

*Original*

Decision No. 63029

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations, )  
rates, charges and practices of )  
GUS A. MELHAFF, doing business as )  
Melhaff Trucking Company. )

Case No. 7128

Bertram S. Silver, for respondent.  
Bernard Cummins, for the Commission staff.

O P I N I O N

On May 31, 1961, the Commission issued its order instituting investigation into the operations, rates and practices of Gus A. Melhaff, doing business as Melhaff Trucking Company for the purpose of determining whether respondent, as a highway permit carrier, has violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser sum for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 2 and supplements thereto.

Pursuant to the order of investigation a public hearing was held at San Francisco before Examiner Martin J. Porter on August 15, 1961 and September 25, 1961, on which latter date the matter was submitted.

The Commission staff presented evidence based upon a review period of July 30, 1960 through December 31, 1960. One hundred sixty freight bills were examined and thirty selected as being representative of the carrier's operations.

A rate analysis of these thirty shipments disclosed undercharges in each instance.

The primary causes of these undercharges were improper application of rail rate and application of carload rates to less-than-carload shipments improperly consolidated.

The respondent presented evidence which mainly dealt with the matter of mitigation, the number of his employees, and his financial condition.

Earlier this year the Commission was authorized to substitute the penalty of a fine, in certain cases, as an alternative to suspension or revocation of operating rights. (Cal. Stats. 1961, c. 1444, amending Secs. 1070, 3774, and 4112 of Public Utilities Code.) The Commission now has under consideration the formulation of a general policy with respect to the exercise of this authority; it is appropriate meanwhile to give consideration to the imposition of fines in individual cases where such action appears warranted. Although the new statute was not yet effective at the commencement of the hearings herein, it became effective before the case was finally submitted. We find that, in place of a mandatory suspension of operating rights, respondent should be given the alternative of paying a fine of \$3,000.00. In making this finding we have considered the seriousness of the violations herein found to have taken place, the amount of the undercharges involved, the size and nature of respondent's operations, and other factors. We recognize that in future hearings there probably will be more complete development of facts bearing on the imposition of fines; to avoid the possibility of prejudice to respondent in this case, he will be given the alternative of a five-day suspension of operating rights, which is the penalty that would have been imposed had the new legislation not been enacted.

It was stipulated that respondent holds Radial Highway Common Carrier Permit No. 34-3258, Highway Contract Carrier Permit No. 34-3697, City Carrier Permit No. 34-3738 and a Highway Common Carrier Certificate. The Highway Common Carrier Certificate was secured after the date of the shipments involved in this case.

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 has permits authorizing him to transport property as a city carrier, a highway contract carrier, and a radial highway common carrier.

3. That respondent has been issued a certificate of public convenience and necessity as a highway common carrier.

4. 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:

<u>Freight Bill No:</u>	<u>Date</u>	<u>Charges Assessed or Collected by Respondent</u>	<u>Correct Charge</u>
6438	7-30-60	\$ 51.48	\$ 69.30
6602	8-4-60	191.57	266.23
6531	8-4-60	191.57	266.23
6539	8-4-60	191.57	266.23
6568	8-5-60	191.57	267.23
6687	8-13-60	191.57	266.23
6688	8-13-60	191.57	266.23
6911	8-31-60	212.85	271.93
6910	8-31-60	212.85	271.93
6884	8-31-60	212.85	271.93
6912	8-30-60	212.85	271.93
6605	8-11-60	167.50	315.36
6636	8-13-60	167.50	254.68
6818	8-27-60	167.50	227.90
6858	8-27-60	167.50	319.74
7023	9-10-60	167.50	328.03
7229	6-30-60	167.50	314.24
6594	8-6-60	175.00	213.75

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charges Assessed or Collected by Respondent</u>	<u>Correct Charge</u>
6696	8-13-60	\$ 150.00	\$ 183.45
6698	8-18-60	85.00	174.70
6697	8-18-60	85.00	174.70
7579	12-10-60	120.00	160.00
6732	8-30-60	164.88	228.77
6493	7-30-60	37.24	48.88
6806	8-27-60	39.20	51.45
7022	9-17-60	39.20	51.45
6908	9-1-60	45.46	94.08
7552	11-25-60	32.24	54.24
7575	12-10-60	77.75	120.12
7599	12-20-60	95.17	150.15

(Undercharges for these shipments amounted to \$2017.65.)

5. That respondent violated Sections 3664, 3667 and 3737 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.

6. That respondent's permit and certificate should be suspended for a period of five consecutive days, or, in the alternative, he should be required to pay a fine of \$3,000.00, and that he should be directed to collect the undercharges herein found, together with any additional undercharges found after the examination required by the ensuing order.

#### O R D E R

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED that:

1. If, on or before the fortieth day after personal service of this order upon respondent, respondent has not paid the fine referred to in Paragraph 3 of this order, then Radial Highway Common Carrier Permit No. 34-3258, Highway Contract Carrier Permit No. 34-3697, City Carrier Permit No. 34-3738, and the Highway Common Carrier Certificate issued to Gus A. Melhaff shall be suspended

for five consecutive days, starting at 12:01 a.m. on the second Monday following the fortieth day after such personal service.

2. In the event of such suspension, respondent shall not lease the equipment or other facilities used in operations under said permits and certificate for the period of the suspension, or directly or indirectly allow such equipment or facilities to be used to circumvent the suspension; respondent 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, city carrier and contract carrier permits and his highway common carrier certificate have been suspended by the Commission for a period of five days; within five days after such posting he shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

3. As an alternative to the suspension of operating rights imposed by Paragraph 1 of this order, respondent may pay a fine of \$3,000.00 to this Commission on or before the fortieth day after personal service of this order upon respondent.

4. Respondent shall examine his records for the period from July 30, 1960, to the present time, for the purpose of ascertaining if any undercharges have occurred other than those mentioned in Finding No. 4 of this decision.

5. Within ninety days after the effective date of this decision, respondent shall complete the examination of his records hereinabove required by Ordering Paragraph 4 and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.

6. 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 found after the examination required by Paragraph 4 of this order, and shall notify the Commission in writing upon the consummation of such collections.

7. In the event charges to be collected as provided in Paragraph 6 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 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.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Gus A. Melhaff. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 9<sup>th</sup> day of JANUARY, 1962.

*Charles L. Page*  
President  
*John E. ...*  
*...*  
*George J. Grover*  
*Fredrick B. Halbach*  
Commissioners