

ORIGINALDecision No. S1414

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,) Case No. 6521
 rates and practices of ROLLAND TABER,)
 INC., a California corporation.)

Frank Loughran, for respondent.
Elmer J. Sjostrom, for the Commission
 staff.

O P I N I O N

This investigation was instituted by the Commission on June 6, 1960 to determine whether respondent violated Section 3667 of the Public Utilities Code by accepting a lesser compensation for the transportation of property than that required by the Commission's applicable minimum rate order, Minimum Rate Tariff No. 2.

Public hearing was held before Examiner John Power on October 17, 1960 at San Francisco. The matter was then submitted subject to the receipt of statements of position from the respondent and the staff on a certain issue. These have been received and the matter is ready for decision.

At the hearing, respondent entered into a stipulation that the staff rate statement (Exhibit No. 2) reflected the correct rates and transportation with one very minor exception. There were twenty-five transactions in the exhibit of which only two are involved in the exception. In these two instances there is an undercharge, but the amount thereof depends upon the construction of a rule in Minimum Rate Tariff No. 2.

One consignee in San Diego is located on a street which is traversed by a main line track of the San Diego and Arizona Eastern Railroad. Also, located in the same street is a team track of the

same railroad. The consignee involved here has the right to use a part of this team track for the purpose of having rail cars spotted there for unloading. The main track lies between this team track and the consignee's building. Respondent billed these shipments as "on rail" under Item 200-L of Minimum Rate Tariff No. 2, the alternative application of common carrier rates provision.

Item 200-L (Note 5) incorporates the definition of "point of destination" set forth in Item No. 10-N of the same minimum rate tariff. The language of paragraph f of Item 10-N so far as it concerns us here reads "...receiving area of one consignee shall include only contiguous property which shall not be deemed separate if intersected only by public street or thoroughfare."

The staff's investigations had ascertained that the section of the team track had been allocated to the consignee by the railroad and it appears that a rental was charged. A witness on behalf of respondent testified that the consignee had received rail shipments there and had moved the beer to its warehouse by means of fork lift trucks. The distance is fifty-seven feet.

It is a well-established principle of transportation law that the provisions of a tariff must be literally construed. Applying this rule to the present situation, it appears that the premises in question are on rail. The intervening space between the team track spot and the building is all part of a public street. The presence of a railroad main line track does not alter the situation. The street is still a street even when the city permits a use other than for road vehicles. The use of streets for certain types of rail movements is still common and in former years was more so.

A staff witness testified that the twenty-five transactions analyzed in Exhibit No. 2 are typical of 500 surveyed by him. This evidence is not contradicted in the record. It appears therefore that

a serious violation has been committed. Twenty-two of the violations affected one shipper who appears to be respondent's most important customer. The other three violations were on shipments of one other shipper. Thus, only two shippers in all are affected. Such a concentration of undercharges on the movements of a small number of beneficiaries suggests the possibility of a preference and will be considered in connection with the fixing of the penalty.

The Commission finds:

1. That the transportation indicated by the freight bills listed in column (1) of Appendix A annexed hereto was performed by respondent.
2. That such transportation was performed by respondent under the authority of permits issued by the Commission.
3. That respondent assessed and collected the amount shown in each case in column (2) of said appendix for said transportation.

The Commission concludes:

- (1) That the amounts shown in column (3) of said Appendix A are the charges for said transportation computed under the minimum rates and charges.
- (2) That in each instance listed in said Appendix A respondent did assess and collect charges for transportation less than the minimum rates and charges applicable to such transportation by the amounts shown in column (4) of said Appendix A.
- (3) That respondent has violated Section 3667 of the Public Utilities Code by charging, demanding, collecting or receiving for the transportation of property rates or charges less than the minimum rates and charges applicable to such transportation established or approved by the Commission.

C 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. 54-3311 and Highway Contract Carrier Permit No. 54-3312 issued to Rolland Taber, Inc., a corporation, are hereby suspended for twelve consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order; and that it 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 respondent shall post at its 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 its radial highway common carrier permit and highway contract carrier permit have been suspended by the Commission for a period of twelve 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 its records for the period from June 4, 1959 to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

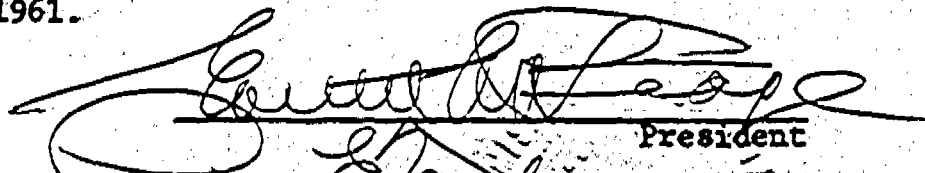
4. That, within ninety days after the effective date of this decision, respondent shall complete the examination of its records hereinabove required by paragraph 3 and file with the Commission a report setting forth all undercharges found pursuant to that examination.

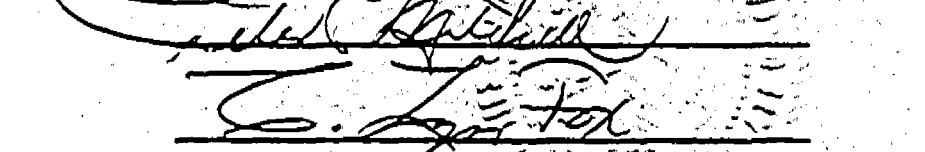
5. That respondent is hereby directed to take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth in Appendix A attached hereto and made a part hereof, together with any additional undercharges found after the examination required by paragraph 3 of 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 Rolland Taber, Inc., and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 24th day of January, 1961.



President


Commissioners

Commissioners

APPENDIX A

TABULATION OF UNDERCHARGES ON TRANSPORTATION
PERFORMED BY ROLLAND TABER, INC.

<u>Part No.</u> <u>(Exh. 2)</u>	<u>(1)</u> <u>Freight</u> <u>Bill No.</u>	<u>(2)</u> <u>Charge</u> <u>Assessed</u> <u>by</u> <u>Respondent</u>	<u>(3)</u> <u>Correct</u> <u>Charge</u>	<u>(4)</u> <u>Undercharge</u>
1	09516	\$593.70	\$650.50	\$ 56.80
2	10779	458.72	518.46	59.74
3	10559	454.85	630.00	175.15
4	10353	504.32	619.82	115.50
5	12269	301.52	420.00	118.48
6	8868	142.15	154.34	12.19
7	12298	385.27	552.00	166.73
8	08595	333.80	410.11	76.31
9	11871	142.45	154.66	12.21
10	10370	423.81	631.75	207.94
11	12340	215.46	220.98	5.52
12	13586	578.83	645.77	66.94
13	13567	442.95	490.73	47.78
14	13596	442.02	618.45	176.43
15	11594	339.42	487.37	147.95
16	11403	284.66	420.00	135.34
17	11546	426.21	490.82	64.61
18	11221	283.07	411.74	128.67
19	12697	283.36	412.16	128.80
20	11398	294.83	404.35	109.52
21	14809	439.74	619.04	179.30
22	15249	151.87	181.14	29.27
23	49	253.96	318.59	64.63
24	58-71A)	74.48	99.75	25.27
	40-44A)			
25	75-68A	\$157.39	\$173.02	15.63
			Total	\$2,326.71