

ORIGINAL

Decision No. 63443

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of JAY B. BOOTH, dba BOOTH TRANSPORTATION.

Case No. 7235

Jay B. Booth, in propria persona.
Walter A. Linstedt, 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 Jay B. Booth, operating as a petroleum irregular route carrier under Decision No. 44861, dated October 3, 1950, as a radial highway common carrier pursuant to permit No. 19-32092, and as a city carrier pursuant to permit No. 19-41709, issued to him on July 25, 1950.

A public hearing was held in Los Angeles on January 23, 1962, before Examiner Robert D. DeWolf, to determine whether or not said Jay B. Booth, 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 property than the applicable charges prescribed by Minimum Rate Tariff No. 2 and by failing to adhere to the provisions and conditions set forth in

Items 85 and 170 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 300 freight bills of respondent, issued from October 1960 to March 1961, and discovered twenty shipments with undercharges. Copies of these freight bills are set forth in Exhibit No. 1.

Exhibit No. 2, 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>
2476	September 30, 1960	\$ 51.05
2641	October 25, 1960	54.79
2810	November 22, 1960	50.46
2920	December 8, 1960	70.73
3053	December 30, 1960	68.10
3120	January 10, 1961	96.78
3121	January 12, 1961	69.70
3164	January 19, 1961	127.41
4833	January 26, 1961	130.09
3251	February 1, 1961	56.85
3346	February 20, 1961	66.82
3478	March 8, 1961	27.39
3479	March 10, 1961	22.05
3488	March 14, 1961	138.94
2488	October 1, 1960	41.78
2700	November 6, 1960	97.94
2778	November 16, 1960	88.36
2777	November 16, 1960	67.65
2932	December 8, 1960	57.50
3064	December 30, 1960	38.82
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		\$1,423.21

Evidence of Respondent

Respondent stated that he has corrected his rate calculation procedures, has set up methods to avoid errors in the future, and has collected all undercharges on shipments set forth in the order instituting investigation.

Respondent conceded that certain violations had occurred, and, by way of extenuation and mitigation, stated that he had incorrectly considered the rules regarding off-spur charges and multiple-lot shipments, and other errors were made in rate calculations, but he contended that these violations were not willful.

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 \$1,423.21, as above set forth.
3. That in the performance of various transportation services hereinabove set forth and as more particularly appearing in Exhibits Nos. 1 and 2 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 Jay B. Booth 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 permit 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

Based upon the evidence of record in this matter,
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. 19-32092 and City Carrier Permit No. 19-41709 issued to Jay B. Booth, doing business as Booth Transportation, 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 city 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 \$1,500.00 to this Commission on or before the fortieth day after personal service of this order upon respondent.

4. Jay B. Booth, doing business as Booth Transportation, shall examine his records for the period from October 1, 1960, to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

5. Within ninety days after the effective date of this decision, Jay B. Booth, doing business as Booth Transportation, shall complete the examination of his records required by paragraph 4, and file with the Commission a report setting forth all undercharges found pursuant to that examination.

6. Jay B. Booth, doing business as Booth Transportation, is hereby directed to take such 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 to 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, Jay B. Booth, doing business as Booth Transportation, 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 upon Jay B. Booth, doing business as Booth Transportation, and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 21th day of MARCH, 1962.

Quentin T. B. [Signature]

President

[Signature]

George J. Grover

[Signature]

Frederic B. [Signature]

Commissioners

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