

Decision No. 62490

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 PETER PAVICH,
doing business as MARTIAN TRANS-
PORTATION COMPANY.

Case No. 7084

Peter Pavich, in propria persona.
Elmer J. Sjostrom, for the Commission staff.

O P I N I O N

This proceeding was instituted on the Commission's own motion by order dated March 28, 1961, which was duly served on respondent on March 29, 1961. The purpose of the investigation was to determine whether Peter Pavich has operated as a highway common carrier between Fresno, on the one hand, and Avenal, Bakersfield, Chowchilla, Corcoran, Delano, Dinuba, Hanford, Lemoore, Madera, Merced, Modesto, Porterville, Sanger, Tulare, Turlock and Visalia, on the other hand, without first having obtained a certificate of public convenience and necessity as required by Section 1063 of the Public Utilities Code. This Commission order stated three additional issues to be determined.

These are:

1. Whether respondent may have violated Section 3667 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 2; and
2. Whether he may have violated Section 3667 of the Public Utilities Code by refunding or remitting a portion of the rates specified in said tariff for the transportation of property; and

3. Whether he may have violated Section 3942 of the Public Utilities Code by transporting property for compensation over public highways within the City of Fresno, in the State of California, without having first obtained from the Commission a permit authorizing such operation.

Public hearing was held in Fresno on June 27, 1961, before Examiner Rowe. Evidence both oral and documentary was adduced and the matter was duly submitted for decision. Three members of the Commission staff testified that after study of the respondent's books and records and other matters that he had in fact and regularly, during the months of September, October, November and December, 1960, been operating as a highway common carrier between the points above indicated; that respondent had, during the months of September, October and November, on numerous occasions violated Section 3667 of the Public Utilities Code by charging, demanding, collecting and receiving a lesser compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 2; that during said three months respondent had also on numerous occasions violated Section 3667 of the Public Utilities Code by refunding and remitting a portion of the rates specified in said Minimum Rate Tariff No. 2; and that respondent has violated Section 3942 of the Public Utilities Code on numerous occasions by transporting property for compensation over the public streets and highways within the City of Fresno, California serving points within said city without having first obtained from the Commission an appropriate authority to conduct such operations.

Respondent, who has a highway contract carrier permit, appeared personally on June 27, 1961, after being properly served with notice of this hearing and stipulated that he had been duly served with all requisite and applicable minimum rate tariffs and all amendments and supplements thereof.

Respondent testified in his own behalf. He admitted that he operated as a highway common carrier between the above-named points without any authority from this Commission but sought to justify his actions which he conceded included soliciting and advertising as well as actively transporting freight for the public, consisting of many shippers, over regular routes and between said fixed points. In justification he stated that his actions were the result of legal advice from his attorney, whom he named, to the effect that unless and until he had operated as a public carrier for sufficient time serving enough shippers so that his business could be called substantial he could not expect to successfully apply for such rights from this Commission. He further testified that he had now filed his application for a certificate of public convenience and necessity to serve between said points.

He attempted to justify the violations shown by the staff, of Section 3942 of the Public Utilities Code, that is transporting property for compensation over public highways within the City of Fresno, California, by the assertion that on May 22, 1961, he had applied to this Commission for a City Carriers' Permit but conceded, and the Commission records reveal, that no such permit has ever been issued to him.

He offered no plausible explanation or statement in response to the staff's testimony that he had violated Section 3667 of the Public Utilities Code.

From the evidence of record the Commission finds that Peter Pavich has been and is operating as a highway common carrier between the fixed points of Fresno, on the one hand, and Avenal, Bakersfield, Chowchilla, Corcoran, Delano, Dinuba, Hanford, Lemoore, Madera, Merced, Modesto, Porterville, Sanger, Tulare, Turlock and Visalia, all without any authority therefor first having been issued to him by

this Commission as required by Section 1063 of the Public Utilities Code. It is further found that Peter Pavich has violated Section 3667 of said code by charging shippers less than the said minimum rates established by Minimum Rate Tariff No. 2 as amended and supplemented and by refunding and remitting portions of the rates specified in the Commission's Minimum Rate Tariff No. 2 as amended and supplemented for the transportation of property, and has violated Section 3942 of said Code by transporting property for compensation over public highways within the City of Fresno, all without having obtained from this Commission a permit authorizing such operation. The undercharges and refunds by which respondent has herein been found to have violated said Section 3667 consisting of unlawful rebates and undercharges granted during the months of September, October and November, 1960, to Hot Point Appliance Company are found to be in the aggregate amount of \$305.40; to McMahan's Furniture Company in the aggregate amount of \$311.66; to P. A. L. Distributors in the sum of \$1.54; to Germain's Seed Company in the amount of \$15.66, and to Seed Research Specialty in the sum of \$16.16. Each and every said rebate and undercharge is found to be a willful and intentional violation of said Section 3667 and of said Minimum Rate Tariff No. 2. The said undercharges and refunds are all found to have been made and granted by Peter Pavich while operating under the highway contract carrier permit issued by this Commission to Peter Pavich and William R. Dobrowski, doing business as Martiam Transportation Company, being Permit No. 10-9081, dated August 24, 1960.

From a consideration of the above findings of fact the Commission concludes that respondent Peter Pavich should be ordered to cease and desist from carrying on operations as a highway common carrier and from transporting property for compensation over the

public highways within the City of Fresno, California, and that Highway Contract Carrier Permit No. 10-9081 should be canceled and revoked.

O R D E R

Public hearing having been held and based upon the above findings and conclusions of law,

IT IS ORDERED:

1. That Peter Pavich, his managing officers and employees are ordered to cease and desist from operating as a highway common carrier between Fresno, on the one hand, and Avenal, Bakersfield, Chowchilla, Corcoran, Delano, Dinuba, Hanford, Lemoore, Madera, Merced, Modesto, Porterville, Sanger, Tulare, Turlock and Visalia, on the other hand, without first having obtained a certificate of public convenience and necessity as required by Section 1063 of the Public Utilities Code.

2. That Peter Pavich, his managing officers and employees are ordered to cease and desist from transporting property for compensation over public highways within the City of Fresno, California, without having first obtained from the Commission a permit authorizing him so to do.

3. That Highway Contract Carrier Permit No. 10-9081, issued and dated August 24, 1960 to Peter Pavich and William R. Dobrowski is hereby canceled and revoked.

The Secretary of the Commission is directed to cause personal service of this order upon Peter Pavich, and this order shall become effective twenty days after the completion of such service upon respondent.

Dated at San Francisco, California, this 29th
day of August, 1961.

Robert B. Rogers
President
John P. Mitchell
John F. Fox
George H. Brewer
Frederick B. Holschopf
Commissioners