

ORIGINAL

Decision No. 63155

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,
rates, charges and practices of
WALTER E. COMBS.

Case No. 7167

Walter E. Combs, respondent, in propria persona.
Bernard F. Cummins, for the Commission staff.

O P I N I O N

This proceeding, instituted by the Commission on its own motion, pertains to the operations, rates and practices of Walter E. Combs, operating as a radial highway common carrier pursuant to Permit No. 19-52785, issued to him on October 20, 1959, which permit at all times hereinafter mentioned has been and now is in full force and effect.

A public hearing was held in Los Angeles on November 14, 1961, before Examiner Robert D. De Wolf, to determine whether or not said Walter E. Combs, hereinafter referred to as respondent, violated, as charged in the order instituting investigation, Sections 3664, 3667 and 3737 of the Public Utilities Code of this State, by charging, demanding, collecting or receiving lesser compensation for the transportation of lumber than the applicable charges prescribed by Minimum Rate Tariff No. 2 and by failing to adhere to the provisions of said tariff, all as more specifically set forth in the said order instituting investigation.

Evidence Submitted by the Commission Staff

A Commission staff witness testified that he checked the freight bills of respondent, issued from July 29 to November 29, 1960, and discovered seventeen shipments with undercharges. Copies of these freight bills are set forth in Exhibit No. 3.

Exhibit No. 5, which was introduced into evidence through the testimony of a Commission staff rate expert, shows that respondent assessed and collected charges less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 2, which resulted in undercharges as follows:

<u>Respondent's Freight Bill Number</u>	<u>Date</u>	<u>Amount of Undercharges</u>
7746	July 29, 1960	\$ 9.42
7747	August 2, 1960	34.43
7680	August 8, 1960	62.42
7684	August 24, 1960	31.51
7694	September 18, 1960	55.62
2051	October 6, 1960	40.08
2052	October 10, 1960	77.00
2053	October 13, 1960	65.95
2055	October 18, 1960	70.83
2056	October 21, 1960	65.99
7501	October 27, 1960	36.43
2060	October 31, 1960	87.37
2061	November 3, 1960	112.43
2073	December 3, 1960	41.70
2068	November 21, 1960	16.25
2069	November 23, 1960	79.59
2070	November 29, 1960	64.21
		<u>\$ 951.23</u>

Evidence of Respondent

Respondent conceded that certain violations had occurred, and, by way of extenuation and mitigation, testified that he had one truck and trailer, and no employees; that he and his wife did the bookkeeping and operated the business at home; that he was not a rate expert, and that he had incorrectly considered

the rules regarding off-spur charges and multiple-lot shipments, and he contended that these violations were not willful. Respondent testified that his hauling assignments in the lumber industry have been increasingly difficult to obtain on account of competition by other carriers for the freight, and that his truck is not now moving and he expects he will lose it for failure to meet the monthly payments on it.

Findings and Conclusions

Upon the evidence of record the Commission finds:

1. That all applicable minimum rate orders were served upon respondent prior to the undercharges above set forth.
2. That respondent assessed and collected charges less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 2 which resulted in undercharges in the total amount of \$951.23, as above set forth.
3. That in the performance of various transportation services hereinabove set forth and as more particularly appearing in Exhibits Nos. 3, 4 and 5 of the record herein, respondent has violated, or failed to comply with, the provisions of Minimum Rate Tariff No. 2.

The Commission having found facts as hereinabove set forth and concluding that respondent Walter E. Combs has violated Sections 3664, 3667 and 3737 of the Public Utilities Code and the provisions and requirements of Minimum Rate Tariff No. 2 by charging, demanding, collecting or receiving a lesser compensation

for the transportation of property as a radial highway common carrier than the minimum charges prescribed in the Commission's Minimum Rate Tariff No. 2, makes its order as follows:

O R D E R

A 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 shall cease and desist from all future violations of the Commission's Minimum Rate Tariff No. 2.
- (2) All operating authority of Walter E. Combs, issued to him by this Commission, be and it is suspended for a period of two consecutive days commencing at 12:01 a.m. on the second Monday after the effective date of this order; and he shall not lease the equipment used in the operation under this permit for the period of the suspension or directly or indirectly allow such equipment to be used to circumvent the suspension.
- (3) Respondent shall post at his place of business 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 two days; and 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.

(4) Respondent shall examine his records for the period July 1, 1960, to the effective date of this order, for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

(5) Respondent is hereby directed to take such action, including legal action, as may be necessary to collect undercharges, both those set forth in the foregoing opinion and those, if any, found during the examination ordered by paragraph (4) of this order.

(6) Within ninety days after the effective date of this order, respondent shall complete the examination of his records ordered by paragraph (4) and file with the Commission a report setting forth all undercharges found pursuant to that examination.

(7) 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 submit to 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 on respondent, and this order shall be effective twenty days after the completion of such service.

Dated at San Francisco, California, this 23rd day of JANUARY, 1962.

Robert C. Page
President
W. L. Mitchell
E. J. Fox
George L. Grover

Commissioners

Commissioner Frederick B. Halaboff being necessarily absent, did not participate in the disposition of this proceeding.