

Decision No. 65061**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 practices, rates, and charges of)
 RAY F. MALAN, doing business as)
 MALAN VAN & STORAGE.)

Case No. 7443

Ray F. Malan, in propria persona.Richard D. Gravelle, for the Commission staff.O P I N I O N

Public hearing was held before Examiner Power at Stockton on November 2, 1962 and the matter was submitted.

The respondent is a carrier of used household goods having headquarters at Stockton. He holds permit No. 39-5884 as a household goods carrier.

The staff presented three witnesses and six exhibits. Exhibit No. 6 is a rate statement.

The oral and documentary evidence covers two moves carried by respondent. On a move from Stockton to Ventura the correct charge was \$949.53, the charge assessed was \$833.65, the undercharge was \$115.88. On a local move in Stockton the proper charge was \$179.23, the charge assessed \$140.35, the undercharge was \$38.88. Total undercharges amounted to \$154.76.

Respondent gave as a reason, the effect of competition. He stated that he was bidding against competitors for these moves.

The Commission accordingly finds that:

1. Respondent was engaged in the transportation of property over the highways as a household goods carrier pursuant to Household Goods Carrier Permit No. 39-5884 during the period the transportation referred to herein was performed.

2. Respondent was served with copies of Minimum Rate Tariff No. 4-A and Distance Table No. 4 and had these documents in his possession at all times during the transportation referred to herein.

3. On a shipment of used household goods from Stockton to Ventura performed on or about December 26, 27 and 28, 1961 and represented by freight bill No. 9825, respondent assessed only five man-hours packing charges when thirty such hours had been expended. Such failure to assess full packing charges resulted in an undercharge of \$115.88.

4. On or about January 5, 1962 respondent transported certain used household goods within the City of Stockton. Said shipment was evidenced by freight bill No. 9840. The labor used in said movement was not correctly charged for and an undercharge of \$38.88 resulted from such incorrect rating.

5. Both freight bills Nos. 9825 and 9840 were incorrectly made out in that they did not show all the services for which Minimum Rate Tariff No. 4-A requires that charges be assessed.

Based upon the pleadings, evidence and findings herein, the Commission concludes that:

(1) Ray F. Malan has violated Sections 5193 and 5196 of the Public Utilities Code by charging, demanding, collecting and receiving a lesser sum for transportation than the charges prescribed by the Commission's applicable minimum rate order.

(2) Ray F. Malan has violated Section 5197 of the Public Utilities Code by assisting, suffering or permitting persons to obtain transportation of property at less than the Commission's minimum rate applicable thereto.

O R D E R

IT IS ORDERED that:

1. Ray F. Malan cease and desist from failing to comply with the lawful orders, rules and regulations of this Commission and the said Ray F. Malan is hereby ordered and directed to observe and obey the provisions of Minimum Rate Tariff No. 4-A, Distance Table No. 4 and Sections 5193, 5196 and 5197 of the Public Utilities Code.

2. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth in Findings Nos. 3 and 4 in the foregoing opinion, and shall notify the Commission in writing upon the consummation of such collections.

3. In the event undercharges ordered to be collected by paragraph 2 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 respondent. The effective date of this order shall be twenty days after the completion of such service.

Dated at san Francisco, California, this 12th day of MARCH, 1963.

George H. Hoover
President

John W. ...

Robert W. ...

Fredrick B. ...

William M. Birneth
Commissioners