

Decision No. 63627**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, and practices of Michael
Alfred Poppert, doing business as
Poppert Trucking Co.

Case No. 7154
(Filed July 18, 1961)

Frank A. Riehle, Jr., and James S. Payne,
for respondent.
Bernard F. Cummins, for the Commission staff.

O P I N I O N

Public hearing was held on October 25, 1961, in Los Angeles before Examiner Rowe. Respondent, before the matter was submitted, filed his petition requesting that a proposed report be issued by the presiding officer. Objections to the issuance of a proposed report were presented by the staff. Thereafter, briefs were filed and the matter now stands ready for decision.

It was stipulated that respondent has been issued a radial highway common carrier permit and had received both Minimum Rate Tariff No. 2 and Distance Table No. 4 and all amendments and supplements. The staff's case consisted of the testimony of an associate transportation representative and covered two field surveys of this carrier's operations and billing procedures. The testimony, together with an exhibit of an associate transportation rate expert, was introduced indicating that rates had been assessed that were less than the applicable prescribed by Minimum Rate Tariff No. 2. These violations consisted generally of assessments of lower rates than prescribed, alterations and falsifications of shipping documents, and the improper consolidation of shipments without the requisite shipping documents.

Respondent testified in his own behalf and stated that he was unversed in tariff interpretation and the technicalities of rate

determination. He insisted that he had delegated this duty to his agent one Dorsey Dunkle, who had, without supervision, managed the trucking segment of the business. Respondent conceded that all of the undercharges alleged had been made, that after receiving the Commission's Order of Investigation he had his agent take all the bills referred to therein to an independent traffic rating service for analysis and if necessary, billing, and that their analysis had coincided substantially with the Commission's experts and that thereafter all had been billed for the undercharges. Collection had been effected at the time of the hearing in at least one case in the amount of \$398.81.

The evidence shows that respondent assessed and collected charges less than the applicable charges established by the Commission in Minimum Rate Tariff No. 2 in the amount of \$4,516.54 including the following numbered freight bills:

<u>Freight Bill No.</u>	<u>Date</u>	<u>Freight Bill No.</u>	<u>Date</u>
1951	July 12, 1960	1395	Nov. 28, 1960
1002	July 20, 1960	1408	Dec. 2, 1960
1014	July 21, 1960	1443	Dec. 15, 1960
1010	July 26, 1960	1544	Jan. 13, 1961
1008	Aug. 5, 1960	1574	Jan. 19, 1961
1022	Aug. 18, 1960	1600	Jan. 24, 1961
1216	Oct. 10, 1960	1660	Feb. 2, 1961
1245	Oct. 14, 1960	1017	Aug. 15, 1960
1668	Feb. 6, 1961	1019	Aug. 15, 1960
1379	Nov. 17, 1960	1192	Sept. 26, 1960
1220	Oct. 3, 1960	1528	Jan. 13, 1961
1226	Oct. 14, 1960	1255	Oct. 20, 1960
1237	Oct. 14, 1960	1210	Oct. 3, 1960
1354	Nov. 9, 1960	1294	Oct. 26, 1960
1453	Dec. 18, 1960	1268	Oct. 11, 1960
1469	Dec. 27, 1960	1286	Oct. 25, 1960
1493	Dec. 29, 1960	1326	Nov. 2, 1960

The evidence presents but one other question for the Commission to resolve and that is whether a penalty should be imposed upon respondent for the acts of his agent or employee. In this

regard, the uncontradicted testimony reveals a situation where respondent, who admittedly was himself unfamiliar with rates, rating procedures and practices turned over to an employee the complete management of his trucking operation without any independent investigation of his qualifications. Rather, respondent unquestioningly relied upon the employee's own opinion of his abilities. A carrier is responsible for observing and abiding by minimum rate tariffs and cannot avoid that responsibility by delegating it to agents or employees. Respondent must, therefore, accept responsibility for such undercharges as resulted from erroneous assessment of rates by his agent or employee and must suffer the consequences thereof. If it were otherwise, the Commission's obligation to enforce minimum rates could easily be frustrated. Accordingly, the order herein will provide for appropriate penalties.

In the latter part of 1961 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.) Although the new statute was not effective at the time of the violations involved 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. Consequently, 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.

The request for a proposed report by the presiding officer, here the examiner, will be denied. The only reason for this request appears to be that one of the staff witnesses challenged the veracity of respondent. The Commission has considered the record and finds and concludes that no useful purpose could be served by the issuance of a proposed report herein.

Findings and Conclusions:

Upon consideration of the evidence herein, the Commission finds and concludes that:

1. Respondent assessed and collected rates less than the applicable minimum rates established by the Commission in Minimum Rate Tariff No. 2 in the amount of \$4,516.54.

2. Respondent has violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting rates less than the minimum rates established by the Commission in Minimum Rate Tariff No. 2.

O R D E R

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

IT IS ORDERED that:

1. The radial highway common carrier permit No. 19-49836 issued to Michael Alfred Poppert is hereby suspended for a period of five consecutive days starting at 12:01 a.m. on the second Monday following the fortieth day after personal service of this order upon respondent.

2. Michael Alfred Poppert shall post at his terminal and station facilities used for receiving property from the public, 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 five consecutive days; 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.

3. Respondent shall examine his records for the period from the time he commenced operations as a radial highway common carrier in 1959, to the present time, for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

4. Within ninety days after the effective date of this decision, respondent shall complete the examination of his records hereinabove required by paragraph 3 and file with the Commission a report setting forth all undercharges found pursuant to that examination.

5. Respondent is hereby directed to 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 3 of this order, and to notify the Commission in writing upon the consummation of such collections.

6. In the event undercharges ordered 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 undercharges and the

result of such action until such undercharges have been collected in full or until further order of this Commission.

7. 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.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Michael Alfred Poppert and this order shall be effective twenty days after the completion of such service upon respondent.

Dated at San Francisco, California, this 1st
day of MAY, 1962.

George W. Page
President
J. E. Smith
S. J. Fox
George T. Grover
Frederic B. Stokely
Commissioners