

ORIGINALDecision No. 64338

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, and practices of GERALD M.
BURELLE.

Case No. 7389

Gerald M. Burelle, for himself.Elmer Sjostrom and Frank O'Leary, for
the Commission staff.O P I N I O N

By order of July 2, 1962, the Commission instituted its investigation into the operations, rates and practices of Gerald M. Burelle.

Pursuant to such order public hearing was held before Examiner Martin J. Porter on August 9, 1962, at Truckee, on which date the matter was submitted.

The purpose of this investigation is to determine whether respondent, in violation of Section 3664 of the Public Utilities Code, has charged, demanded or received a lesser compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 2 and Minimum Rate Tariff No. 3-A and supplements thereto.

The Commission staff presented evidence that a review period of August 15, 1961, to October 15, 1961, was selected. During this period fifty ratable shipments were made. Thirty-five freight bills and supporting documents were selected as

representative of the carrier's operations and were rated by the Rate Analysis Unit.

The rating of the 35 shipments showed undercharges in each instance.

The causes for the undercharges were assessment of a flat rate on lumber hauls and insufficient assessment on other shipments.

Six other shipments not forwarded to the Rate Analysis Unit were similar to those rated, so that out of the 50 ratable shipments, 41 were undercharged.

The respondent's explanation as to the causes for the majority of these undercharges was that at the time of the lumber hauls it was difficult to obtain a weight certificate so he just applied an average weight, and as to the other shipments, it was just an error in computing mileage.

The field representative established the points of origin, destination and mileages, while the rate expert cited tariff authority for his ratings.

It was stipulated that Gerald M. Burrelle holds Highway Contract Carrier Permit No. 46-63 and that he has been served with Minimum Rate Tariffs Nos. 2 and 3-A, Distance Table No. 4 and the applicable supplements thereto.

Findings

Based upon the evidence of record we hereby find that:

1. Respondent is engaged in the transportation of property over the public highways for compensation as a highway contract carrier.

2. Respondent assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate Tariffs Nos. 2 and 3-A, which resulted in undercharges as follows:

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charge Assessed or Collected by Respondent</u>	<u>Correct Charge</u>	<u>Under- Charge</u>
7541	8/17/61	\$ 38.50	\$ 45.90	\$ 7.40
7540	8/17/61	153.08	177.01	23.93
7542	8/18/61	131.00	162.80	31.80
7543	8/18/61	38.50	48.40	9.90
7544	8/21/61	153.23	177.23	23.95
7548	8/24/61	38.50	48.40	9.90
7547	8/24/61	38.50	48.40	9.90
7545	8/24/61	20.00	28.90	8.90
7549	8/24/61	38.50	48.40	9.90
7550	8/25/61	150.85	174.42	23.57
7602	8/28/61	131.20	162.80	31.60
7603	8/29/61	38.50	48.40	9.90
7604	8/30/61	38.50	48.40	9.90
7609	9/ 1/61	38.50	45.90	7.40
7610	9/ 5/61	148.16	171.31	23.15
7611	9/ 6/61	154.62	178.78	24.16
7612	9/ 7/61	158.59	183.37	24.78
7613	9/ 9/61	152.19	175.97	23.78
7614	9/11/61	150.97	174.57	23.60
7615	9/12/61	150.27	173.75	23.48
7617	9/14/61	151.93	175.68	23.75
7618	9/15/61	162.11	187.44	25.33
7619	9/18/61	144.00	166.50	22.50
7620	9/19/61	157.06	181.60	24.54
7621	9/20/61	154.20	178.41	24.21
7622	9/21/61	144.66	168.42	23.76
7624	9/25/61	157.06	181.60	24.54
7623	9/27/61	158.53	183.30	24.77
7625	9/29/61	144.00	166.50	22.50
7626	10/ 2/61	163.98	189.59	25.61
7437	8/14/61	188.34	264.00	75.66
7436	8/14/61	152.48	264.00	111.52
7439	8/24/61	136.40	145.20	8.80
7442	9/ 1/61	58.00	64.00	6.00
7441	9/ 1/61	72.20	88.20	16.00

Undercharges for these shipments amounted to

\$820.39

3. Respondent violated Section 3664 of the Public Utilities Code by charging and collecting a compensation less than the minimum established by this Commission in Minimum Rate Tariffs Nos. 2 and 3-A.

4. Respondent's permit should be suspended for a period of five consecutive days, or, in the alternative, he should be required to pay a fine of \$2,000.

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 Highway Contract Carrier Permit No. 46-63 issued to Gerald M. Burrelle shall be suspended for five 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 highway

contract carrier permit has been suspended by the Commission for a period of five 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. As an alternative to the suspension of operating rights imposed by paragraph 1 of this order, respondent may pay a fine of \$2,000 to this Commission on or before the fortieth day after personal service of this order upon respondent.

4. Respondent shall examine his records for the period from August 15, 1961, to the present time, for the purpose of ascertaining all undercharges that have occurred.

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

6. 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 4 of this order, and shall notify the Commission in writing upon the consummation of such collections.

7. In the event undercharges ordered to be collected by paragraph 6 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.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Gerald M. Burrelle. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 2nd day of OCTOBER, 1962.

George E. Hoover
 President

Robert H. [unclear]

Frederic B. Halbach

 Commissioners

Commissioner C. Lyn Fox, being necessarily absent, did not participate in the disposition of this proceeding.