

Decision No. 61820

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,
rates and practices of EMMITT H.
EANNAE, doing business as EMMITT
& DARRELL EANNAE TRUCKING SERVICE.

Case No. 7014

Sam Shaw, for respondent.

William C. Bricca and Frank S. O'Leary,
for the Commission staff.

O P I N I O N

On November 15, 1960, the Commission instituted its order of investigation into the operations, rates and practices of Emmitt H. Hannah, doing business as Emmitt & Darrell Hannah Trucking Service, who is engaged in the business of transporting property over the public highways as a radial highway common carrier and as a highway contract carrier. Pursuant to said order, public hearing was held before Examiner Martin J. Porter, in San Francisco on February 28, 1961.

The purpose of the investigation is to determine whether respondent violated Section 3664 of the Public Utilities Code by charging, demanding or receiving a lesser compensation for the transportation of property than the applicable minimum rates set forth in Minimum Rate Tariffs Nos. 2, 7 and 10.

The staff presented evidence of carrier's operations from February 1959 through May of 1960, which was the review period selected.

In all, 350 freight bills and supporting documents were examined. The respondent had been directed by Commission letter,

Exhibit No. 3, to review his records to ascertain if there were any undercharges, as an examination of his records by the Commission staff had revealed certain undercharges on shipments. These shipments were identified to the respondent in Exhibit No. 3. The review period was directed to be from February 1, 1959 to December 14, 1959.

Exhibit No. 5, a letter from the respondent, stated that the review had been conducted, and no undercharged shipments were discovered.

Twenty-five shipments were selected by the staff, twenty-one of which shipments were performed during the period the respondent had allegedly reviewed his records. All twenty-five shipments were similar to the type of shipments that had been identified in Exhibit No. 3 as violations of minimum rates, rules and regulations established by the Commission.

A rating of these shipments disclosed undercharges in each instance. The basic causes for the undercharges were improper mixture of shipments, assessment of less than the prescribed minimum rate and affording the benefits of split pickup charges to shipments for which such basis was not authorized.

It was stipulated that the carrier had been served with the minimum rate tariffs, distance table and modifications and supplements thereto, applicable to the transportation herein involved.

Respondent did not present evidence upon his behalf.

Findings and Conclusions

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 and as a highway contract carrier.

2. That respondent violated Section 3664 of the Public Utilities Code by assessing and collecting less than the applicable charges established by this Commission in Minimum Rate Tariffs Nos. 2, 7 and 10, which resulted in undercharges as follows:

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charge Assessed or Collected by Respondent</u>	<u>Correct Charge</u>	<u>Undercharge</u>
40733)	5/22/59	\$130.00	\$165.00	
40435)	5/31/59	130.00	165.00	\$ 70.00
39099	8/ 7/59	114.40	145.20	30.80
35427	9/12/59	136.40	145.20	8.80
40591	3/10/59	144.20	163.20	19.00
35527	5/20/59	144.00	163.20	19.00
36682	11/24/59	144.00	163.20	19.00
40424	5/20/59	144.00	158.40	14.40
36533	11/16/59	144.00	158.40	14.40
40561	2/20/59	79.09	176.30	97.21
35595	9/21/59	71.65	82.16	10.52
40383	4/20/59	91.78	148.80	57.02
40414	5/14/59	93.53	148.94	55.41
40201)	6/ 1/59	91.69	146.00	
40204)	6/ 3/59	81.24	133.00	106.07
40573	2/28/59	92.51	150.20	57.69
35152)	8/20/59	91.50	146.84	
35226)	8/25/59	80.75	128.70	103.29
41192	1/ 8/60	72.33	136.00	63.67
39927)	6/22/59	120.00	135.00	
39928)	6/24/59	120.00	135.00	
39929)	6/25/59	100.00	112.50	42.50
36045)	3/16/60	48.10	50.56	
36046)	3/17/60	69.50	75.84	
36047)	3/18/60	71.15	75.84	13.49
Undercharges for these shipments amount to				\$802.27

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. 54-2687 and Highway Contract Carrier Permit No. 54-4706 issued to Emmitt H. Hammah 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 Emmitt H. Hannah 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 highway contract 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 respondent shall examine his records for the period from January 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. 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 file with 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 respondent and the effective date of this order shall be twenty days after the completion of such service upon the respondent.

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

[Signature]
President

[Signature]

[Signature]

George H. Trotter

Fredrick B. Holcomb
Commissioners