

It was stipulated that respondent Smiser Freight Service has been issued a certificate of public convenience and necessity as a highway common carrier and has been issued Highway Contract Carrier Permit No. 15-6126 and has been served with Minimum Rate Tariff No. 2, Distance Table No. 4 and applicable supplements thereto and is a party to Western Motor Tariff Bureau Freight Tariff No. 17-A.

It was further stipulated that respondent California Produce Distributors has been issued Radial Highway Common Carrier Permit No. 15-5215 and has been served with Minimum Rate Tariff No. 2, Distance Table No. 4 and applicable supplements thereto.

The staff selected a review period of April through July 1962. Fifteen shipments for Smiser Freight Service and 13 for California Produce Distributors were selected and forwarded to the Rate Analysis Unit of the Commission and undercharges were found in each instance.

Parts 1, 2, 3, 4, 9, 11, 12 and 13 of Exhibit 5 show violations of Western Motor Tariff Bureau Freight Tariff No. 17-A to which Smiser Freight Service is a party, in that a rate was applied that was not in the carrier's tariff. The respondent testified that he had applied a "piggy back" rail rate, but staff witness pointed out that such a rate was not in Western Motor Tariff Bureau Freight Tariff No. 17-A.

In parts 6, 7 and 14 of Exhibit 5 Smiser Freight Service failed to issue a master shipping document as a prerequisite to applying a split delivery rate, also in violation of its tariff.

Parts 5, 8, 10, 12 and 15 of Exhibit 5 show violations by Smiser Freight Service of its filed tariff and of Minimum Rate Tariff No. 2 by failure to protect minimum weight requirements when

applying a carload rate; incorrect classification of a commodity and an incorrect rate being applied.

Exhibit 6 consisting of 13 parts shows that California Produce Distributors in the main has violated Minimum Rate Tariff No. 2 by performing split deliveries and applying a split delivery rate without written instructions from the shipper as required by Minimum Rate Tariff No. 2. Testimony was adduced that even if the proper shipping documents had been issued the rail rates assessed by the carrier would not apply because of the routing restriction.

Based upon the evidence we find that:

1. Respondents are engaged in the transportation of property over the public highways for compensation as permit carriers.
2. Respondent Smiser Freight Service is engaged in the transportation of property over the public highways for compensation as a highway common carrier.
3. Respondents assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate Tariff No. 2 and those specified in Western Motor Tariff Bureau Freight Tariff No. 17-A. Undercharges for these shipments amounted to \$694.77 for Smiser Freight Service as found in Exhibit 5 and \$469.57 for California Produce Distributors as found in Exhibit 6.
4. Respondents violated Sections 494, 3664 and 3737 of the Public Utilities Code by charging and collecting a compensation less than the minimum established by this Commission in Minimum Rate Tariff No. 2 and as specified in Western Motor Tariff Bureau Freight Tariff No. 17-A.

O R D E R

IT IS ORDERED that:

1. If, on or before the twentieth day after the effective date of this order, California Meat & Produce, Inc., and/or Samjo,

Inc., respondents, have not paid the fines referred to in paragraph 7 of this order, then Radial Highway Common Carrier Permit No. 15-5215 issued to California Meat & Produce, Inc., and Highway Contract Carrier Permit No. 15-6126 and the certificate of public convenience and necessity issued to Samjo, Inc., are hereby suspended for five consecutive days starting at 12:01 a.m. on the second Monday following the twentieth day after the effective date of this order. Respondents shall not, by leasing the equipment or other facilities used in operations under these permits or certificate 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. Respondents shall post at their 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 their radial highway common carrier permit, highway contract carrier permit and certificate of public convenience and necessity have been suspended by the Commission for a period of five days. Within five days after such posting respondents shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

3. Respondents shall examine their records for the period from April 1, 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 order respondents shall complete the examination of their 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. Respondents shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth in Exhibits 5 and 6, 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, respondents 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, each respondent may pay a fine of \$3,000 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 respondents. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 9th day of July, 1963.

William J. Bennett
President
George G. Crover
Frederick B. Hallock
Commissioners