

ORIGINALDecision No. 63913

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates and practices of Kenneth)
 Gammon. }

Case No. 7201

Donald J. Harvey and Charles D. Gilbert,
 for the respondent.
Richard Godino, for the Commission staff.

O P I N I O NOrder of Investigation

On October 10, 1961, the Commission instituted its order of investigation into the operations, rates and practices of Kenneth Gammon, a radial highway common carrier, for the purpose of determining:

"Whether respondent has violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging or collecting a lesser compensation for the transportation of property as a highway permit carrier than the applicable charges prescribed by Minimum Rate Tariff No. 2.

"Whether respondent has acted in violation of Section 3737 of the Public Utilities Code by failing to comply with the various provisions and requirements of Minimum Rate Tariff No. 2, including, but not limited to:
 (a) Failure to show on the shipping documents the information required by Item No. 240 of Minimum Rate Tariff No. 2.

"Whether any other order or orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction."

Public Hearing

Pursuant to the order of investigation a public hearing was held in Fresno before Examiner Edward G. Fraser, on March 22, 1962, and the matter was taken under submission on April 12, 1962, after the receipt of two late-filed letters dated April 6 and April 12, 1962.

Stipulations

It was stipulated by the respondent that he was operating under Radial Highway Common Carrier Permit No. 10-8453, dated May 8, 1956, and amended on September 6, 1960, during the entire period concerned in the present investigation, and that he is still operating under this permit; that he has been served a copy of Minimum Rate Tariff No. 2, Distance Table No. 4 and all applicable supplements and amendments thereto, and that the documents were received before the transportation involved herein occurred.

Evidence of the Commission Staff

A representative of the Transportation Division of the Commission testified that he reviewed the records of the respondent on January 2, 1961, and checked approximately 400 freight bills covering transportation performed from July through December 1960. Twenty-one freight bills were removed and photostated by the witness. The photo copies were combined with other documents and introduced in evidence as Exhibit No. 2. The staff presented several witnesses who testified that many of the points rated on rail by the respondent were actually not located on rail. The representative checked respondent's records on January 2, 1961, then returned on May 12, 1961, to ask why the payments from the shippers on Parts 9, 19 and 20 (Exhibit No. 1) were less than the amounts due indicated on the

freight bills. The respondent replied that the shipper (Fresno Milling Co. of Fresno) audited and supposedly corrected these bills. The discrepancy was not noted on the original freight bill and no effort had been made to collect the difference up to that time.

A rate expert from the Commission staff testified that he took the set of documents now in evidence as Exhibit No. 2 along with other information presented by the prior witnesses and formulated Exhibit No. 3, which gives the rate charged by the respondent and the rate computed by the Commission staff on each of the 21 freight bills presented in Exhibit No. 2. He testified the rates assessed, charged and collected by the respondent on the 21 counts in Exhibits Nos. 2 and 3 are lower than the lawful minimum rate allowed by Minimum Rate Tariff No. 2 and that the correct rates along with the undercharges are set out in Exhibit No. 3.

Another staff witness stated the files of the Commission show the respondent's gross income for 1961 was \$143,838, and that his February 2, 1961, equipment list included 5 power vehicles and 13 trailers. This equipment was augmented on July 19, 1961, by one additional power unit and two additional trailers.

Position of the Respondent

The respondent testified that he has depended on his drivers, and occasionally the shipper, to advise whether a pickup or delivery point is on or off rail. Neither of these sources has been infallible. Although he attended a transportation school for three years, he has found that he needs constant help on rating since he was given very little information on tariffs or rates. He now retains a transportation consultant to do most of his rating

and billing. The consultant has also been auditing his books for other undercharges since the start of this investigation. Respondent also testified after this investigation was filed and he had received a copy of the staff rate statement (Exhibit No. 3), he decided to check the mileage between points as computed by the Commission field investigators. He found the points that are listed in Distance Table No. 4 as unnamed road junctions difficult to locate. On several occasions two junctions were within a quarter mile of each other and it was difficult to select the right one. He is convinced that the mileage between origin and destination taken from Distance Table No. 4 as a basis for the computation of rates may be incorrect in many instances due to changes in the highway system. He stated his monthly operating costs total about \$5,000; if his operating authorities are suspended, he may not be able to make his payments when due and consequently may have to go out of business.

