

ORIGINALDecision No. 60905

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
 motion into the operations, rates and)
 practices of JIM SHROPSEIRE, doing)
 business as JIM SHROPSHIRE TRUCKING. }

Case No. 6483

Jim Shropshire, for respondentElinore Charles, for the
Commission staff.O P I N I O N

On May 24, 1960, the Commission issued an order instituting an investigation on its own motion into the operations, rates and practices of Jim Shropshire, doing business as Jim Shropshire Trucking, who is engaged in the business of transporting property over the public highways as a radial highway common carrier and who also holds a city carrier permit. Pursuant to said order, a public hearing was held on August 30, 1960, at Fresno, before Examiner Martin J. Porter, at which time evidence was presented and the matter was taken under submission.

Purpose of Investigation

The purpose of this investigation is to determine whether this respondent has violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting for the transportation of property as a highway permit carrier a rate less than the minimum established under Minimum Rate Tariff No. 2 and Minimum Rate Tariff No. 10.

Position of Respondent

It was argued by respondent that he is an interstate carrier and that all of the shipments in question were movements in interstate commerce, over which this Commission has no jurisdiction. He further showed in attempted mitigation that all undercharges specified in the order of investigation had been collected prior to the date of hearing in this matter.

Position of Staff Counsel

Staff counsel contended that even if the transportation by respondent was originally a movement in interstate or foreign commerce, the shipments involved in this proceeding lost such character when bulk was broken and intrastate shipments were made. Further, the fact that respondent billed and collected the specified undercharges seems to negate the contention that the shipments were interstate movements not subject to the minimum rates applicable to intrastate transportation.

Findings

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

1. That respondent is engaged in the transportation of property over the public highways for compensation as a radial highway common carrier pursuant to Radial Highway Common Carrier Permit No. 54-1751 and that he possesses City Carrier Permit No. 54-3570, each permit having been issued by this Commission.

2. That respondent assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate Tariffs Nos. 2 and 10, which resulted in undercharges as follows (from Exhibits Nos. 3 and 4):

<u>Frt. Bill No.</u>	<u>Date</u>	<u>Charge Assessed or Collected by Respondent</u>	<u>Correct Charge</u>	<u>Undercharge</u>
17806	7/11/58	\$108.00	\$141.00	\$ 33.00
17834	7/22/58	114.36	149.31	34.95
17862	7/29/58	108.31	141.41	33.10
15930	9/ 8/58	108.00	141.00	33.00
16002	9/30/58	108.00	141.00	33.00
16047	10/14/58	108.00	141.00	33.00
16135	10/29/58	142.15	185.58	43.43
16166	11/ 4/58	108.00	141.00	33.00
18225	12/ 5/58	129.24	168.73	39.49
19448	6/ 3/59	108.00	147.00	39.00
17792	7/10/58	145.13	170.53	25.40
17832	7/21/58	135.52	159.24	23.72
17857	7/28/58	137.43	161.48	24.05
17957	8/11/58	147.79	173.65	25.86
15853	8/26/58	145.82	171.34	25.52
15921	9/ 5/58	154.25	181.24	26.99
15951	9/14/58	138.88	163.18	24.30
15993	9/29/58	158.80	186.59	27.79
16037	10/13/58	160.40	188.47	28.07
16111	10/27/58	135.27	158.94	23.67
16118	10/28/58	134.18	157.67	23.49
18257	12/10/58	159.08	190.12	31.04
18270	12/11/58	168.10	200.90	32.80
18338	12/30/58	143.58	171.50	27.92
18511	1/27/59	160.93	192.33	31.40
18647	2/16/59	161.33	195.20	33.87
18732	3/ 2/59	143.75	171.79	28.04
18961	5/30/59	163.70	195.64	31.94
19172	4/24/59	123.00	147.00	24.00
19122	4/20/59	151.70	181.30	29.60
19253	5/ 3/59	156.41	186.92	30.52
19294	5/11/59	176.10	210.46	34.36
19354	5/18/59	128.27	153.30	25.03
19441	6/ 2/59	154.57	184.73	30.16
19483	6/15/59	152.36	182.09	29.73
19527	6/24/59	153.34	183.26	29.92

<u>Frt. Bill</u> <u>No.</u>	<u>Date</u>	<u>Charge Assessed</u> <u>or Collected</u> <u>by Respondent</u>	<u>Correct</u> <u>Charge</u>	<u>Undercharge</u>
19594	7/ 8/59	\$181.19	\$216.54	\$ 35.35
19606	7/13/59	148.96	178.03	29.07
17309	7/15/58	135.38	144.40	9.02
17343	7/24/58	121.11	129.20	8.09
17935	8/ 6/58	135.38	144.40	9.02
18019	8/18/58	132.53	141.36	8.83
15923	9/ 5/58	135.38	144.40	9.02
15956	9/16/58	135.38	144.40	9.02
15997	9/29/58	135.38	144.40	9.02
16043	10/13/58	135.38	144.40	9.02
18552	2/ 2/59	135.38	144.40	9.02
18703	2/24/59	135.38	144.40	9.02
18747	3/ 3/59	135.38	144.40	9.02
18802	3/10/59	135.38	144.40	9.02
18964	3/30/59	125.40	133.76	8.36
19073	4/15/59	135.38	144.40	9.02
19219	4/28/59	135.38	144.40	9.02
19310	5/12/59	135.38	144.40	9.02
19377	5/21/59	135.38	144.40	9.02
19426	5/28/59	135.38	144.40	9.02
19478	6/12/59	109.16	123.00	13.84
19502	6/19/59	135.38	144.40	9.02
16198	11/10/58	135.38	144.40	9.02
18138	11/24/58	135.38	144.40	9.02
18292	12/15/58	135.38	144.40	9.02
16134	10/29/58	131.10	139.84	8.74
18462	1/20/59	135.38	144.40	9.02

Undercharges for these shipments amounted to \$1,387.19

3. That respondent has acted in violation of Sections 3664 and 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 Tariffs Nos. 2 and 10.

The Commission having found the facts as hereinabove set forth and concluding that respondent has violated Sections 3664 and 3667 of the Public Utilities Code makes its order as follows:

O R D E R

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

IT IS ORDERED:

1. That Radial Highway Common Carrier Permit No. 54-1751 and City Carrier Permit No. 54-3570 issued to Jim Shropshire are hereby suspended for five 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 these permits for the period of the suspension or directly or indirectly allow such equipment or facilities to be used to circumvent the suspension.
2. That Jim Shropshire 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 city carrier permit have been suspended by the Commission for a period of five 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 Jim Shropshire shall examine his records for the period from January 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, Jim Shropshire 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 Jim Shropshire 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. 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, Jim Shropshire 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 Jim Shropshire 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.

[Signature]
President
[Signature]
[Signature]
[Signature]
Theodore Deener
Commissioners