

ORIGINAL

Decision No. 64050

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,)
rates, charges, and practices of)
SPEEDY TRANSPORT, INC., a)
corporation.)

Case No. 7222

Francis X. Vieira, for respondent.
Lawrence Q. Garcia, for the Commission
staff.

O P I N I O N

Order of Investigation

On November 7, 1961, the Commission instituted its order of investigation into the operations, rates, charges and practices of Speedy Transport, Inc., a corporation, which was operating over the public highways as a radial highway common carrier, a highway contract carrier and a city carrier, at the times of the undercharges alleged herein. Respondent also operates under a certificate of public convenience and necessity granted by Decision No. 61587, dated February 28, 1961, in Application No. 42573, which was filed on October 3, 1960. Subsequent to the filing of the Order Instituting Investigation, the Commission by Decision No. 63664 dated May 8, 1962, in Application No. 44039, granted respondent additional authority to transport poles, pilings and commodities transported in dump trucks and hopper-type trucks between the points set forth in Decision No. 61587.

The Order Instituting Investigation was filed for the purpose of determining:

1. Whether respondent has violated Sections 3664, 3667, and 3737 of the Public Utilities Code by charging, demanding, collecting, or receiving a lesser compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 2, and supplements thereto.

2. Whether respondent has violated Section 3668 of the Public Utilities Code by assisting, suffering or permitting a person to obtain transportation for property between points within this State at rates less than the minimum rates established and approved by this Commission, by means of known false billing or any other device.

3. Whether respondent has violated Sections 3664 and 3737 of the Public Utilities Code, and Items 60-C and 85-D(b) of Minimum Rate Tariff No. 2 and supplements thereto, by assessing and collecting charges for the transportation of property calculated as if the conditions in Item 85-D(a)3 of said minimum rate tariff had been fulfilled, when in fact such conditions had not been fulfilled.

4. Whether respondent has violated Sections 3664 and 3737 of the Public Utilities Code and Items 60-C and 160-R(f) of Minimum Rate Tariff No. 2 and supplements thereto by performing split delivery service on split pickup shipments without rating each component part of such shipments as a separate shipment.

5. Whether respondent has violated Sections 3664 and 3737 of the Public Utilities Code and Items 60-C and 170-R(f) of Minimum Rate Tariff No. 2 and supplements thereto by performing split pickup service on split delivery shipments without rating each component part of such shipments as a separate shipment.

6. Whether respondent has violated Sections 3664 and 3737 of the Public Utilities Code by assessing and collecting charges for

the transportation of property without complying with the provisions of Item 210-J of Minimum Rate Tariff No. 2 and supplements thereto.

7. Whether respondent has violated Sections 3664 and 3737 of the Public Utilities Code, and Item 85-D of Minimum Rate Tariff No. 2 and supplements thereto by assessing and collecting charges for the transportation of property in shipments of multiple lots calculated as if the conditions with respect to time limitations as set out in Item 85-D-4 of said tariff had been fulfilled, when in fact such conditions had not been fulfilled.

8. 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 Stockton before Examiner Edward G. Fraser on May 3 and 4, 1962.

Stipulations

It was stipulated that Speedy Transport, Inc., was operating under Radial Highway Common Carrier Permit No. 39-4323, Highway Contract Carrier Permit No. 39-4324, and City Carrier Permit No. 39-5488 at all times during the transportation performed under the documents listed herein. It was further stipulated that the rate statement submitted by the staff is accurate and correct, along with the rates and application of tariff items listed therein; also that the photo copies of respondent's records to be submitted as evidence are true and correct copies of the originals; also that the respondent was served with copies of tariffs, including Minimum Rate Tariff No. 2, Distance Table No. 4, and amendments and supplements thereto.

Evidence Presented by the Staff

A representative of the Commission's Transportation Division testified that he visited the terminal of the respondent on April 18, 1961, and made photostats of freight bills on transportation services performed by the respondent. Several of these bills were selected because it seemed the date on each one had been altered. He testified that he later obtained photo copies of documents from consignors, subhaulers and public weighmasters, which showed pickups were made on dates differing from those listed on the respondent's freight bills. The witness further testified that during his investigation he asked the secretary-treasurer of the respondent for an explanation of the apparent alteration of the dates on the freight bills. The officer of the corporation stated she knew nothing about these alterations and had never authorized them. The witness asserted that he copied other documents because it appeared that in numerous instances multiple lot shipments had been rated without the supporting documents required by Minimum Rate Tariff No. 2; and that on some freight bills several split pickups and split deliveries had been improperly combined and rated as single shipments. The witness identified Exhibit No. 1 as the set of documents he personally photostated. It was accepted in evidence with Exhibit No. 2, which the witness identified as an undercharge letter sent to the respondent on or about November 5, 1959.

