

ORIGINALDecision No. 61818

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
 motion into the operations, rates, and
 practices of Young's Commercial
 Transfer, Inc., a California corporation.

Case No. 6977

Francis X. Vieira, for respondent.William C. Bricca, for the Commission
staff.O P I N I O NOrder of Investigation

On September 20, 1960, the Commission instituted its Order of Investigation into the operations, rates and practices of Young's Commercial Transfer, Inc., a California corporation, operating as a radial highway common carrier, a highway contract carrier, and a petroleum contract carrier, for the purpose of determining:

1. Whether the respondent has acted in violation of Section 3664 of the Public Utilities Code by charging or collecting sums less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 2 and Minimum Rate Tariff No. 8.
2. Whether respondent has acted in violation of Section 3668 of the Public Utilities Code by assisting, suffering or permitting corporations or persons to obtain transportation of property between points within this State by means of known false billing, classification, weight, weighing or report of weight; and in that by means of various devices, i.e., an alleged agreement of sale contract with a shipper for the purchase of 3 tractors and a trailer, with payment to be made on the basis of allowing credits to shipper's account; and an oral lease agreement whereby the respondent leases its tractors to haul trailers owned and loaded by the shipper, respondent assists, suffers, or permits Roberts Farms, Inc., to obtain transportation for property between points within this State at rates less than those established by the Commission in Minimum Rate Tariff No. 8.

3. Whether respondent has acted in violation of Section 3737 of the Public Utilities Code by failing to observe requirements set out in Minimum Rate Tariffs Nos. 2 and 8.
4. 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 Porterville before Examiner Edward G. Fraser, on January 25, 1961 and the matter was taken under submission at the close of the hearing.

Stipulations

It was stipulated that the respondent is a California corporation and that the respondent holds Radial Highway Common Carrier Permit No. 54-4161, issued on June 29, 1953; Highway Contract Carrier Permit No. 54-4162, issued June 29, 1953; and Petroleum Contract Carrier Permit No. 54-4454, issued May 28, 1956. It was further stipulated that the respondent was served with a copy of Minimum Rate Tariff No. 2 and a copy of Minimum Rate Tariff No. 8; also a copy of Distance Table No. 4, and all supplements and corrections published on both tariffs and the distance table.

Evidence Respecting Alleged Undercharges:

A representative of the Transportation Division of the Commission testified that he made an examination of the records of the respondent on January 26, and April 4, 5, 7 and 8, 1960. These records covered transportation performed during the period from July 1959 through March 1960. The commodities hauled by the respondent on the counts wherein an undercharge is alleged are dolomite, lumber, asphalt roofing and shingles, potatoes and oranges.

The staff witness stated that a split pickup was made on certain shipments, as shown on the tachograph charts attached to the freight bills. The freight bills, however, indicate a single pickup on each of these loads.

Copies of two of respondent's freight bills were subpoenaed from the Grand View Citrus Association to show that they differed from the records of the respondent in the "Number of Packages", "Description of Commodity", and the "Rate". The total charges, however, are identical.

The witness also stated that certain documents show delivery was made to two or more points in violation of the provisions of Minimum Rate Tariffs Nos. 2 and 8. The original freight bills, however, show two deliveries of 800 sacks of potatoes to San Francisco. The accompanying documents on each freight bill list partial deliveries at Agnew, San Quentin, El Verano, Yountville, Napa and San Francisco.

A rate expert of the Commission staff testified that sums charged by the respondent for the hauling in question are less than the charges obtained by applying the provisions of Minimum Rate Tariffs Nos. 2 and 8. The respondent stipulated that the rate statement present by the staff correctly listed the proper minimum rates as alleged.

Evidence Respecting Use of Device Under
3668 of Public Utilities Code.

The evidence introduced by the Staff concerned two separate operations of the respondent.

The first operation is indicated by an Agreement of Sale dated December 15, 1958, between Roberts Farms, Inc., the seller, and Young's Commercial Transfer, Inc., a California corporation, the buyer. This document provides for the sale of 3 Autocar 3-axle tractors and one 1952 Utility stake trailer. The purchase price is

stated as \$32,500.00 and is to be paid by the respondent using some, or all of the equipment sold to perform the hauling offered by the seller, at a rate of 26 cents a mile, plus 7 cents a mile for all mileage logged in the State of Oregon. The agreement then provides that 75 percent of the hauling fee will be "credited against the amount owed by buyer as the purchase price of the said equipment, and 25 percent thereof will be paid to buyer in cash, at such times as are customary for settlement of accounts". If equipment other than the four pieces sold is used for the hauling, the contract provides that the "regular hauling rates established by the California Public Utilities Commission will be charged", with payment to be 75 percent credited on the balance due and 25 percent paid to the respondent in cash, as provided when the items sold are used. The respondent testified that the terms of this agreement were carried out and the entire purchase price has been paid. Documents of record indicate that payments were still being made in March of 1960.

