

ORIGINAL

Decision No. 64352

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,
rates and practices of
JOHN WEISZ, JR.

Case No. 7206

Herbert Cameron, for respondent.
E. O. Blackman, for California Dump Truck
Owners Association, interested party.
Richard V. Godino, for the Commission staff.

O P I N I O N

This proceeding, instituted by the Commission on its own motion, is an investigation into the operations, rates and practices of John Weisz, Jr., operating as a Radial Highway Common Carrier, Permit No. 19-46947, which permit at all times hereinafter mentioned has been and now is in full force and effect.

A public hearing was held on April 26, 1962, in Los Angeles before Examiner Mark V. Chiesa, to determine whether or not said John Weisz, Jr., hereinafter sometimes referred to as respondent, violated Section 3668 and/or Section 5003 of the Public Utilities Code as charged on the order instituting investigation in this case.

The matter was submitted for decision upon stipulation (Exhibit No. 1) of counsel for the Commission and for respondent and upon documentary evidence (Exhibit No. 2) and the oral testimony of respondent and a Commission associate transportation representative.

Upon said evidence we find:

1. That all applicable minimum rate orders were served upon respondent prior to the date of any of the shipments hereinafter noted.
2. That respondent is engaged in the transportation of rock, sand and gravel in dump trucks and the shipments hereinafter listed were shipments of said commodities.
3. That respondent, as of the date of hearing, had complied with Section 5003 of the Public Utilities Code, having filed with this Commission quarterly statements of gross operating revenue for the third and fourth quarters of 1960 and the first quarter of 1961 and having paid the required fees for each of said quarters.
4. That respondent assessed and collected charges less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 7 and supplements thereto, which resulted in undercharges as follows:

<u>Ticket Nos.</u>	<u>Date</u>	<u>Amount of Undercharges</u>
101, 111, 123	7-1-60	\$ 9.47
134, 135, 136, 137, 138	7-1-60	22.39
145, 147, 149, 150, 156, 157,		
161, 162	7-2-60	34.95
175, 181, 198, 210, 216	7-5-60	21.94
234, 251, 267, 284, 306	7-6-60	22.09
333, 334, 335, 336, 337	7-7-60	23.38
439, 459, 478, 490	7-8-60	13.05
513, 514, 515, 517, 518	7-8-60	23.74
523, 527, 533, 539, 546	7-9-60	22.81
569, 579, 588, 605, 642	7-11-60	24.79
721, 722, 723, 724, 725	7-12-60	23.02
750, 763, 781, 792, 805	7-13-60	25.00
834, 837, 846, 856, 876	7-14-60	24.94
901, 911, 914, 931, 932,		
940, 960, 966	7-15-60	34.56
1015, 1033, 1041, 1051, 1056	7-18-60	24.34
1064, 1070, 1088, 1097	7-19-60	13.41
1147, 1151, 1156, 1159, 1163	7-20-60	24.62
1168, 1187, 1190, 1200, 1203,		
1207, 1215, 1221	7-21-60	35.11
1301, 1329, 1337	7-25-60	9.33
1344, 1358, 1377, 1387	7-26-60	13.42
1398, 1405, 1415, 1423	7-27-60	13.27
Total Amount of Undercharges		\$459.63

5. That the applicable minimum rate charges and other data for each shipment are correctly set forth in Exhibit No. 2; that respondent did not apply the prescribed rates and charges for said transportation because he was misinformed as to the proper rates for said transportation and mistakenly believed, in good faith, that he was engaging in the business of buying and selling said commodities; that respondent is also engaged in the business of selling rock, sand and gravel.

Respondent cooperated with the representatives of this Commission in this investigation. Exhibit No. 2 discloses that respondent transported numerous loads of rock, sand and gravel during 1960. Shipments so described were transported from A-1 Paving Company, Claremont, to A-1 Contractors, Inc., Walnut, and to Sparks and Mundo, Los Angeles. While the staff's analysis of respondent's operations reflected by said exhibit discloses that respondent purported to perform this transportation on the basis of "buy-and-sell" transactions, respondent stipulated that such transportation was in fact for-hire transportation. In view of said stipulation, no evidence as to the detailed manner of respondent's operations was introduced.

Respondent's motion to strike Exhibits Nos. 3 (an undercharge letter issued to the carrier) and 4 (a letter from the respondent concerning the undercharge letter) is denied.

In certain other "buy and sell" cases, the evidence has indicated attempted evasion of lawful regulation or attempted obstruction of the Commission's investigation, and mandatory penalties have been imposed. In this case, however, we are persuaded, by the nature of respondent's conduct, by his good

faith, and by his cooperation during the investigation, to suspend the execution of the penalty.

The Commission, having found the facts as hereinabove set forth and concluding that respondent has violated Section 3668 of the Public Utilities Code and the provisions of certain items of Minimum Rate Tariff No. 7, makes its order as follows:

O R D E R

IT IS ORDERED that:

1. Radial Highway Common Carrier Permit No. 19-4697, issued to John Weisz, Jr., is hereby suspended for a period of five consecutive days; provided, however, that the execution thereof 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 date of issuance of this decision, the suspension shall be vacated by further order of the Commission.

2. John Weisz, Jr., shall examine his records for the period from July 1, 1960, to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

3. Within ninety days after the effective date of this decision, John Weisz, Jr., shall complete the examination of his records required by paragraph 2 and file with the Commission a report setting forth all undercharges found pursuant to that examination.

4. John Weisz, Jr., shall take such 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 2 of this order, and shall notify the Commission in writing upon the consummation of such collections.

5. In the event charges to be collected as provided in paragraph 4 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order, John Weisz, Jr., shall institute legal proceedings to effect collection and shall submit to the Commission, on the first Monday of each month, a report of the undercharges remaining to be collected and 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 John Weisz, Jr., and this order shall be effective twenty days after the completion of such service.

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

George F. Traver
President

Robert Page

Frederick B. Holhoff
Commissioner

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