

ORIGINALDecision No. 65790

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates, charges and practices of) Case No. 7543
 C. C. WHITE, INC., a corporation,)
 doing business as WHITE'S TRANS-)
 PORTATION.)

Richard A. Bennett, for respondent.Timothy E. Treacy, for the Commission staff.O P I N I O N

On January 29, 1963, the Commission instituted an investigation into the operations, rates, charges and practices of the respondent herein, a corporation operating as a radial highway common carrier and a highway contract carrier, for the purpose of determining whether in the operation of its transportation business the respondent violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging, demanding, collecting, and receiving lesser sums for the transportation of property than the applicable charges prescribed by this Commission, in that respondent may have improperly consolidated separate shipments for rate determination purposes in violation of Item 85 of Minimum Rate Tariff No. 2, may have provided split delivery services without complying with Item 170 of Minimum Rate Tariff No. 2, may have failed to assess off-rail rates where applicable pursuant to the provisions of Minimum Rate Tariff No. 2, and may have used rates other than the applicable rates prescribed by Minimum Rate Tariff No. 2 to determine said lesser sums for transportation.

A duly noticed public hearing was held before Examiner Fraser on April 2, 1963, at Manteca, and the matter was submitted subject to the filing of an exhibit, which has been received.

It was stipulated that the respondent is operating under Radial Highway Common Carrier Permit No. 39-4050 and Highway Contract Carrier Permit No. 39-4309; also that the respondent was served with copies of Minimum Rate Tariffs Nos. 2 and 8, Distance Table No. 4, and all of the pertinent amendments and supplements thereto, prior to the dates on which the transportation alleged herein was performed.

A Commission representative testified that he visited the respondent's office in Manteca, on July 23 and 24, 1962 and checked the respondent's records on 200 shipments hauled during the period from September 1961 to June of 1962. The records showed that 50 percent of the shipments consisted of commodities which are exempt from rate regulation by this Commission; 25 percent consisted of glass commodities which seemed to be rated correctly, and 25 percent consisted of lumber which had all of the rate differences found by the witness. The witness stated he made photostatic copies of 16 of the 200 freight bills on July 24, 1962. He testified these copies are true and correct copies of the original documents and that they have been combined with true and correct copies of invoices, bills of lading and weight certificates, as Exhibit No. 1; also that he visited the points of origin and destination on the 16 counts in Exhibit No. 1 and found numerous points rated on rail by the respondent to be actually off rail; and that no written instructions from shippers or consignors to the carrier were found on some of the split-delivery shipments (Parts 15, 16) as required by Item 170 of Minimum Rate Tariff No. 2; also on Freight Bill No. 1887 (Part 3) the date was changed from December 19, 1961 to December 27, 1961 without an apparent reason.

The witness testified that the respondent operates with 25 power vehicles and 66 trailers out of a terminal in Manteca, which includes a shop and office. He testified the Commission records show the respondent's gross earnings for 1962 totaled \$384,321; also that the respondent employs from 20 to 25 drivers, an accountant, rate man, dispatcher, and a mechanic. The witness identified and authenticated Exhibit No. 2, which contains copies of an undercharge letter dated July 28, 1960 along with a supplementary letter dated February 1, 1961 and a Notice of Violation of Tariff Item 85(c) and Item 170(P) of Minimum Rate Tariff No. 2 dated February 2, 1960.

A rate expert from the Commission staff testified that he took the set of documents now in evidence as Exhibit No. 1 along with other information in the testimony of the prior witness and formulated Exhibit No. 3, which gives the rate charged by the respondent and the rate computed by the Commission staff on each of the freight bills in Exhibit No. 1. He stated the rates assessed, charged and collected by the respondent on the documents included in Exhibit No. 1 are lower than the lawful minimum rates allowed by Minimum Rate Tariff No. 2 and that the correct rates along with the undercharges are set out in Exhibit No. 3. The witness testified the undercharges listed in Exhibit No. 3 total \$1,359.89.

The president of the respondent corporation testified they have been in business since 1936. The witness stated he lost his father in 1959 and his brother in 1962; he was never able to obtain a good rate man after the death of his brother, because competent rate men refused to live and work in Manteca. He testified they have determined a shipper to be on or off rail by having their drivers fill in the information on the freight bills and also by writing or phoning the shipper concerned; neither of these methods has been effective; he now has a good rate man in the office and hopes to avoid future undercharge violations, although it may be necessary

to personally visit the premises of each new shipper to be sure whether they are on rail; he stated some of his customers phone in their orders and others use a teletype; many of his shippers fill out their own shipping documents, which happened on Freight Bill No. 1887 (Part No. 3) with the altered date and Freight Bill No. 25660 (Part 10). He thinks Freight Bill No. 1887 was filled out on December 19, 1961, the first date entered, but due to bad weather, or some other reason, the pickup was delayed until December 27, 1961; when the load was picked up the shipper simply lined out the old date and filled in the date on which the shipment actually moved. The witness stated that White's Transportation employs forty employees during the busy season, with a weekly payroll of \$6500. If a suspension is imposed on the respondent all of these employees will be out of work for an indefinite period.

An employee of the respondent testified he personally viewed the premises at 3737 San Leandro Blvd., Oakland, which was occupied by the Eureka Mill and Lumber Co. when the undercharges alleged herein occurred. He followed a Southern Pacific spur track in through a fence at the north end of the property; his investigation was made on February 15, 1963. The respondent introduced Exhibits Nos. 9 and 9(a), which are copies of purported agreements between the Southern Pacific Company and Eureka Mill and Lumber Company, Inc., dated June 24, 1929 and November 23, 1962, respectively, each having a map attached showing a rail spur entering the Eureka Mill and Lumber Company yard. The witness testified the rail spur entered the premises at the corner of 38th Avenue and Warren Street, as indicated on the maps attached to the exhibits.

