

**ORIGINAL**

Decision No. 62207

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates, and practices of LEONARD  
PAYNE.

Case No. 7065

Leonard Payne, for respondent.

Sheldon Rosenthal, for the Commission  
staff.

O P I N I O N

On February 21, 1961, the Commission instituted its investigation into the operations, rates and practices of Leonard Payne, who is engaged in the business of transporting property over the public highways as a radial highway common carrier. Pursuant to the order instituting investigation, public hearing was held before Examiner Martin J. Porter on May 23, 1961, in Bakersfield.

Purpose of Investigation

The purpose of this investigation is to determine whether respondent has violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting a rate less than the minimum established under Minimum Rate Tariff No. 2; and whether respondent has been transporting property not authorized by his permit.

Facts

The Field Section of the Commission's staff presented evidence that 128 shipments were examined for the period of September 1959 through January 1960; twenty-six shipments were

selected as representative; documents and supplemental information (information obtained by observation or interview of the respondent) for rating purposes were forwarded to the Rate Analysis Unit.

A rating of twenty-one of these shipments was only possible by the use of the supplemental information furnished by the Field Section; the rating disclosed undercharges in each instance. Four of these shipments could not be rated due to the failure of the respondent to have the necessary information on his shipping documents. The respondent was not able to furnish such necessary information to the Field Section.

The evidence also shows that some shipments were of commodities not authorized to be transported by the respondent.

The evidence offered by the respondent was that he was engaged both in driving a truck and tending to the paper work during the period the violations occurred. There was no denial as to the failure to have sufficient information for rating purposes on the shipping documents as required by Minimum Rate Tariff No. 2. There was no denial of the correctness of the Rate Analysis Unit's rating and the undercharges disclosed. As for the shipments of commodities not authorized to be transported under his permit respondent testified he thought he had the authority to transport these commodities.

It was stipulated that the respondent has Radial Highway Common Carrier Permit No. 15-5490, and that respondent had been served with the tariff and distance table, and modifications and supplements thereto, applicable to the transportation herein involved.

#### 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 pursuant to Radial Highway Common Carrier Permit No. 15-5490 issued by this Commission.

2. That 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 Exhibit No. 2):

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charge Assessed or Collected by Respondent</u>	<u>Correct Charge</u>	<u>Undercharge</u>
7501	9/ 6/59	\$123.32	\$178.76	\$ 55.44
0901 (0903)	9/10/59	160.50	226.61	66.11
0905	9/18/59	115.52	178.09	62.57
0906	9/24/59	94.50	128.13	33.63
0909	10/ 3/59	101.92	117.60	15.68
0911	10/ 6/59	126.91	187.20	60.29
0914	10/19/59	84.12	114.00	29.88
9216	10/23/59	74.18	93.20	19.02
9220	10/24/59	130.44	153.94	23.50
7508	10/30/59	78.84	81.66	2.82
7509	11/ 2/59	77.84	80.62	2.78
0919	11/ 4/59	123.14	203.68	80.54
0918	11/ 6/59	131.32	210.82	79.50
9393	11/12/59	63.64	114.00	50.36
0921	11/17/59	121.20	151.20	30.00
0924	12/ 2/59	125.66	144.00	18.34
0926	12/ 3/59	60.15	75.16	15.01
9221	12/ 4/59	57.93	93.20	35.27
0939	1/12/60	67.85	86.63	18.78
9398	1/15/60	141.50	208.10	66.60
9233	1/18/60	209.00	302.50	<u>93.50</u>

Undercharges for these shipments amounted to \$859.62

3. That respondent has transported property not authorized by his permit.

4. That in view of the evidence of record, we find the respondent violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting a compensation less than the prescribed minimum established by this Commission in Minimum Rate Tariff No. 2.

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. 15-5490 issued to Leonard Payne 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 Leonard Payne 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 September 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 institute legal proceedings to effect collection and 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.

7. That respondent shall cease and desist from transporting property not authorized by his permit.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Leonard Payne 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 27<sup>th</sup> day of JUNE, 1961.

*Charles A. Payne*  
 President

*W. D. ...*

*S. ...*

*George H. ...*

*Frederick B. Haloboff*  
 Commissioners