

ORIGINAL

Decision No. 63449

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of D. L. DALE

Case No. 7023

D. L. Dale, respondent, in propria persona.

Elmer Sjostrom, for the Commission staff.

O P I N I O N

On November 22, 1960, the Commission instituted this investigation into the operations, rates and practices of D. L. Dale for the purpose of determining (among other things) whether respondent has 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 the Commission's Minimum Rate Tariffs Nos. 2 and 8, and whether respondent has violated Section 3737 of the Public Utilities Code by issuing documents that fail to comply with the requirements of said minimum rate tariffs.

A public hearing was held before Examiner Rowe on March 2, 1961, at which time evidence was adduced and the matter was submitted for decision.

From the evidence it appears, and the Commission finds, that respondent D. L. Dale has been operating under Radial Highway Common Carrier Permit No. 33-1608 and Highway Contract Carrier Permit No. 33-1609, issued by this Commission; that he has been served with the Commission's Minimum Rate Tariffs Nos. 2 and 8 and with all

pertinent supplements and amendments thereto; that he has transported the freight indicated by the following numbered freight bills; and that he has failed to collect the minimum lawful charge for said transportation, with resulting undercharges as follows:

<u>Freight Bill No.</u>	<u>Undercharges</u>
8222	\$ 2.68
8837	36.20
8835	13.13
8560	30.87
8507	40.11
8505	40.11
9912	<u>6.75</u>
Total	\$169.85

In mitigation of the violations herein found, and which respondent admitted, he testified that he had never intentionally violated the provisions of the Commission's minimum rate tariffs, that Freight Bills Nos. 8835 and 8837 represented charges which the shipper told him had been correctly rated, and that subsequent to investigation herein by the Commission staff, respondent made a diligent effort to comply with all the provisions of Minimum Rate Tariffs Nos. 2 and 8. A staff witness testified that there has been an improvement in the correctness of respondent's charges.

The evidence shows, and respondent admitted, that he had been warned about previous violations of Minimum Rate Tariffs Nos. 2 and 8 at an admonishment conference on March 19, 1959 by a member of the Transportation Division of the Commission staff; that these violations had been pointed out and explained to him; and that he had received such warning and admonishment in written form. Despite this warning and admonishment, respondent has failed to observe said minimum rate tariffs.

The Commission finds that the above listed undercharges constitute violations of Section 3667 of the Public Utilities Code. We also find that, because of said violations, respondent's radial highway common carrier permit and highway contract carrier permit should be suspended for a period of five consecutive days, or, in the alternative, he should be required to pay a fine of \$500.00.

Other asserted violations covered by the investigatory order involve tariff provisions being considered in other pending proceedings. Under the circumstances, the investigation herein is discontinued as to such matters.

O R D E R

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. 33-1608 and Highway Contract Carrier Permit No. 33-1609 issued to D. L. Dale 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 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 permit and highway contract carrier permit 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 \$500.00 to this Commission on or before the fortieth day after personal service of this order upon respondent.

4. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth in the preceding opinion, and shall notify the Commission in writing upon the consummation of such collections.

5. In the event undercharges to be collected as provided by Paragraph 4 of this order, or any part of said undercharges, 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 undercharges and the result of such, until such undercharges 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 D. L. Dale. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 20th day of MARCH, 1962.

Ernest W. Page

President

John E. ...

George T. Hoover

Fredrick B. ...

Commissioners

C. Lyn Fox
Commissioner being
necessarily absent, did not participate
in the disposition of this proceeding.