

61273

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of LEO B.
CLAWSON, doing business as
LEO B. CLAWSON TRUCKING.

Case No. 6442

Lawrence W. Clawson, for respondent.Elmer J. Sjostrom, for the Commis-
sion staff.O P I N I O NOrder of Investigation

On March 29, 1960, the Commission instituted its order of investigation into the operations, rates and practices of Leo B. Clawson, doing business as Leo B. Clawson Trucking, a radial highway common carrier, for the purpose of determining:

1. Whether respondent has acted in violation of Section 3667 of the Public Utilities Code by charging, demanding, collecting or receiving for the transportation of property sums less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 2.
2. The order which should be issued by this Commission in the event it be found that any of the alleged violations have occurred.

Public Hearing

Pursuant to the order of investigation, a public hearing was held in Hanford before Examiner Edward G. Fraser on October 20, 1960.

Stipulations

It was stipulated that Leo B. Clawson is operating under Radial Highway Common Carrier Permit No. 16-152, issued on July 27,

1937; that the respondent was served with Minimum Rate Tariff No. 2 in 1948 and Distance Table No. 4 in 1951, and that he also received all supplements and amendments thereto.

Evidence Presented by the Staff

A representative of the Commission's Transportation Division testified that he reviewed 600 of respondent's freight bills and selected 20 of these as representative of the respondent's operation. Those selected were forwarded to the Rate Analysis Unit of the Transportation Division for analysis. The witness stated that true copies of these twenty freight bills are included in Exhibit No. 1 along with photostat copies of documents which show that payment was made for the transportation performed. The respondent stipulated that the documents in Exhibit No. 1 were true and correct copies of the originals in the records of the respondent.

A Commission rate expert explained that after analyzing the documents in Exhibit No. 1 he prepared his rate statement (Exhibit No. 2). He then testified that the rates collected by the respondent on the transportation performed under Parts 1 through 20 (Exhibits 1 and 2) are less than the minimum rates prescribed by Minimum Rate Tariff No. 2.

Position of the Respondent

The manager of the respondent admitted the undercharges and then stated they happened primarily because the respondent had two inexperienced men doing the rating when the undercharges occurred. These men were hired temporarily during the period from June to November, 1959, when the witness was recuperating from a broken leg. They computed the mileage from the point of origin to the point of delivery by either a highway road map, or by checking the speedometer reading on the trucks. They did not realize that

under the terms of Minimum Rate Tariff No. 2, the mileage distances between points that are set out in Distance Table No. 4 must be used, in computing the rates between these points.

On Parts Nos. 4, 5, and 7 (Exhibit No. 2) the witness stated the rate charged was a 27½ cent rate which was under an agreement with the shipper, because the latter agreed to unload respondent's trucks as soon as they arrived, at any time of the day or night. This so-called "twenty-four hour agreement" is an important benefit to the respondent, because his trucks are immediately unloaded and become available for another hauling job.

On several of the other counts the same rate was charged as the other truckers receive. It was the "going rate" for the loads hauled. Respondent transported the loads on Parts 13 through 20 as a back haul, when the equipment was returning to the terminal. He claimed that shippers demand a lower rate be charged on this operation, because they realize the trucks must return whether or not they are loaded, and that competition results in some truckers charging the same rate, even though it may be less than the minimum allowed by this Commission.

Findings and Conclusions

Upon the evidence of record the Commission finds that:

1. 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. 16-152.
2. Respondent 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 (from Exhibits Nos. 1 and 2):

Part No. Exh. 2	Frt. Bill No.	Date	Amount Assessed by Respondent	Amount Collected by Respondent	Correct Charge	Amount of Undercharge
1	426	5/25/59	\$137.50	\$137.50	\$176.88	\$ 39.38
2	383	5/29/59	145.48	145.48	183.96	38.48
3	1667	6/17/59	96.62	96.62	112.73	16.11
4	1784	6/ 3/59	143.99	143.99	194.26	50.27
5	1020	6/10/59	129.86	129.86	175.19	45.33
6	428	6/ 7/59	137.72	137.72	185.80	48.08
7	534	6/ 2/59	135.71	135.71	154.72	19.01
8	948	6/11/59	118.58	118.58	179.99	61.41
9	6901	6/16/59	62.88	62.88	80.78	17.90
10	4127	7/ 2/59	141.35	141.35	165.39	24.04
11	1438	7/ 3/59	119.90	119.90	160.91	41.01
12	1442	7/ 9/59	128.79	128.79	144.23	15.44
13	4128	8/11/59	208.40	208.40	308.30	99.90
14	4129	8/15/59	204.72	204.72	302.86	98.14
15	4132	8/18/59	207.00	207.00	306.23	99.23
16	4284	8/19/59	202.40	202.40	283.36	80.96
17	4290	8/21/59	204.00	204.00	285.60	81.60
18	4295	8/24/59	195.08	195.08	251.27	56.19
19	4293	8/25/59	177.12	177.12	247.97	70.85
20	4300	8/27/59	195.72	195.72	274.01	78.29

Total undercharges for the above shipments amount to \$1,081.62 ✓

3. Respondent has acted in violation of 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 Tariff No. 2.

The Commission having found the facts as hereinabove set forth and concluding that respondent has violated Section 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 therein adduced,

IT IS ORDERED:

1. That Radial Highway Common Carrier Permit No. 16-152 issued to Leo B. Clawson is 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 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. 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 has 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 respondent shall examine his records for the period from January 1, 1960 to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

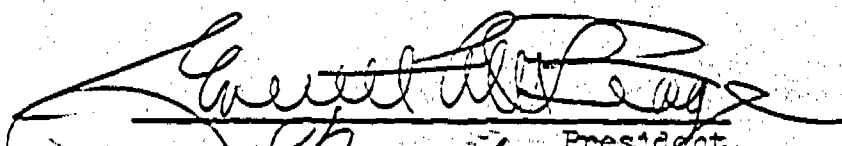


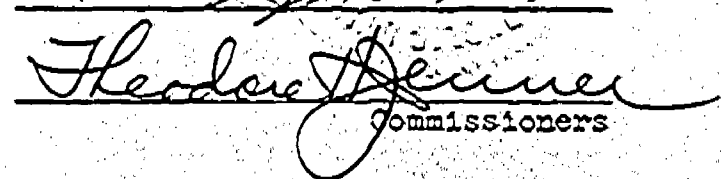
4. That, within ninety days after the effective date of this decision, respondent shall complete the examination of his records hereinabove required by paragraph 3 and file with the Commission a report setting forth all undercharges found pursuant to that examination.

5. That respondent is hereby directed to take such action, 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, 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 Leo B. Clawson and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this
28th day of December, 1960.


 President


 E. A. Tamm

 Commissioners