

ORIGINAL

Decision No. 63500

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations, rates))
and practices of WILLIAM FONTES.)

Case No. 7171

A. R. Kerstetter, for respondent.

William C. Ericca, for the Commission
staff.

O P I N I O N

On August 15, 1961, the Commission issued its order instituting investigation into the operations, rates and practices of William Fontes for the purpose of determining whether respondent, as a highway permit carrier, has violated Sections 3664 and 3668 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser sum for the transportation of property than the applicable charges prescribed by Minimum Rate Tariff No. 2 and supplements thereto.

Public hearing was held on January 18, 1962, before Examiner Rowe in Fresno. It was stipulated that respondent holds Radial Highway Common Carrier Permit No. 54-4102, Highway Contract Carrier Permit No. 54-3479 and City Carrier Permit No. 54-4360. It was also stipulated that Minimum Rate Tariff No. 2 and Distance Table No. 4, together with all amendments and supplements, were properly served upon respondent.

The Commission staff presented evidence based upon a review of respondent's documents covering the months of June, July and August of 1960. Eleven freight bills were examined and selected

as representing undercharges. An additional fifteen transactions were presented as representing "buy and sell" arrangements with a San Francisco broker, and considered as a device by means of which respondent assisted, suffered or permitted said broker to obtain transportation of property between points within this State at rates less than the minimum rates established by this Commission in Minimum Rate Tariff No. 2. The first eleven freight bills are found to represent undercharges aggregating \$450.11. The fifteen transactions claimed by the staff to be fictitious "buy and sell" arrangements, aggregating, according to the Commission's expert witness, undercharges in the sum of \$857.10, are found to be such as to him because respondent unquestionably had the necessary intent by this device to permit the shipper to evade paying the minimum rate. In fact, respondent's representative acting as his counsel in his closing statement asserted that as a matter of fact respondent had entered into similar additional arrangements with this broker aggregating in excess of \$20,000 of such undercharges. ✓

The staff witness in referring to his conversation with respondent and his examination of the documents relating to the "buy and sell" transactions testified that Mr. Fontes had stated that an employee of a San Francisco broker asked him to purchase animal feed from J. G. Boswell Company in Corcoran and transport it to various points north of Tulare; that he frequently had done this, ✓
dispatching a truck to pick up the shipment, have it weighed, and ✓
return the number five copy of J. G. Boswell's invoice; that this copy ✓
would only show the date, the name of the purchaser as Fontes
Trucking, the type of commodity, the number of the truck in which it ✓
was picked up, and a debit and credit number, together with a pur- ✓
chase number and a sale number; that after the truck had returned, ✓

it would be dispatched by Mr. Fontes as soon as he had prepared his freight bills in triplicate; that these bills would show the truck number, the date, the point of origin as J. G. Boswell Company, Corcoran, the point of delivery and the name of the consignee there and the shipper as being Berger & Plate, 64 Pine Street, San Francisco; that there would be no extensions on the freight bills at this time as to weight, or rate or total amount of the freight bill; that the driver also would bring back from J. G. Boswell copies of the weight tags; that the driver then would take the shipment to the point of destination, turning over one copy of the freight bill to the consignee, receive the consignee's signature for the receipt of the merchandise and would return the receipt and the copy of the freight bill to Mr. Fontes; that a day or so after the first shipment was picked up, the original invoice would come in from J. G. Boswell through the U. S. mail; that at that time the number of sacks of feed or the number of loads of bulk feed would be indicated; that this invoice would also show the selling price of the feed; that after Mr. Fontes received this document, and the driver had returned the original copy of the freight bill, Mr. Fontes would enter on the invoice the selling price which would be normally \$4.50 per ton for Cottonweed, Peacake or Cottonseed Meal over the original price named by J. G. Boswell; that at the end of seven or ten days Mr. Fontes would accumulate all his freight bills, would present them to Berger & Plate who in turn would transmit a check for the total amount to respondent; that after receiving this check, Mr. Fontes would deposit this check in his bank account, then

draw off his check to J. G. Boswell Company, Corcoran, for the amount of the original invoice; that the freight bills in Appendix A, other than those listed in the following paragraph, are the same as those presented to Berger & Plate.

