

Decision No. 63694

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 J. A. STAFFORD TRUCKING,)
a California corporation. }

Case No. 7104

Donald Murchison, for respondent.
Elinore Charles and Frank O'Leary, for the
Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion to determine whether respondent has violated Sections 3664, 3668 and 3737 of the Public Utilities Code by charging and collecting a lesser compensation for the transportation of property as a highway permit carrier than the applicable charges established by Minimum Rate Tariff No. 2 and supplements thereto. Public hearing in this matter was held on February 14, 1962, before Examiner John K. Power in Los Angeles. The aforesaid hearing having been held and the matter submitted, it is now ready for decision.

It was stipulated that respondent had received Minimum Rate Tariff No. 2, Distance Table No. 4, and supplements. Evidence was presented by representatives of the Commission's staff which shows that during the five months, April through August, 1960, respondent deviated from the provisions of Minimum Rate Tariff No. 2 in the following respects:

1. In nine instances respondent billed shippers for consolidated shipments without picking up all components thereof within 2 days as required by Item No. 85 series of Minimum Rate Tariff No. 2.

2. In ten instances respondent billed shippers for consolidated shipments without having received written instructions from the shipper prior to first pickup and failed to issue a single multiple lot document. Both are required by Item No. 85 series of Minimum Rate Tariff No. 2.

3. In two instances shipments were incorrectly billed.

4. In fifteen instances respondent failed to assess proper off-rail charges on shipments moving at rail rates.

5. In five instances incorrect records of the shipments involved were maintained.

6. Two separate shipments were billed as one split pickup shipment even though the provisions of Item No. 160 series of Minimum Rate Tariff No. 2 were not complied with.

7. In eight instances respondent assessed rates and charges less than those provided by Minimum Rate Tariff No. 2.

Respondent, while not challenging the foregoing evidence, presented evidence in mitigation thereof. Its witness testified that respondent hired an employee to solicit business; that this employee had full charge of the accounts brought in by him, including the billing; that the aforesaid violations all occurred with respect to the traffic solicited by this employee; and that the employee concerned was discharged when these facts came to light. Respondent conceded that it is responsible for the acts of this employee.

Based upon the foregoing evidence, the Commission finds and concludes that respondent violated Sections 3664, 3668 and 3737 of the

Public Utilities Code by charging and collecting for transportation in this State rates or charges less than the minimum established by the Commission in Minimum Rate Tariff No. 2 and supplements thereto in the total amount of \$3,600.51.

The evidence shows that the undercharges shown in the Commission staff's Exhibits Nos. 1 and 2 had been rebilled and collected by respondent. Therefore, the usual requirement that specific undercharges be collected will be omitted from the following order. The amount of such collections was \$3,600.51.

The Commission is now authorized to impose a fine in a case of this type as an alternative to suspending operating authority. Although the applicable statute was not in effect at the time of the violations here involved, it became effective before the matter was submitted. We find that, in place of a mandatory suspension of operating rights, respondent should be given the alternative of paying a fine of \$4,500. In making this finding we have considered the seriousness of the violations found to have been committed, the amount of the undercharges, the size and nature of respondent's operations, and other factors, including the suspension of respondent's radial highway common carrier and highway contract carrier permits for 3 days by Decision No. 55544, dated September 10, 1957, in Case No. 5916.

O R D E R

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

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. 19-23198 and Highway Contract Carrier Permit No. 19-49273 issued to J. A. Stafford Trucking, a corporation, shall be suspended for ten 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 its 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 its radial highway common carrier permit and highway contract carrier permit have been suspended by the Commission for a period of ten days; within five days after such posting it 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 \$4,500 to this Commission on or before the fortieth day after personal service of this order upon respondent.

4. Respondent shall examine its records for the period from April 16, 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, respondent shall complete the examination of its records hereinabove

required by paragraph 4 of this order and file with the Commission a report setting forth all undercharges found.

6. Respondent is hereby directed to take such action, including legal action, as may be necessary to collect the amounts of 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, respondent shall institute legal proceedings to effect collection and shall submit to the Commission, on the first Monday of each month thereafter, a report of the undercharges remaining to be collected, 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 J. A. Stafford Trucking, a corporation. This order shall be effective twenty days after the completion of such service.

Dated at San Francisco, California, this 14th day of MAY, 1962.

Levent B. Baskin
President
E. J. Fox
George W. Hoover
Frederick B. Hallock
Commissioners