A rate expert from the Commission staff testified he took the documents in evidence as Exhibit No. 1 along with other information provided 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 18 freight bills presented in

the Exhibit (3). He testified the rates assessed, charged and collected by the respondent on the 18 counts in Exhibit No. 3 are lower by \$3,767.57 than the lawful minimum rates established by Minimum Rate Tariff No. 2 and that the correct rates along with the undercharges are set out in Exhibit No. 3.

Position of the Respondent

The respondent admitted the rate errors and presented evidence in mitigation. The vice president of the respondent testified they had no multiple lot shipments prior to 1960 and he did not know that a master freight bill had to be issued "at the time of or prior to the initial pickup", on multiple lot shipments as required by Item 85-D(a)3 of Minimum Rate Tariff No. 2. He stated the respondent is a family corporation and they had no lawyer or rate man prior to October, 1960. He stated their business was-- and is--primarily the hauling of poles and piling. He testified during the period of the undercharges alleged herein he and his wife were doing the dispatching and billing. Some of the rating was done by his wife, some by their office girl, some by a man they employed for a short period, and some by himself. He testified the other officers of the corporation are inactive, but are officers because they contributed the capital to start the business.

He asserted the respondent has been charged with a failure to add the off rail charge required by Item 210-J of Minimum Rate Tariff No. 2 among other alleged violations on nine counts. This transportation was all performed for the same consignor, who recently moved to Hopland. He testified that the shipper's representative had advised the respondent's witness that the move to Hopland was made so the shipper would be located on rail.

Respondent considered this information to be accurate and rated the shipper as being on rail. The witness stated the respondent did not realize the shipper was off rail until the rate statement was received from the Commission staff. The witness asserted that the claimed violations involve the hauling of telephone poles and wooden piles, which require special flat bed trailers. The witness asserted that the respondent has only six pieces of equipment suitable for hauling these long piles and that these six trucks are occasionally delayed due to retarded loading or unloading, breakdown, inclement weather, or possibly other reasons. When this occurs, the pickup has been delayed, sometimes overnight or longer. The witness favors the use of subhaulers, but he stated they could not be used effectively to haul piling since only a few have the necessary equipment and these must be requested far in advance of the dates on which they will be needed. He explained that respondent frequently had no reason to believe the pickups or deliveries would not be made on time until a hurried call was received from a driver. It would then be too late to eliminate the delay, although the driver was always told to make the pickup or delivery as rapidly as possible.

The witness testified regarding the alleged violation of Items 170-R, 160-R and 60-C of Minimum Rate Tariff No. 2, which provide that split pickups and split deliveries can be rated as a single shipment, if there are written instructions from the shipper prior to the first pickup, and if the goods can be picked up in one calendar day.

The witness testified that neither he nor his wife ever authorized anyone to alter the dates on any of the documents in the

respondent's records. He stated he had no idea who changed the dates, but it might have been a temporary employee they hired about December 1960, for a few months.

He testified that the respondent and its shippers will be seriously affected if a suspension of operating authority is imposed. The respondent has fixed expenses of \$8,000 a month which must be paid. Respondent is hauling telephone poles for the Pacific Gas and Electric Company on both a daily and emergency basis. This service is valued at more than \$50,000 annually. Respondent also transports more than 1,400 items for the telephone company under contract. The witness estimated that respondent is now serving approximately 2,400 consignors and 8,000 consignees. He stated that 75% of respondent's hauling is now performed under its certificate, even though respondent was operating only under permits when the undercharges alleged herein occurred.

Counsel for respondent made a closing statement in which he argued that any suspension of operating authorities imposed, should apply only to the permits held by the respondent during the period within which the transportation, under the freight bills listed herein, took place. He contended that the respondent's new certificate was issued by Decision No. 61587, dated February 28, 1961 (in Application No. 42573), which was after the alleged undercharges occurred and the certificate should therefore not be suspended.

Findings and Conclusions

I. 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. 39-4323,

as a highway contract carrier under Highway Contract Carrier Permit No. 39-4324, and as a city carrier under City Carrier Permit No. 39-5488. Respondent is also operating as a certificated highway common carrier of general commodities under a certificate issued by this Commission on February 28, 1961.

2. The Commission takes official notice of Decision No. 63664, dated May 8, 1962, in Application No. 44039 which granted respondent certain additional highway common carrier operative authority.

3. 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.

