALD P. )  
KALIAN and JAMES H. KAYIAN, doing )  
business as TRI-ANGLE FREIGHT )  
LINES. )

Case No. 6430

Orville A. Schulenberg, for Gerald P. Kalian  
and James H. Kayian, respondents.  
William C. Bricca and Arthur J. Lyon, for  
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 Gerald P. Kalian and James H. Kayian, doing business as Tri-Angle Freight Lines, a radial highway common carrier, for the purpose of determining:

1. Whether respondents have acted in violation of Sections 3664 and 3667 of the Public Utilities Code by refunding or remitting portions of applicable rates and charges, resulting in the collecting or receiving of sums less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 2.
2. Whether respondents have acted in violation of Item 240-N of Minimum Rate Tariff No. 2 by failing to charge, demand, collect or receive compensation for loading service.
3. The order which should be issued by this Commission in the event it be found that any of the alleged violations has occurred.

Public Hearing

Pursuant to the order of investigation, a public hearing was held in Fresno before Examiner Wilson E. Cline on May 10, 1960,

and the matter was taken under submission at the close of the hearing.

Evidence Respecting Alleged Undercharges

Evidence was introduced by the Commission staff to show that in seven instances, Parts 1 through 7 of the Commission staff Exhibit No. 11, respondents carried wooden box or crate material in shooks for various consignors who paid the minimum rate and charge for the shipment without accessorial service. The shipper consignors loaded the shipments onto respondents' trucks and the consignee, I. V. Box Co. at Blythe, unloaded the shipments. The consignee assessed and collected from the respondents an unloading charge of \$12 per shipment.

Subsequently to the original billings for the shipments and the investigation by the Commission staff respondents learned that an accessorial charge of 1 cent per 100 pounds should have been made to the consignor-shipper by reason of respondents having arranged with the consignee to unload the shipments at destination. Supplemental invoices covering the additional accessorial charge have been sent to the various consignors, and at the time of the hearing all but one of these supplemental invoices had been paid. These invoices total \$33.47 and range from \$3.67 to \$4.37 per shipment which is considerably less than the \$12 per shipment paid by the respondents to the consignee. Respondents, however, have introduced evidence to show that the amounts paid to the consignee for the unloading are reasonable and are considerably less than respondents would have had to pay their own employees to have such services performed by them. The arrangement for payment for the unloading was made at the suggestion of a representative of the consignee, I. V. Box Co., who assured respondents that the arrangement was perfectly legal in every respect.

As to Part 8 of Exhibit No. 11, respondents admit that there was an undercharge of \$12.76 but their witness testified that the undercharge was unintentional and the result of inadvertence.

The witness for the Commission staff testified that throughout the investigation respondents have been very cooperative and that their records are in excellent shape.

Position of the Commission Staff

The counsel for the Commission staff, in his closing argument, stated that the specific question presented in this case for consideration by the Commission is whether the respondents' \$12 payment to the consignee for unloading each shipment is a refund or remittance within the meaning of Section 3667 of the Public Utilities Code.

Section 3667 provides:

"No highway permit carrier shall charge, demand, collect or receive for the transportation of property, or for any service in connection therewith, rates or charges less than the minimum rates and charges. ... nor shall any carrier directly or indirectly pay any commission or refund, or remit in any manner or by any device any portion of the rates or charges so specified. ..."

He urges that the use of such phrases as "shall charge, demand, collect or receive," "indirectly pay," "remit in any manner," or "by any device," in Section 3667, reflect a clear intention to give the minimum rate structure the broadest possible protection against refund or remittance, and that the section must therefore have been intended to include the relationship between the carrier and consignee as well as between the carrier and the shipper consignor.

He concludes that the carrier's payments to the consignee constitute refunds or remittances of a portion of the rates or

charges, with the result that the carrier receives less than the minimum rate.

Position of the Respondents

The counsel for the respondents urges that a carrier may contract with whomever he wishes for the performance of services for himself. If a consignee will contract to perform unloading services for an amount less than the carrier could perform these services through his own employees, the carrier would be remiss in not entering into such a contract and thereby saving the difference between the two amounts. Good business and common sense would compel him to do so.