A rate expert introduced Exhibit No. 8 and testified for the respondent. He stated he rated all 16 counts presented by the staff and his rates agreed with those in Exhibit No. 3 on all counts

except Parts Nos. 5, 7 and 10. He stated the staff undercharge on Part 5 is listed as \$65.41; under his rate it is reduced to \$32.95, a difference of \$32.46. The difference results from the staff computing the off-rail charges from the team track at Hemet to the consignee at Hemet based on the total weight of the shipment, or 103,920 pounds. He believes the charge should be computed only on the actual weight delivered or 51,980 pounds, per Note 4 of Item 210 of Minimum Rate Tariff No. 2. He testified on Part No. 7 he found an undercharge of \$323.00; the staff had \$447.80, a difference of \$124.80, caused by the staff rate showing the consignee Rialto Lumber Co. as being off rail. The witness testified he rated the consignee as "on rail" because it is listed as "on rail" on Page 154 of Southern Pacific Freight Tariff No. 1517. The witness admitted this tariff is labeled "Not to be used for rating purposes", and that it is an unofficial publication. He stated however, that the consignee Rialto Lumber Company receives shipments "on rail", at the Pacific Electric Railway siding located approximately one block away (Exhibits Nos. 6, 6-A); the goods are then transported from the rail siding to the consignee's premises in the consignee's truck. The witness testified he found no undercharge on Part 10 (Freight Bill No. 4-2-295). He rated the shipment as a split-delivery shipment because the shipper prepared the freight bill and written instructions required by Item 170 of Minimum Rate Tariff No. 2 were contained thereon. He also considered the Eureka Mill and Lumber Company as being "on rail", based on the testimony of the prior witness and Exhibits Nos. 9 and 9-A.

The witness testified the only sure way for a carrier to determine whether a shipper or consignee is on or off rail is by a personal visit to the premises in question; the railroads will not furnish this information and if one asks the owner of the establishment, the answer is usually in the affirmative regardless of the

facts, since most shippers prefer the lower rail rate. The witness testified Exhibit No. 4 is a letter from a shipper who claims to be "on rail"; the Santa Fe freight agent says this shipper is not "on rail" and an investigation of the premises has revealed that delivery by rail is taken on a team track next door.

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 under Radial Highway Common Carrier Permit No. 39-4050, and as a highway contract carrier under Highway Contract Carrier Permit No. 39-4309.

2. Respondent was served copies of Minimum Rate Tariffs Nos. 2 and 8, Distance Table No. 4, and all of the pertinent amendments and supplements thereto, prior to the dates on which the transportation alleged herein was performed.

3. The staff and the respondent differ as to whether the 6½ cents off-rail rate is applicable to 103,920 pounds (as contended by the staff), or 51,980 pounds (as contended by the respondent).

The entire shipment consists of 103,920 pounds. There is no provision in Item No. 210 which provides that rates can be assessed on a weight less than the weight of the shipment. The staff's rating on Part 5 (Freight Bill No. 2-2-94) is correct.

4. The respondent has rated the consignee in Part No. 7 as being "on rail" because of respondent's belief that the consignee receives goods hauled by truck at a team track owned by the Pacific Electric Railway Co. While the consignee does not have its own rail

spur, the record does not establish that the deliveries were made at an off-rail point. We therefore find that the undercharge on this count is \$323.00 as contended by respondent.

5. The evidence on Part No. 10 indicates that written instructions were received and the Eureka Mill and Lumber Co. to be "on rail", as rated by the respondent. The undercharge of \$58.50 alleged in Part No. 10 of Exhibit No. 3, by the staff, will be canceled.

6. Respondent assessed and collected charges less than the applicable charges established by this Commission in the applicable tariffs, which resulted in undercharges in the total sum of \$1,176.59. ✓

7. Respondent has improperly consolidated the weight of numerous separate shipments for the purpose of assessing a rate on the gross weight thereof, without complying with the provisions of Item 85 of Minimum Rate Tariff No. 2, which require that the carrier receive written instructions from the consignor prior to, or at the time of, the initial pickup and that the carrier transport the shipment within a period of two days. (Parts 1, 6 and 7 of Exhibit 1) ✓

8. Respondent has provided a split-delivery service without complying with the provisions of Item 170 of Minimum Rate Tariff No. 2, which requires in part that if proper instructions have not been received from the consignor prior to, or at the time of, the first pickup each component part must be rated as a separate shipment. (Parts 1, 3, 15, and 16 of Exhibit 1) ✓

9. Respondent has failed to assess the off-rail charge which must be added to the basic rail rate, when a point of origin or destination of a shipment is located "off rail". (Parts 4, 5, 9, 11, 12, 13, 14 of Exhibit 1)

Having found facts as hereinabove set forth, the Commission concludes that:

1. C. C. White, Inc., a corporation, doing business as White's Transportation, has violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging and collecting lesser sums than the applicable charges prescribed by this Commission in Minimum Rate Tariff No. 2 and the supplements thereto.

2. C. C. White, Inc., a corporation, doing business as White's Transportation, has violated the provisions of Item No. 85 and Item No. 170 of Minimum Rate Tariff No. 2.

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 of \$2,000 referred to in paragraph 7 of this order, then Radial Highway Common Carrier Permit No. 39-4050 and Highway Contract Carrier Permit No. 39-4309, issued to C. C. White, Inc., shall be suspended for four 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. In the event the suspension as provided in paragraph 1 hereof becomes effective 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 four 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 September 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 \$2,000 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 30th day of JULY, 1963.

William J. Bennett
President
John E. Stutz
Robert W. [unclear]
George L. Trover
Fredrick B. Hallock
Commissioners