

ORIGINAL

Decision No. 65241

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)
DAVID G. LEDESMA, doing business)
as DAVE LEDESMA TRUCKING.)

Case No. 7447

Loyal D. Frazier, for respondent.

Richard D. Gravelle, for the Commission
staff.

O P I N I O N

Public hearing was held before Examiner Power at Los Angeles on December 18, 1962. The matter was submitted subject to a late-filed exhibit due on January 17, 1963.

An associate transportation representative and an associate transportation rate expert testified on behalf of the Commission staff. They gave evidence relating to twenty-four transactions in which, the staff contends, the minimum rates were violated. All involved the transportation of fresh fish from wharves to canneries.

Respondent testified in his own behalf and it was stipulated that one Keith Porter, the shipper chiefly involved, would have corroborated his testimony on all matters within Porter's competence as a witness.

Twenty-one of the transactions in question were short
hauls from Port Hueneme to Oxnard. It appears that the fish were

added

brought in on boats and landed at Port Hueneme. They were then mechanically loaded on the trucks and covered with ice and hauled to canneries at Oxnard. There were three long hauls to Monterey, Terminal Island and Newport Beach.

The staff investigation revealed some evidence that respondent was not charging for the weight of the ice and also there was some evidence that the multiple lot rule was not being protected. However, the evidence on these two points was very slight and, therefore, not pressed by the staff.

In three cases, Parts 9, 10 and 11, shipments were involved that had moved on December 28, 29 and 30, 1961. The rate used would have been correct had they been moved prior to December 16. On December 16 the rate had been increased and the rate increase had not been applied in these three cases.

In fixing the penalty in this matter, the Commission has considered the fact that these hauls of fish represented only a small part of respondent's business. However, in this small part violations were very numerous. A Commission staff witness testified that in 100 movements, the documentations of which he inspected, there were about 75 violations; the 24 violations in Exhibit No. 3 were selected as typical.

The Commission finds that:

1. 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. 56-1945.

2. Between November 3, 1961 and March 1, 1962, respondent transported 24 shipments of fresh fish, iced, at rates less than the lawful minimum rates established for such transportation.

3. The aggregate of the undercharges on these 24 shipments was \$772.34.

4. Prior to the transportation, here involved, respondent had been served with the Commission's Minimum Rate Tariff No. 2 and Distance Table No. 4 and supplements thereto.

The Commission concludes that:

1. David G. LeDesma in the twenty-four instances referred to in the evidence herein, has violated Sections 3664, 3667 and 3737 of the Public Utilities Code.

2. A fine of One Thousand Five Hundred Dollars is a reasonable punishment for the violations alleged and proved herein.

O R D E R

IT IS ORDERED that:

1. Within twenty days after the effective date of this order David G. LeDesma shall pay to this Commission a fine of One Thousand Five Hundred Dollars.

2. Respondent shall examine his records for the period from November 1, 1961 to the present time, for the purpose of ascertaining all undercharges that have occurred.

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

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

5. In the event undercharges ordered to be collected by paragraph 4 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 16th day of APRIL, 1963.

George B. Brewer
President

Robert H. ...

Charles W. ...

Frederic B. Holoboff

William W. ...
Commissioners