Conclusion

As urged by the counsel for the Commission staff, Section 3667 should be interpreted to give the minimum rate structure the broadest possible protection against refund or remittance. The minimum rates provide for shipments without the unloading service being performed by the carrier. Where the consignee, one of the parties to the shipping arrangement, unloads the shipment, such minimum rates apply. Any amounts paid by the carrier to the consignee for unloading the shipment, which exceed the amounts which may be paid to the carrier by the consignor as an accessorial charge for such service constitutes a refund or remittance within the meaning of Section 3667 of the Public Utilities Code.

The original undercharges in the total amount of \$33.47 for unloading services have already been billed and all but one of these bills has been paid.

Upon the evidence of record the Commission finds and concludes that:

Respondents are engaged in the transportation of property over the public highways for compensation as a radial highway

common carrier pursuant to Radial Common Carrier Permit No. 10-3754, issued January 23, 1946.

Respondents 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:

<u>Exh.No.11</u> <u>Part No.</u>	<u>Respondents'</u> <u>Freight Bill No.</u>	<u>Date</u>	<u>Amount of</u> <u>Undercharge</u>
8	3510	6-24-59	\$12.76

Respondents have acted in violation of Section 3664 and 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.

Respondents have made unlawful remittances to the consignee, I. V. Box Co., as follows:

<u>Exh.No.11</u> <u>Part. No.</u>	<u>Respondents'</u> <u>Freight Bill No.</u>	<u>Date</u>	<u>Amount of</u> <u>Remittance</u>
1	3424	5--7-59	\$7.82
2	3426	5--7-59	7.69
3	3427	5-11-59	7.79
4	3440	5-20-59	7.68
5	3439	5-21-59	7.63
6	3441	5-21-59	7.84
7	3484	6-19-59	8.33
8	3510	6-24-59	7.75

The total of such remittances is \$62.53.

Respondents have acted in violation of Section 3664 and Section 3667 of the Public Utilities Code by making remittances to the consignee, I. V. Box Co., which have resulted in the collecting or receiving of a lesser compensation for the transportation of property than the applicable charges prescribed by the Commission in Minimum Rate Tariff No. 2.

#### Penalty

In view of the fact that this Commission has not previously found that payments by a carrier to a consignee for unloading

services constitute a refund or remittance within the meaning of Sections 3664 and 3667 of the Public Utilities Code and in view of the fact that the total of the undercharges and the unlawful remittances is so small, respondents' permit will be suspended for a period of three days; however, the imposition of said suspension will be deferred and held in abeyance for a period of one year.

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. 10-3754 issued to Gerald P. Kalian and James H. Kayian, is hereby suspended for three consecutive days; and they 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; provided, however, the execution of said suspension will be deferred and held in abeyance pending further order of the Commission. If no further order of the Commission is issued affecting said suspension within one year from the date of issuance of this decision, said suspension shall be vacated.

2. Respondents shall examine their records for the period from June 24, 1959, to the present for the purposes of ascertaining if any additional undercharges, unlawful remittances, or unlawful refunds have occurred other than those mentioned in this decision.

3. Within ninety days after the effective date of this decision respondents shall complete the examination of their records hereinabove required by paragraph 2 and file with the Commission a report setting forth all undercharges and all unlawful remittances and refunds found pursuant to that examination.

4. Respondents are hereby directed to take such action, including legal action, as may be necessary to collect the amounts of undercharges and the amounts of unlawful remittances set forth in the conclusion to the decision herein, together with any additional undercharges and unlawful remittances and refunds found after the examination required by paragraph 2 of this order, and to notify this Commission in writing upon the consummation of such collections.

5. In the event the charges and claims to be collected as provided in paragraph 4 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 and unlawful remittances and refunds remaining to be collected and specifying the action taken to collect such charges and claims and the result of such, until such charges and claims 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 Gerald P. Kallian and James H. Kayian, and this order shall become effective twenty days after the completion of service upon the first of either of such respondents.

Dated at San Francisco, California, this 13<sup>th</sup> day of SEPTEMBER, 1960.

*Charles W. Boyle*  
President  
*John E. ...*  
*...*  
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Commissioners