4. 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>Exhibit No. 3 Part No.</u> | <u>Freight Bill No.</u> | <u>Date</u> | <u>Amount of Undercharges</u> |
|-----------------------------------|-----------------------------|-------------------|-----------------------------------|
| 1 | 5637 | November 28, 1960 | \$ 320.90 |
| 2 | 5690 | December 17, 1960 | 446.50 |
| 3 | 5813 | February 1, 1961 | 364.08 |
| 4 | 5824 | February 9, 1961 | 136.00 |
| 5 | 5441 | October 10, 1960 | 14.40 |
| 6 | 5782 | January 16, 1961 | 153.16 |
| 7 | 5798 | January 25, 1961 | 302.60 |
| 8 | 5845 | February 10, 1961 | 184.61 |
| 9 | 5587 | November 1, 1960 | 354.69 |
| 10 | 5626 | November 18, 1960 | 244.90 |
| 11 | 5645 | November 28, 1960 | 197.45 |
| 12 | 5675 | December 16, 1960 | 173.42 |
| 13 | 5691 | December 19, 1960 | 163.22 |
| 14 | 5711 | December 22, 1960 | 177.18 |
| 15 | 5740 | January 5, 1961 | 167.51 |
| 16 | 5757 | January 13, 1961 | 172.58 |
| 17 | 5846 | February 20, 1961 | 175.53 |
| 18 | 5396 | October 3, 1960 | 18.84 |

The undercharges total \$3,767.57

5. Respondent has violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging, collecting and receiving a lesser compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 2, and supplements thereto.

6. Respondent has violated Sections 3664 and 3737 of the Public Utilities Code and Items 60-C, 160-R(f), and 170-R(f) of Minimum Rate Tariff No. 2 and supplements thereto by performing split delivery and split pickup service under conditions not permitted by the tariff.

7. Respondent has violated Sections 3664 and 3737 of the Public Utilities Code and Items 60-C and 85-D(b) of Minimum Rate Tariff No. 2 and supplements thereto, by assessing and collecting charges for the transportation of property calculated as if the conditions in Item 85-D(a)3 of said minimum rate tariff had been fulfilled, when in fact such conditions had not been fulfilled; by assessing and collecting charges for the transportation of property without complying with the provisions of Item 210-J of Minimum Rate Tariff No. 2 and supplements thereto; and by assessing and collecting charges for the transportation of property in shipments of multiple lots calculated as if the conditions with respect to the time limitations as set out in Item 85-D(a)4 of said tariff had been fulfilled, when in fact such conditions had not been fulfilled.

8. Respondent has violated Section 3668 of the Public Utilities Code by assisting, suffering, or permitting persons to obtain transportation for property between points within this State at rates less than the minimum rates established and

approved by this Commission, by means of the device of alteration of freight bills.

9. The request of the respondent to exclude the respondent's certificate from any suspension of operating authorities imposed must be denied. This Commission has held that, "A violation of the Highway Carriers Act occurring prior to becoming a certificated carrier constitutes good cause to suspend the certificate."

(Inv. of Liberty Freight Lines (C-6132, D-58325, April 28, 1959), 57 P.U.C. 175.)

10. Respondent's operating authority should be suspended for a period of fifteen days with the execution of ten of said days deferred for a period of one year. If at the end of the period of one year the Commission is satisfied that respondent is complying with the orders and rules of this Commission, the deferred portion of said suspension will be vacated by further order of this Commission. However, if the Commission finds at any time during the one-year period that respondent is failing to comply with all such orders and rules, the additional ten-day period of suspension will be imposed together with whatever additional penalty the Commission deems appropriate.

11. Respondent should be ordered to collect the undercharges hereinabove found and to examine his records from October 1, 1960, to the present time, for the purpose of ascertaining whether additional undercharges exist.

O R D E R

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

IT IS ORDERED that:

1. The certificates of public convenience and necessity to operate as a highway common carrier, granted by Decision No. 61587, dated February 28, 1961, in Application No. 42573, and Decision No. 63664, dated May 8, 1962, in Application No. 44039, Radial Highway Common Carrier Permit No. 39-4323, Highway Contract Carrier Permit No. 39-4324, and City Carrier Permit No. 39-5488, issued to Speedy Transport, Inc., are hereby suspended for a period of fifteen consecutive days; provided, however, that the execution of ten days of said suspension is hereby deferred pending further order of this Commission. If no further order of this Commission is issued affecting said suspension within one year from the effective date of this decision, the unexecuted portion of the suspension shall be vacated by further order of the Commission. The executed period of suspension will commence at 12:01 a.m. on the second Monday following the effective date of this order; and respondent shall not, by leasing the equipment or other facilities used in operations under these permits for the period of suspension, or by any other device, directly or indirectly allow such equipment or facilities to be used to circumvent the suspension.

2. Speedy Transport, Inc., 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 highway common carrier certificates, radial highway common carrier permit, highway contract carrier permit and city carrier permit have

been suspended by the Commission for a period of five days. Within five days after such posting Speedy Transport, Inc., 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 its records for the period from October 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 its 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 set forth in the preceding opinion, together with any additional 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 31st day of July, 1962.

George A. Grover
President
John S. Mitchell
E. L. Fox
Robert W. Page
Frederick C. Hillhoff
Commissioners