

Decision No. 65716**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
LAURA O. MORRISON; H. A. MORRISON, JR.
and WENDELL R. MORRISON, doing
business as H. A. MORRISON TRUCKING
CO., a copartnership.

Case No. 7335

Hugh A. Morrison, Jr., for respondents.

Richard D. Gravelle and Frank J. O'Leary. for
the Commission staff.

O P I N I O N

Public hearing was held before Examiner Rowe on July 31, 1962, in Yuba City, at which time evidence was adduced and the matter was submitted for decision.

The order in the above case dated June 26, 1962, instituted an investigation of the operations, practices, rates and charges of respondents to determine:

1. Whether they have violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging, demanding, collecting, or receiving rates less than the applicable minimum rates set forth in Minimum Rate Tariff No. 2 and supplements and amendments thereto.
2. Whether any or all of the operating authority of respondents should be canceled, revoked, suspended or any fine imposed.
3. Whether respondents should be ordered to collect from shippers or other persons liable for freight charges amounts heretofore unbilled or unpaid and/or the difference between the

charges billed or collected and charges due under Minimum Rate Tariff No. 2 and supplements and amendments thereto.

4. Whether respondents should be ordered to cease and desist from any and all unlawful operations and practices.

5. Whether, in the event it be found that respondents have committed any undercharge violations, said respondents should be ordered to examine their records to ascertain if any additional undercharges have occurred, to file a report on such examination, to collect any such additional undercharges disclosed by said examination and to report such collection to this Commission.

6. Whether any other order or orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

At the hearing it was stipulated that respondents possessed Radial Highway Common Carrier Permit No. 51-587 issued by this Commission and had received Minimum Rate Tariff No. 2 and all supplements and amendments thereto, as well as Distance Table No. 4.

A staff representative testified that he had reviewed 100 of respondents' freight bills issued during the period commencing January 1, 1962 and ending on March 15, 1962. He selected 22 of these bills as representing undercharges and these are the bills referred to in the order of investigation.

The first of these freight bills was numbered 6156, dated January 22, 1962, in which Van Waters and Rogers of Stockton was the consignor and Bob Hanke Chemicals was the consignee. It represented 400 coils of 12-gauge galvanized wire and according to

Mr. H. A. Morrison was the only instance where such a product had been transported for the Hanke Company or anyone else. According to the Commission rate expert it indicated a billing which amounted to an undercharge of \$44. This undercharge has now been collected.

The other freight bills studied were issued for the transportation of bulk oats originating at Lincoln or Gridley and shipped to Paramount, and Walter Jansen & Son was the consignor and Western Consumers Feed Company was the consignee. According to the undisputed testimony of Mr. Morrison, this movement represents his entire transportation of this commodity. Mr. Jansen had first given respondents two truckloads for shipment and liking the service had immediately told respondents they could transport the balance at the agreed rate of 40 cents per 100 pounds. The Commission's rate expert testified that 38-1/2 cents was the minimum set forth in the Commission's Minimum Rate Tariff No. 2. The difficulty arose because of the fact that respondents had not properly prepared the shipping documents so as to include at least 80,000 pounds in each bill of lading and in some instances had failed to pick up at least that quantity for transportation within a 48-hour period.

Mr. Morrison further testified that the errors in his billing and in the preparation of shipping documents were not an effort to undercharge in violation of the minimum rate tariff. He stated that his background and prior experience were that of a mechanic and truck driver and that the task of billing for freight charges was extremely complicated and difficult and that his mistakes resulted from his confusion and inexperience. The Commission rate expert testified that it was a difficult and

complex task to properly rate such shipments, and that no carrier could be safe without the aid of a transportation rate specialist.

Granting that the rating of shipments, in many instances, may be difficult and requires technical proficiency, the law is settled that neither negligence, inexperience, nor inadvertence constitutes a defense to a failure to collect the proper tariff charge. One who engages in the business of transporting freight for the public may not lawfully charge for his services rates less than the minimum established by this Commission. The practices of the respondents in incorrectly billing and in the preparation of shipping documents in improper form are unlawful and should be corrected. A lawful duty rests upon the respondents to observe minimum rates, and the law will not permit them to offer excuses for not doing so.

