

Decision No. 65311

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
own motion into the operations, )  
rates, and practices of ROY E. )  
LAY, doing business as ROY E. )  
LAY TRUCKING. )

Case No. 7461

E. H. Griffiths, for respondent.

Sheldon Rosenthal, for the Commission  
staff.

O P I N I O N

On October 16, 1962 the Commission instituted its investigation into the operations, rates, charges and practices of Roy E. Lay, doing business as Roy E. Lay Trucking.

Public hearing was held before Examiner Porter on January 31, 1963, at Sacramento on which date the matter was submitted.

The purpose of this investigation is to determine whether respondent in violation of Section 3664, 3667 and 3737 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 supplements thereto.

The Commission staff presented evidence that a review period of January 16, 1962 through April 13, 1962 was selected. Exhibits No. 1 and No. 2, each consisting of 7 corresponding parts, were presented by the staff as representative of the carrier's operations and billing practices. As to parts 2, 3, 6 and 7 of Exhibit No. 2 (the Rate Statement) the respondent stipulated as to their correctness and resulting undercharges.

As to parts 1, 4 and 5 of Exhibit No. 2 the correctness of the rate used by the respondent was dependent upon the question of whether a contract post office in a retail store could serve as a mileage reckoning point as distinguished from the main post office, a branch post office, or a substation.

The minimum rate tariff here involved refers to "the post office". The Commission construes this to mean the main post office and not a branch thereof or a substation. It appears, however, that respondent had a reasonable doubt as to the mileage reckoning point to be used for portions of the traffic in question in this proceeding. Therefore, the investigation as to parts 1, 4 and 5 of Exhibits Nos. 2 and 3 will be discontinued.

It was stipulated that respondent holds Radial Highway Common Carrier Permit No. 6-183 and Highway Contract Carrier Permit No. 57-1016 and that he has been served with Minimum Rate Tariff No. 2, Distance Table No. 4 and applicable supplements thereto.

Based upon the evidence we hereby find that:

1. Respondent is engaged in the transportation of property over the public highways for compensation as a radial highway common carrier.
2. Respondent assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate Tariff No. 2, which resulted in undercharges as set forth in parts 2, 3, 6 and 7 of Exhibit No. 2. Undercharges for these shipments amounted to \$255.61.

O R D E R

IT IS ORDERED that:

1. If, on or before the twentieth day after the effective date of this order, respondent has not paid the fine referred to in paragraph 7 of this order, then Radial Highway Common Carrier Permit No. 6-183 and Highway Contract Carrier Permit No. 57-1016 issued to Roy E. Lay shall be suspended for three consecutive days, starting at

12:01 a.m., on the second Monday following the twentieth day after said effective date. Respondent shall not, by leasing the equipment or other facilities used in operations under these permits 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 and highway contract carrier permit have been suspended by the Commission for a period of three 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 January 16, 1962, 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 \$1,000 to this Commission on or before the twentieth day after the effective date of this order.

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 1st day of MAY, 1963.

George H. Brown  
President  
Robert A. ...  
Robert W. ...  
William W. ...

Commissioners

Commissioner Frederick B. Koloboff, being necessarily absent, did not participate in the disposition of this proceeding.