

64313

**ORIGINAL**

Decision No. \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates and practices of Clarence  
Joseph Perry, dba C. J. Perry  
Trucking.

Case No. 7299

Arthur F. Malleon, for respondent.

Walter J. Linstedt and Frank J. O'Leary,  
for the Commission staff.

O P I N I O N

Public hearing was held in this investigation before Examiner John Power in San Francisco on June 12, 1962 and the matter was submitted.

The staff presented two witnesses. One of these put in a collection of carrier's documents as Exhibit No. 1. A rate witness presented a rate analysis as Exhibit No. 2. A representative of respondent made a statement.

The evidence revealed that there had been 23 violations of the Commission's applicable minimum rate order, namely, Minimum Rate Tariff No. 2. Not all were rate violations; some violated the credit rules in the tariff.

This applies especially to parts 1, 2, 3 and 6<sup>1/</sup> of the staff exhibits. These transactions violate Item 250-A series, Minimum Rate Tariff No. 2 relating to billing. They were late-billed and there is no undercharge. Part 4 was never billed at

---

2/ Due to the lack of documentation in respondent's files the items of violation will be identified by reference to the divisions of the staff exhibits.

all. Part 5, a split pickup cannot be rated because weights of the components were not obtained. This shipment violates the split-pickup rule for want of proper documentation.

Parts 7, 8 and 9 deal with shipments of lumber from Del Norte County to a yard just outside of Bakersfield. All were rated incorrectly.

Detailed discussion of the remaining 14 parts (shipments) is not necessary since a generalization is justified by the evidence. This respondent cannot or will not apply rail rates correctly. For example, parts 13, 15 and 16 reveal that even when there are no off-rail charges to complicate matters respondent cannot or, at least, does not reach the proper result.

Based upon the evidence adduced at the hearing the Commission finds that respondent has deviated from the rates, rules and regulations set forth in Minimum Rate Tariff No. 2 in the following particulars:

1. In failing to present bills to shippers within seven days as required by Item No. 250-A series, of said tariff.
2. In failing to correctly apply the rates of common carriers by land when such rates are used in the alternative under Items Nos. 200-M series and 210-J series of said tariff.
3. In failing to comply with the provisions of Item No. 85 series of Minimum Rate Tariff No. 2 requiring written instructions.
4. In providing free transportation on a shipment of lumber from 2.2 miles north of Hyampom, California to Lompoc Union High School, Lompoc, California, transported on or about April 22, 1961.

The Commission further finds that in the transactions examined at the hearing the following undercharges were shown to have resulted:

<u>Part of Exhibits Nos. 1 &amp; 2</u>	<u>Correct Charge</u>	<u>Charge Assessed</u>	<u>Resulting Undercharge</u>
4	\$437.96	\$ None	\$437.96
7	426.46	401.77	24.69
8	425.92	401.72	24.20
9	433.15	426.18	6.97
10	251.16	244.72	6.44
11	424.04	416.73	7.31
12	365.76	347.00	18.76
13	198.01	177.53	20.48
14	439.77	426.62	13.15
15	250.68	246.57	4.11
16	205.70	196.85	8.85
17	277.15	251.94	25.21
18	176.72	143.22	33.50
19	146.37	141.79	4.58
20	500.31	354.18	146.13
21	379.67	288.36	91.31
22	185.37	166.24	19.33
23	250.80	224.90	25.90

The Commission concludes that respondent has been shown to have violated Sections 3664, 3667 and 3737 of the Public Utilities Code.

In fixing the penalty to be imposed in this case three major factors must be weighed. The first is the provision of free transportation. The second is the failure of respondent to correctly apply the filed rates of common carriers by land under Items Nos. 200, 210, 220 and 230 of Minimum Rate Tariff No. 2. The third is that this is a second investigation of this carrier. Perry was previously investigated in Case No. 6341. On July 12, 1960, by Decision No. 60392 his permit was suspended for three days. The violations in that case involve lumber shipments just as the ones in this investigation do.

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 7 of this order, then Radial Highway Common Carrier Permit No. 1-9036 issued to Clarence Joseph Perry 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. Respondent shall not, by leasing the equipment or other facilities used in operations under this permit 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. 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 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.
3. Respondent shall examine his records for the period from March 31, 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 set forth herein, together with those 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 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.

7. As an alternative to the suspension of operating rights imposed by paragraph 1 of this order, respondent may pay a fine of \$5,000 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 respondent. The

effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 25<sup>th</sup> day of SEPTEMBER, 1962.

George G. Crow  
President

[Signature]

[Signature]

[Signature]

Frederick B. Holhoff  
Commissioners