

**ORIGINAL**Decision No. 60904

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
own motion into the operations, )  
rates, and practices of WEBSTER H. )  
TENNIS. )

Case No. 6495

Webster H. Tennis, respondent.  
Martin J. Porter, 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 Webster H. Tennis, who operates as a highway permit carrier.

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis on July 22, 1960 at Los Angeles.

The purpose of this investigation is to determine, with respect to certain specified transportation, whether respondent violated Sections 3664 and 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 respondent. Based upon the evidence of record in this matter the Commission makes the following findings and conclusions:

1. At all times herein mentioned, respondent held, and he now holds, Radial Highway Common Carrier Permit No. 19-50299.
2. At all times here involved, respondent 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.

3. During the year 1959, respondent transported under authority of his 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:

Freight Bill Number	Date of Shipment	Weight in Pounds	Charge Assessed by Respondent	Charge Corrected	Amount of Undercharge
1340	7-13-59	50,390 <sup>1</sup> and as minimum 60,000 <sup>1</sup>	\$311.21	\$366.63	\$ 55.42
1348	7-16-59	47,120 <sup>2</sup>	230.00	353.40	123.40
9683	8-11-59	47,100 <sup>1</sup>	301.22	356.67	55.45
9684	8-13-59	46,880	235.00	330.50	95.50
9713	8-25-59	40,517 <sup>2</sup>	235.00	287.47	52.47
9722	8-28-59	48,410 <sup>2</sup>	235.00	341.30	106.30
9729	9--2-59	52,900 and as minimum 60,000 <sup>1</sup>	314.75	369.96	55.21
9734	9--3-59	54,700 and as minimum 60,000 <sup>1</sup>	313.50	372.35	58.85
2664	10-13-59	49,300 and as minimum 60,000 <sup>2</sup>	307.22	328.35	21.13
2637	9-25-59	44,960 <sup>2</sup>	275.00	356.20	81.20
2638	9-28-59	48,000	307.20	335.88	28.68
2649	10--5-59	49,940 <sup>2</sup>	230.00	352.08	122.08
2652	10-18-59	50,200 and as minimum 60,000 <sup>2</sup>	283.63	300.00	16.37
2648	10--5-59	47,000 <sup>2</sup>	250.00	314.90	64.90
2680	10-21-59	47,300 <sup>1</sup>	260.64	383.13	122.49
2685	10-26-59	52,420 <sup>1</sup>	291.43	394.32	102.89
2686	10-28-59	47,420 <sup>2</sup>	235.00	355.65	120.65
2701	11--4-59	48,300 <sup>1</sup>	296.96	365.75	68.79
2712	11-13-59	43,650 <sup>1</sup>	300.29	347.02	46.73
2713	11-14-59	49,150 and as minimum 60,000 <sup>1</sup>	309.18	386.01	76.83
2716	11-19-59	48,180 <sup>1</sup>	297.60	337.14	39.54
2721	11-20-59	50,100 <sup>1</sup>	280.83	415.83	135.00
2727	11-24-59	48,900 and as minimum 60,000 <sup>1</sup>	245.76	323.23	77.47
2733	12--2-59	47,260 <sup>2</sup>	220.00	335.43	115.43
			Total .....	\$1,842.78	

- 1 The respondent improperly based his charge on cents per 1,000 feet of board measure without regard to weight in pounds.
- 2 The respondent assessed a flat charge without respect for weight in pounds.

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

- 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 assessing transportation charges on a flat rate or in cents per 1,000 board feet rather than in weight in pounds as required by law.

5. Respondent violated Public Utilities Code Sections 3664 and 3667 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.

The respondent testified in his own behalf at the hearing. He conceded the undercharges above found. He stated that he engaged in the aforesaid conduct because "everybody" was doing it. However, he was unable to point to any specific instance to his knowledge where anyone else was engaged in similar conduct.

If a carrier under the jurisdiction of this Commission has knowledge that one of its competitors is assessing improper charges the proper way to rectify the situation is by calling it to the attention of this Commission and not by engaging in similar illegal practices.

The Commission further finds and concludes that:

6. Respondent's operating authority should be suspended for a period of 10 days with the execution of 5 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 respondent is 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 respondent is failing to comply with all such orders, rules and regulations, the additional 5-day period of suspension will be imposed together with whatever additional penalty the Commission deems necessary.

7. Respondent should be ordered to collect the undercharges hereinabove found and to examine his records from September 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. 19-50299 issued to Webster H. Tennis is hereby suspended for a period of ten consecutive days; provided, however, that the execution of five 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 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 such equipment or facilities to be used to circumvent the suspension.

2. 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 has been suspended by the Commission for a period of five days. 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. Respondent shall examine his records for the period from September 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, 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.

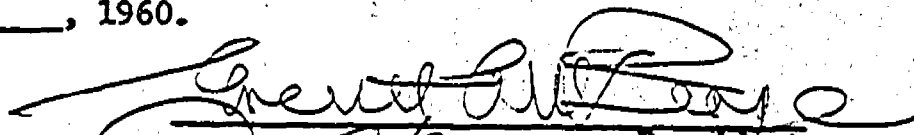


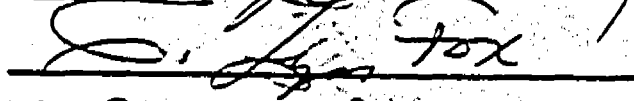
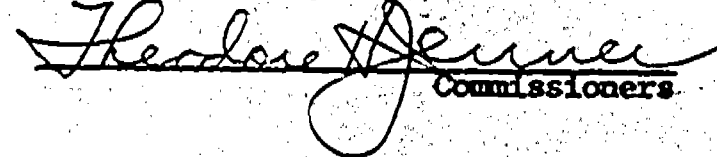
5. Respondent is hereby directed to take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth in the preceding opinion, together with any additional undercharges found after the examination required by paragraph 3 of this order, and to notify the Commission 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, 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 Webster H. Tennis and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 18th day of OCTOBER, 1960.

  
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President  
  
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Commissioners