The second operation concerns hauling performed for Roberts Farms, Inc., by the respondent, under the terms of an oral lease. Roberts Farms, Inc. owns several trailers which they load with their own produce. When a trailer is loaded they contact the respondent and the latter sends a tractor and driver to Roberts. The latter has control of the vehicle as soon as it arrives and instructs the driver where the loaded trailer is to be delivered. The rental (as termed by the respondent) of the tractor is computed at 26 cents a mile over the total distance the trailer is hauled. The respondent testified that Roberts retains control over the driver and his vehicle until the service has been completed and the driver is released to return to the respondent.

The rate expert of the Commission staff testified that the sums charged by the respondent in such operation are less than the charges obtained by applying the Provisions of Minimum Rate Tariff No. 8.

The respondent made a motion to strike all evidence on this issue from the record on the basis that this Commission has no jurisdiction over a lease agreement or sale agreement concerning a tractor and trailers. This motion was made during the hearing and was taken under submission.

Position of the Respondent

The president of the respondent testified the corporation owns 60 tractors and 65 trailers. They frequently use from 80 to 90 subhaulers at certain times of the year and in 1960 their gross income was \$1,600,000. Respondent annually writes about 15,000 freight bills, covering the hauling of peaches, tomatoes, oranges, bakery goods, cotton and petroleum products. Since 85 percent to 90 percent of their business consists of carrying unrated commodities they do not have a rate clerk. The witness divided their business into a radial highway common carrier service and a highway contract carrier service. The undercharges and violations alleged in the present investigation concern only the radial operation.

The witness stated there would have been no undercharges on the transportation of dolomite if it were listed in Minimum Rate Tariff No. 2. The witness was not able to find "dolomite" as a rated item in the tariff and so considered it to be exempt. The shipper advised that 25 cents was "the going rate" and respondent shipped at the recommended charge to obtain the business. The respondent has decided not to haul dolomite in the future. The staff rate expert admitted that errors were easily made on the rating of dolomite. Plain dolomite is not in the tariff but "dolomite roasted" is listed in Item 32810 of Western Classification No. 77. For plain

dolomite the staff used Item 47715, under the listing, "stone".

The witness was uncertain as to what caused the undercharges on certain shipments but stated that multiple pickups or deliveries not indicated on the freight bills were frequently caused by a consignor directing a truck driver to pickup at or deliver to, more than one point. Occasionally the consignee directs the driver to deliver part, or all of the load to a destination not on the freight bill. Most drivers will follow orders even when they are warned it is a violation of the applicable tariff provisions.

The witness stated the oral lease developed due to the inconvenience to respondent of having to send a truck and trailer to be loaded. This took time and was expensive for both parties. Roberts can now load their trailers at their convenience and call for a truck after they are ready. The truck can move out with the trailer as soon as it is attached. The respondent thereby saves the time it would take to load the trailer on each load hauled. The witness declared the lease was adopted as a method of eliminating the immobilization of tractors while waiting for their trailers to be loaded. The respondent introduced exhibits to show that the total sums paid by Roberts were not less than the minimum rates computed by the staff.

The witness described the operations performed as a highway contract carrier. The respondent hauls bread for Langendorf bakery from San Francisco to Redding and Los Angeles under a \$150,000 a year contract. They also operate under a \$160,000 annual contract to haul exempt citrus fruits and under a \$70,000 agreement for the transport of petroleum. The respondent makes payments of about \$8,000 a month on its equipment. These payments are made out of the proceeds of the hauling performed under these contracts. Respondent contends that if a suspension is imposed it may incur lawsuits under these contracts and may be unable to make its payments due to loss of the business.

Closing Statements

The Staff Counsel requested that the Commission take official notice of Decision No. 58413, dated May 12, 1959, in Case No. 5432, which sets out an opinion of the Commission staff, that "permit carriers may not pay rental or other remuneration to shippers for the use of shipper-owned trailers unless the minimum rate tariff specifically provides for such payment or equivalent allowance".

The counsel for respondent requested that any suspension of operating authority imposed be limited to the respondent's radial highway common carrier permit. Such request was based on the fact that only the radial operation is involved in this investigation and because a suspension of the corporation's contract authority will subject the respondent to several breach of contract actions and result in the loss of a substantial portion of its business.

Discussion

When operating as a highway carrier the respondent must observe all of the terms and provisions of the tariffs concerned, along with the minimum rate provisions prescribed by this Commission. If a contrary decision were adopted, it would nullify the regulations governing highway carriers in the State of California.

The Agreement of Sale and oral leases executed by the respondent cannot be interpreted so as to exempt the transportation in question from the application of the minimum rate provisions promulgated in the tariffs adopted by this Commission. "The tariff applicable, on the facts, to any particular shipment cannot be changed by an agreement between the parties." Gardner vs. Rich Manufacturing Co. (1945) 68 Cal. App (2), 725, 730.