The bookkeeper employed by the respondent testified that she has been doing the respondent's rating for three years without any formal education on how to apply a tariff. She was sent to traffic school for two years but rates and tariffs were not included in the instruction. She stated she now maintains a card file which lists each shipper's name, address, and exact location, whether on or off rail, and instructions to drivers on what routes to use. She stated all mileage on loads shipped is now being checked by the respondent. They hope these new policies will prevent future undercharges.

The vice president of the West Coast Freight Tariff Bureau, Inc., testified that they have audited all of the shipments in

Exhibit No. 3 for the respondent. During their investigation they wrote to a shipper and received a reply stating the shipper was on rail (Exhibit No. 4). They then contacted the railroad and were advised the shipper had an on-rail installation, but the place to which delivery was made is off rail (Exhibit No. 5). The witness stated that charging on-rail rates to off-rail points was the principal reason for most of the undercharges alleged in Exhibit No. 3. The witness stated it is very difficult to get proper information from certain shippers, or from the railroads, as to whether a particular address is on or off rail. This factor has contributed to the erroneous rates charged by the respondent. While the Commission is mindful of the difficulty which may be encountered in a given case in determining whether a shipper is on or off rail, it is our conclusion that such determination is the ultimate responsibility of the carrier involved.

Findings and Conclusions

The Commission hereby finds and concludes:

1. That respondent is engaged in the transportation of property over the public highways for compensation as a radial highway common carrier pursuant to Radial Highway Common Carrier Permit No. 10-8453 issued by this Commission.
2. That respondent was served with Minimum Rate Tariff No. 2, Distance Table No. 4 and the pertinent amendments and supplements thereto, prior to the transportation performed under the freight bills listed herein.
3. That respondent assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate Tariff No. 2, which resulted in undercharges as follows (from Exhibit No. 3):

	<u>Freight Bill No.</u>	<u>Date</u>	<u>Amount of Undercharge</u>
1.	9988	July 27, 1960	\$ 17.02
2.	5512	September 14, 1960	9.15
3.	5515	September 17, 1960	18.86
4.	9657	August 15, 1960	18.87
5.	5907	November 8, 1960	27.39
6.	5929	December 22, 1960	26.92
7.	5863	November 7, 1960	8.00
8.	9832	August 16, 1960	11.34
9.	5904	November 2, 1960	30.27
10.	5659	November 28, 1960	22.05
11.	9693	October 17, 1960	13.97
12.	9989	July 29, 1960	8.84
13-A.	9785	August 15, 1960	16.57
13-B.	9790	August 19, 1960	16.89
14.	9799	August 30, 1960	10.41
15.	5928	December 20, 1960	10.38
16.	5754	September 15, 1960	9.59
17.	5632	December 28, 1960	19.18
18.	5530	October 4, 1960	8.00
19.	5598	October 14, 1960	12.00
20.	5655	November 18, 1960	16.24
21.	9687	October 5, 1960	<u>33.33</u>

The undercharges total \$365.27

4. That respondent violated Public Utilities Code Sections 3664 and 3667 by charging, demanding, collecting or receiving a lesser compensation for the transportation of property as a radial highway common carrier than the minimum charges prescribed in the Commission's Minimum Rate Tariff No. 2.

5. That respondent has violated Section 3737 of the Public Utilities Code by failing to comply with the requirements of Item No. 240 of Minimum Rate Tariff No. 2.

6. In view of the entire record in this proceeding and the above findings thereon, the Commission concludes that respondent's operating authority should be suspended for a period of three days.

O R D E R

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

IT IS ORDERED that:

1. Radial Highway Common Carrier Permit No. 10-8453 issued to Kenneth Gammon is hereby suspended for three 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 this permit for the period of the suspension or directly or indirectly allow such equipment or facilities to be used to circumvent the suspension.

2. 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 has been suspended by the Commission for a period of three 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.

3. Respondent shall examine his records for the period from July 1, 1960, to the present time, for the purpose of ascertaining all undercharges that have occurred.

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

5. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges found after the examination required by paragraph 3 of this order, and shall notify the Commission in writing upon the consummation of such collections.

6. In the event undercharges ordered to be collected by paragraph 5 of this order, or any part of such undercharges, remain uncollected one hundred twenty days after the effective date of this order, respondent 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 10th day of July, 1962.

George G. Grover
President
John P. ...
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Commissioners