

Decision No. ~~61889~~**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of JOHN SHUBIN,
JR., doing business as LIVESTOCK
TRANSPORT COMPANY.

Case No. 6265

Ivan McWhinney, of Bailey and McWhinney,
for John Shubin, Jr., respondent.
Robert Barnes, for Line Drivers Union,
Local 224, interested party.
Elmer J. Sjostrom, for the Commission
staff.

O P I N I O N

On September 1, 1960, this Commission issued its order reopening the proceeding herein. In this order the Commission stated that by Decision No. 59347 herein, which became effective on December 31, 1959, Livestock Transport Company, a corporation, hereinafter called the respondent, was ordered to audit its records and report to the Commission any undercharges other than those mentioned in said decision, and take the necessary action to collect such additional undercharges; and that it appeared that respondent may have failed to report additional undercharges and to take action to collect such undercharges as ordered by said decision. The Commission ordered that Case No. 6265 be reopened for the purpose of determining:

1. Whether respondent has failed to comply with the Commission's decision in Case No. 6265.
2. Whether any or all of respondent's operating authority should be canceled, revoked or suspended.
3. Whether any other order or orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

A copy of Decision No. 59007 and a copy of the order reopening the proceeding were personally served upon respondent.

Public hearing in this matter was held before Examiner Wilson E. Cline at Los Angeles on February 6, 1961. At the close of the hearing the matter was taken under submission.

Evidence Submitted by the Commission Staff

A Commission staff witness testified that he checked 1,000 freight bills of respondent issued during the period October, 1958 through December, 1959. Twenty-four of these bills are analyzed in Exhibit No. 8 which was introduced into evidence through the testimony of a Commission staff rate expert.

Exhibit No. 8 shows that respondent assessed and collected charges less than the applicable charges prescribed in Livestock Transport Local Tariff No. 1, Cal. P.U.C. No. 6, issued by T.A.L. Loretz, Agent, which resulted in undercharges as follows:

<u>Respondent's Freight Bill No.</u>	<u>Date of Freight Bill</u>	<u>Amount of Undercharges</u>
581	12/ 7/58	\$7.58
1278	1/23/59	7.96
1558	2/24/59	7.26
1711	3/15/59	8.20
2181	4/15/59	7.52
2529	5/ 4/59	8.14
3552	6/15/59	8.06
3810	7/28/59	7.04
772	1/19/59	7.73
1551	2/17/59	8.33
3028	7/28/59	8.05
3860	8/ 3/59	8.15
374	12/10/58	7.98
761	1/ 8/59	7.14
295	1/24/59	8.70
1455	2/11/59	8.02
1666	3/25/59	7.08
2136	4/14/59	8.14
3108	6/10/59	7.22
3560	6/28/59	8.38
3654	7/ 9/59	7.21
3758	7/11/59	6.92
4471	9/ 7/59	7.88
5112	10/16/59	8.10
Total		\$186.79

Evidence of Respondent

The President of respondent testified that respondent had employed a public accountant to audit its freight bills for the period of October 1, 1958 to December 31, 1959. By letter dated March 29, 1960, respondent advised the Commission of the results of such audit, and stated that it was attempting to collect from its customers the undercharges revealed by such audit as well as those listed in the findings in Decision No. 59347 in this proceeding.

The first notice that respondent had of the other undercharges during this period was when the order reopening the proceeding herein was served upon respondent. Respondent is presently trying to collect the undercharges set forth in Exhibit No. 8.

Respondent's President testified that the mileages on which the freight charges have been based are those reported by the drivers of respondent's trucks. The common practice of the trucking industry is to rely on mileages reported by the drivers. Respondent is presently assessing freight charges on the corrected mileages disclosed by Exhibit No. 8. The Business Representative of Line Drivers Union, who testified as a witness for respondent, stated that under the employment agreement a truck driver could not be discharged for reporting incorrect mileages unless it could be proved that he had done so intentionally. For an unintentional or excusable error a driver would be issued a warning.

Exhibit No. 10 shows that for the nine months ending September 30, 1959, respondent had freight revenue of \$452,260, operating expenses of \$383,247 and a net operating profit of \$69,013. For the nine months ending September 30, 1960, respondent's freight revenue amounted to \$388,387, the operating expenses were \$389,141 and it incurred a net loss of \$754. Respondent's President testified that respondent lost a considerable amount of revenue as a result of the order suspending its operative rights. Some of

its shippers who had to have other carriers handle their shipments during the suspension period did not return and others who formerly gave respondent all their shipments now give it only a part of their shipments. The witness stated that any further suspension of respondent's operating rights will injure respondent a great deal.

This witness also testified that one of the important livestock truckers, Garibaldi Brothers, has recently sold its trucks and trailers and has gone out of business. In the event of the further suspension of respondent's operating rights there might be occasions on which the shipping public would have difficulty engaging a livestock trucker to handle shipments.

Findings and Conclusions

Upon the evidence of record, the Commission finds and concludes:

That respondent assessed and collected charges less than the applicable minimum charges prescribed in Livestock Transport Local Tariff No. 1, Cal. P.U.C. No. 6, which resulted in undercharges in the total amount of \$186.79, as set forth above in this opinion.

In view of the fact that the undercharges found in this decision amount to only \$186.79, and the evidence (1) that respondent has taken reasonable steps to comply with Decision No. 59347 herein, and (2) that respondent already has suffered substantial financial losses as a result of the previous order suspending its operative rights, the Commission will order respondent to collect the undercharges but will not further suspend its operative rights.

O R D E R

Public hearing having been held and the Commission basing its decision on the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED that:

1. Respondent, Livestock Transport Company, a corporation, is hereby directed to take such action, including legal action, as may be necessary to collect the amounts of undercharges and charges for free loads set forth in the preceding opinion and in Decision No. 59347, herein, issued on December 8, 1959, and to notify the Commission in writing upon the consummation of such collection.

2. In the event charges to be collected as provided in paragraph 1 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 and charges for free loads 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 Livestock Transport Company,

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

Dated at San Francisco, California, this 25th day of April, 1961.

Carroll O. Page
President

Walter P. Mitchell

S. J. Taylor

George T. Grover

Fredrick K. Holloff
Commissioners