

ORIGINAL

Decision No. 65374

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)
LELAND J. PERRY, an individual,)
doing business as LEE PERRY)
TRUCKING.)

Case No. 7426

Marvin Handler, for respondent.
Richard D. Gravelle, for the Commission staff.

O P I N I O N

On August 28, 1962, the Commission instituted an investigation into the rates and practices of Leland J. Perry, an individual, doing business as Lee Perry Trucking.

A public hearing was held before Examiner Daly on January 16, 1963, and March 5, 1963, at San Francisco, with the matter being submitted on the latter date.

Respondent is presently engaged in the transportation of property under authority of Radial Highway Common Carrier Permit No. 49-1686 and Highway Contract Carrier Permit No. 49-1768. His principal place of business is located in Sebastopol. He owns and operates nine units of equipment. Respondent had a gross revenue of \$115,071 for the year 1961.

The record indicates that a representative of the Commission's License and Compliance Branch visited respondent at his accountant's office in Sebastopol on March 12, 14, 15 and 16, 1962. According to the staff representative, respondent admitted being served with copies of the appropriate Minimum Rate Tariffs

and Distance Table involved herein. After checking approximately 119 freight bills covering the period from September to December 1961, inclusive, the representative selected the underlying documents relating to 26 shipments. Based upon these documents, a staff rate expert prepared and introduced Exhibit No. 1, which indicates undercharges amounting to \$514.65.

It was stipulated that the information set forth in Exhibit No. 1 was correct with the exception of Part 26, which involved a 134,565-pound split delivery shipment of canned apple products from the Sebastopol Co-operative Cannery in Sebastopol to Market Basket Stores, Los Angeles; Davies Warehouse, Los Angeles; A. M. Lewis, Northridge and the Smart & Final Iris Co., Vernon. This shipment was similar in nature to 20 other split delivery shipments considered in Exhibit No. 1 which were also transported for the Sebastopol Co-operative Cannery. According to the staff witness, the shipment resulted in undercharges amounting to \$67.79, but according to respondent's expert rate witness, the shipment resulted in undercharges of only \$25.29. The discrepancy is attributable to an interpretation of Item 410 of Pacific Southcoast Freight Bureau Trailer Flat Car Tariff 294-D. The item deals with split deliveries and consists of paragraphs (a), (b), (c), (d), (e) and (f). Paragraph (b) states in effect that the charges for split deliveries "shall be the charge applicable for the transportation of a single shipment of like kind and quantity of property from railhead point of origin to a railhead location at the highest rated railhead destination, plus charges prescribed in Paragraphs (c), (d) or (e) of this item". Respondent's rate expert apparently combined

the various paragraphs in rating the shipment. The staff expert testified that the wording, "(c), (d) or (e)" required alternative use of the paragraphs and precluded combined use of said paragraphs, which would have been permissible had the wording been, "(c), (d) and (e)".

In mitigation respondent testified that he is a man of limited education; that he learned the use of the minimum rate tariffs by reading them; that 75 percent of his business is with the Sebastopol Co-operative Cannery; that on the split delivery shipments he merely followed the instructions of the former traffic manager of the Sebastopol Co-operative Cannery, who told him to rate the shipments in such manner or lose the business; that he was also informed by the Petaluma and Santa Rosa Railroad that he was correctly rating the split delivery shipments; that he commenced to correctly rate such shipments after being properly informed by a Commission representative; that on the single shipment of purple vetch he was of the opinion the commodity was an exempt item; that he has since engaged the service of a traffic consultant to rate his shipments; that he is financially unable to pay a penalty and that a suspension could lose him the Sebastopol Co-operative Cannery account.

The present traffic manager for the Sebastopol Co-operative Cannery testified that the former traffic manager had incorrectly advised respondent in rating the split delivery shipments and the cannery was willing to pay all undercharges resulting therefrom.

After consideration the Commission finds as follows:

1. Respondent has violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging or collecting a lesser

compensation for the transportation of property as a highway permit carrier than the applicable charges prescribed by Minimum Rate Tariff No. 2.

2. The staff correctly interpreted Item 410 of Pacific Southcoast Freight Bureau Trailer Flat Car Tariff 294-D.

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. 49-1686 and Highway Contract Carrier Permit No. 49-1768 issued to Leland J. Perry shall be suspended for two 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. Leland J. Perry 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 two 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 1, 1961 to the present time, for the purpose of ascertaining all undercharges that have occurred.

4. Within ninety days after the effective date of this order, 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 Leland J. Perry. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 22nd day of MAY, 1963.

Robert G. Hoover
President
John J. Ladd
Fredrick B. Holloman
William H. Bennett

Commissioners

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