

ORIGINAL

Decision No. 62632

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Case No. 7099

Lloyd Cannon, for respondent.
Sheldon Rosenthal, for the Commission staff.

O P I N I O N

On April 18, 1961, the Commission issued its order instituting investigation into the operations, rates, and practices of Lloyd Cannon for the purpose of determining:

1. Whether respondent, as a highway permit carrier, has violated Sections 3664 and 3667 of the Public Utilities Code by charging, demanding, collecting, or receiving a lesser compensation for the transportation of property, or for any service in connection therewith, than the applicable charges prescribed in Minimum Rate Tariff No. 2 and supplements thereto.

2. Whether respondent, as a highway permit carrier, has violated Section 3667 of the Public Utilities Code by remitting in any manner or by any device any portion of the rates or charges authorized by the Commission and has thus performed transportation of property at less than the minimum rates or charges established by the Commission.

Pursuant to the order of investigation a public hearing was held at Fresno before Examiner Martin J. Porter on June 20, 1961.

The Commission's staff presented evidence based on the period of August 15 through August 30, 1960, which was selected as representative of the carrier's operations. Twenty-four shipments were analyzed. This analysis showed that respondent in effect had hauled lumber at less than the minimum rates prescribed by this Commission in that, under the guise of payments to the shipper for night loading charges, he had remitted to the shipper the amount paid above an illegal flat rate per trip. There is no provision in Minimum Rate Tariff No. 2 for these alleged night loading charges.

The evidence shows that this practice of rebating to the shipper commenced July 15, 1959, by agreement between the carrier and the shipper.

Exhibit 3 also shows certain additional violations on individual occasions in that, wholly aside from the rebates later made, the charges originally assessed or collected were less than the lawful minimum.

It was stipulated that Lloyd Cannon holds Radial Highway Common Carrier Permit No. 10-7473 and that he had been duly served with Distance Table No. 4, Minimum Rate Tariff No. 2, and applicable supplements thereto. Respondent did not testify or offer any evidence.

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.

2. That respondent, by means of remitting to the shipper a portion of the rates and charges authorized by the Commission and

also by means of incorrectly assessing or collecting charges applicable to individual shipments, has collected and received a lesser compensation for the transportation of property than the applicable minimum rates or charges established by this Commission, with resulting undercharges, as shown in Exhibit No. 3, as follows:

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charges Assessed or Collected by Respondent</u>	<u>Correct Charge</u>
1199	8-16-60	\$ 86.96	\$ 91.54
2187	8-22-60	65.25	70.40
1673	8-22-60	62.25	70.40
1730	8-22-60	44.96	71.94
1675	8-24-60	46.89	64.60
2189	8-25-60	62.50	70.40
1416	8-14-60	197.86	202.40
1200	8-17-60	193.37	193.37
1669	8-17-60	160.97	173.60
2185	8-18-60	178.23	189.20
2186	8-19-60	164.56	189.20
1671	8-19-60	159.01	189.20
2013	8-20-60	216.19	207.18
2188	8-23-60	180.72	202.40
1674	8-24-60	195.51	197.51
1731	8-24-60	185.28	189.20
2226	8-24-60	188.85	189.20
1733	8-26-60	153.51	202.40
2190	8-26-60	164.96	171.60
1736	8-14-60	70.75	82.00
1734	8-28-60	87.87	92.50
1735	8-29-60	205.24	205.24
2229	8-31-60	198.14	198.14
2191	8-31-60	203.30	202.40
		<u>\$3,473.21</u>	<u>\$3,722.02</u>
Less Amount Rebated to Shipper		<u>773.21</u>	
		\$2,700.00	

Total undercharges for these shipments: \$1,022.02.

3. That 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 and upon the above findings and conclusions,
IT IS ORDERED:

1. That Radial Highway Common Carrier Permit No. 10-7473 issued to Lloyd Cannon is hereby suspended for ten 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 said suspension or directly or indirectly allow such equipment or facilities to be used to circumvent said suspension.

2. That Lloyd Cannon 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 said 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 ten days; and that within five days after such posting Lloyd Cannon shall file with this 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 July 15, 1959, to the present time for the purpose of ascertaining if any 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 disclosed by that examination.

5. That respondent shall 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 disclosed by the examination required by paragraph 3 of this order, and shall notify this 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 this 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 results 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; the effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 3rd day of October, 1961.

C. J. Fox President

George L. Hoover

Fredrick B. Halbachoff

Commissioners

Everett C. McKeage
Commissioner.....Peter E. Mitchell - being
necessarily absent, did not participate
in the disposition of this proceeding.