The evidence shows that certain shipments transported by respondent were movements in interstate commerce. Since there is nothing in the record to indicate that such shipments were or are

exempt from the provisions of the Interstate Commerce Act, such alleged undercharges will be disregarded herein.

The Commission will take official notice of Decision No. 58418, dated May 12, 1959, in Case No. 5432.

Findings and Conclusions

Upon the evidence of record the Commission finds that:

1. Respondent is a California corporation 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. 54-4161, as a highway contract carrier pursuant to Highway Contract Carrier Permit No. 54-4162, and as a petroleum contract carrier pursuant to Petroleum Contract Carrier Permit No. 54-4454.

2. The so-called "Agreement of Sale" and the oral lease together with the transportation performed thereunder constitute a device and a violation of law within the meaning of Section 3668 of the Public Utilities Code by which the respondent has permitted Roberts Farms, Inc., to obtain transportation for property between points within this State at rates less than the applicable minimum rates established by this Commission.

3. The respondent violated Section 3664 of the Public Utilities Code by charging and collecting a lesser rate than the minimum rate established by this Commission.

4. The respondent has violated Section 3737 of the Public Utilities Code by failing to adhere to the provisions of Minimum Rate Tariffs Nos. 2 and 8, governing the issuance of shipping documents.

5. Respondent assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate

Tariffs Nos. 2 and 8, which resulted in undercharges as follows

(From Exhibits Nos. 2 and 4):

<u>Part No.</u> <u>Exhibit No. 4</u>	<u>Respondents</u> <u>Freight Bill No.</u>	<u>Date</u>	<u>Amount of</u> <u>Undercharge</u>
1	E-4978	July 2, 1959	\$112.89
2	D-7613	July 15, 1959	35.35
3	E-1472	Aug. 31, 1959	30.30
4	E-5516	Oct. 19, 1959	35.35
5	E-5517	Oct. 26, 1959	30.30
6	F-9826	Dec. 1, 1959	91.07
7	F-9217	Jan. 11, 1960	91.07
8	F-7637	Jan. 28, 1960	91.07
9	F-1499	Mar. 7, 1960	35.35
10	F-1621	Mar. 17, 1960	35.35
11	F-1683	Mar. 24, 1960	32.20
12	F-1463	Mar. 3, 1960	14.54
15	F-9240	Jan. 12, 1960	8.67
16	F-9448	Jan. 4, 1960	202.34
17	F-8796	Jan. 11, 1960	207.19
18	F-1669	Mar. 20, 1960	69.54
19	F-1677	Mar. 20, 1960	39.20
20	F-1681	Mar. 21, 1960	19.20
21	F-8216	Mar. 22, 1960	59.13
22	F-1687	Mar. 23, 1960	28.60
23	F-8215	Mar. 24, 1960	86.04
24	F-9651	Mar. 25, 1960	22.76

The total undercharges amount to \$1377.51

The motion of respondent to strike certain evidence herein will be denied.

The Commission having found the facts as hereinabove set forth and concluding that respondent has violated Sections 3664, 3668 and 3737 of the Public Utilities Code, will make its order as hereinafter set forth.

Penalty:

In view of the entire record in this proceeding and the above findings thereon, the Commission concludes that respondent's radial highway common carrier permit should be suspended for a period of five days.

O R D E R

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

IT IS ORDERED that:

1. Young's Commercial Transfer, Inc., is ordered to cease and desist from acting in violation of Section 3668 of the Public Utilities Code by assisting, suffering, or permitting Roberts Farms, Inc., or any other corporation or any other person, through the use of sale or oral lease agreements such as those described in the opinion above, or by any other means or device, to obtain transportation for any property between points within this State at rates less than the minimum established or approved by this Commission.

2. Radial Highway Common Carrier Permit No. 54-4161 issued to Young's Commercial Transfer, Inc., 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 it 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.

3. Young's Commercial Transfer, Inc. 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 has been suspended by the Commission for a period of five days; that within five days after such posting Young's Commercial Transfer, Inc. shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

4. Young's Commercial Transfer, Inc., shall examine its records for the period from July 1, 1959, to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

5. Within ninety days after the effective date of this decision, Young's Commercial Transfer, Inc., shall complete the examination of its records hereinabove required by paragraph 4 and file with the Commission a report setting forth all undercharges found pursuant to that examination.

6. Young's Commercial Transfer, Inc., 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 4 of this order, and to notify the Commission in writing upon the consummation of such collections.

7. In the event charges to be collected as provided in paragraph 6 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order, Young's Commercial Transfer, Inc., 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 Young's Commercial

Transfer, Inc., and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 11th day of April, 1961.

Carl D. ...

President

...

...

George W. ...

Fredrick B. ...

Commissioners