As a result of the above findings and of the further findings hereinafter appearing, the permits of respondent will be suspended for a period of ten days and he will be ordered to collect the undercharges shown in Appendix A, represented by freight bills numbered 8750, 8725, 8720, 8721, 8607, 8604, 8546, 4342, 4344, 4840, and 4813, and all other undercharges revealed by his examination of his records. The Commission finds that a suspension in this case of ten days is appropriate and in no respect excessive. The magnitude of respondent's violations of the minimum rate order is emphasized by the fact that he offered no evidence at the hearing and that his representative volunteered the information that his violations were actually much greater and more frequent than the evidence revealed. The use of this "buy and sell" device and the inaccurate form and use of shipping documents is an attempt to evade the Commission's authority and especially the minimum rate tariff.

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 has violated Section 3664 of the Public Utilities Code by assessing charges less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 2.

3. That respondent has violated Section 3668 of the Public Utilities Code by assessing and collecting charges less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 2 through the device of a fictitious "buy-and-sell" transaction.

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. The operating authority of William Fontes, issued to him by this Commission, being Radial Highway Common Carrier Permit No. 54-4102, Highway Contract Carrier Permit No. 54-3479 and City Carrier Permit No. 54-4360, is suspended for a period of ten consecutive days starting at 12:01 a.m., on the second Monday following the effective date of this order. Respondent shall not lease the equipment or other facilities used in operations under these permits for the period of the suspension or directly or indirectly allow such equipment or facilities to be used to circumvent the suspension.

3. 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 contract and radial highway common carrier permits have been suspended by the Commission for a period of ten days. 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 from June 1, 1960, to the present time, for the purpose of ascertaining all undercharges that have occurred.

5. Within ninety days after the effective date of this decision, respondent shall complete the examination of his records required by paragraph 4 of this order 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 Appendix A together with those 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 undercharges ordered to be collected by paragraph 6 of this order, or any part of such undercharges, remain uncollected one hundred twenty days after the effective date of this order, respondent shall institute legal proceedings to effect collection and shall file with the Commission, on the first Monday of each month thereafter, a report of the undercharges remaining to be collected and specifying the action taken to collect

such undercharges and the result of such action, until such undercharges have been collected in full or until further order of the 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 24th day of APRIL, 1962.

President
Everett C. McKeago
Secretary
George T. Crover
Fredrick B. Hollohoff
Commissioners

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

APPENDIX A

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charge Assessed</u>	<u>Minimum Charge</u>	<u>Undercharge</u>
4813	6-23-60	\$175.40	\$258.72	\$ 83.32
4840	6-29-60	191.88	283.02	91.14
4842	6-30-60	162.11	172.24	10.13
4844	6-30-60	182.16	268.69	86.53
8546	7-27-60	124.43	134.38	9.95
8604	7-29-60	119.16	123.83	4.67
8607	7-30-60	127.75	135.42	7.67
8689	8-15-60	84.00	96.00	12.00
8700	8-17-60	113.40	156.24	42.84
8708	8-19-60	113.49	156.36	42.87
8709	8-19-60	106.20	172.28	66.08
8712	8-22-60	110.07	151.65	41.58
8718	8-23-60	110.97	152.89	41.92
8720	8-24-60	30.00	64.00	34.00
8721	8-24-60	40.00	77.00	37.00
8724	8-24-60	113.18	155.93	42.75
8725	8-25-60	62.80	90.00	27.20
8729	8-25-60	112.41	154.88	42.47
8730	8-25-60	191.66	301.18	109.52
8731) 8733)	8-26-60	114.92	223.20	108.28
3732	8-26-60	84.00	96.00	12.00
3742) 3743)	8-29-60	114.46	223.20	108.74
8749	8-30-60	114.30	165.42	71.12
3750	8-31-60	85.50	144.00	58.50
8806	8-31-60	111.69	153.38	42.19
3808	8-31-60	108.18	180.66	72.48