The remaining issue to be determined is whether respondents should be ordered to collect from Walter Jansen & Son the proper tariff charges. According to the evidence, respondents undercharged Walter Jansen & Son in the total amount of \$1,614.26. Of this amount, \$407.33 represents situations where freight was carried in truckloads but at times not within the 48-hour period. The remainder, or \$1,206.93, resulted from respondents' failure to prepare shipping documents pursuant to respondents' agreement with the shipper. Had respondents complied with this agreement, the freight in question should have been carried at times and in amounts sufficient to entitle the shipper to the 40-cent minimum rate. Because of the default of the respondents, this agreement was not carried out. In this connection, it is pointed out that no equitable defense, based upon the default of a carrier, may be interposed to the collection of proper tariff charges applicable

to the transportation service furnished, notwithstanding any agreement or understanding between the carrier and the shipper which may be contrary thereto. (Armour & Co. v. A.T. & S.F. Ry. Co., 254 Fed. (2d) 719, 723-724; United States v. Associated Air Transport, 275 Fed. (2d) 827, 833.) If, as a result of the default of a carrier, a shipper has been damaged, the shipper has his action at law against the carrier, but the shipper must, nevertheless, pay the proper tariff charge.

Based upon the evidence, the Commission finds that, at all times herein mentioned:

1. Respondents were operating under Radial Highway Common Carrier Permit No. 51-537 issued by this Commission.
2. Respondents had been served with the Commission's Minimum Rate Tariffs Nos. 2 and 8, and with all supplements and amendments thereto.
3. Respondents transported freight consisting of bulk oats and collected charges less than the applicable minimum rates, as indicated by the following numbered freight bills, thus resulting in the following undercharges which we hereby find to exist:

<u>Freight Bill No.</u>	<u>Resulting Undercharge</u>
6123	\$ 74.43
6124	74.85
6127	73.43
6123	75.21
6134	79.04
6135	77.15
6139	74.40
6140	75.68
6143	76.01
6159	73.47
6161	74.36
6167	76.47
6168	72.30
6178	73.53
6179	73.37
6191	76.35
6204	82.29
6194	83.84
6199	83.62
6209	81.33
6216	<u>82.53</u>
Total	\$1,614.26

Based upon the foregoing findings of fact, the Commission concludes that:

1. Respondents have violated Sections 3664, 3667, and 3737 of the Public Utilities Code by charging, demanding, collecting, and receiving charges less than the applicable minimum rates set forth in Minimum Rate Tariff No. 2, and supplements and amendments thereto.

2. Respondents should be fined the sum of \$1,500.

3. Respondents should be ordered to collect from the shipper liable for freight charges amounts as above-stated as unpaid, being the difference between the charges billed and collected and the charges due under Minimum Rate Tariff No. 2, and supplements and amendments thereto.

4. Respondents should be ordered to examine their records to ascertain if any additional undercharges have occurred subsequent to March 15, 1962, to file a report on such examination, to collect any such additional undercharges disclosed by said examination and report such collection to this Commission.

O R D E R

IT IS ORDERED that:

1. Respondents shall pay a fine of \$1,500 to this Commission on or before the fortieth day after personal service of this order upon respondents.

2. Respondents shall examine their records for the period from March 15, 1962, to the present time, for the purpose of ascertaining if any undercharges have occurred other than those mentioned in the findings of this decision.

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

4. Respondents shall take such action, including legal action, as may be necessary to collect the amounts of undercharges as above found by the Commission and as 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, 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.

The Secretary of the Commission is directed to cause personal service of this order to be made upon each 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 July, 1963.

William G. Bennett
President
Robert E. Murphy
Edward W. Ray

I concur in the order.
George H. Grover
Commissioner.

I concur in the order
Fredrick B. Hebbhoff