

ORIGINALDecision No. 65791

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 M. BROCCO)
 & SONS, INC., a corporation.)

Case No. 7568

Marvin Handler, for respondent.Alan Silvius, for the Silvius Traffic Service,
interested party.Robert Charles Marks, for the Commission staff.O P I N I O N

On February 26, 1963, the Commission instituted its order of investigation into the operations, rates, charges and practices of M. Brocco & Sons, Inc., a California corporation, for the purpose of determining whether respondent has violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging, demanding, collecting and receiving a lesser sum for transportation than the applicable charges prescribed in Minimum Rate Tariff No. 2 and supplements thereto.

A duly noticed public hearing was held before Examiner Fraser on May 23, 1963 in San Francisco, and the matter was submitted. It was stipulated that the respondent is a California corporation, operating over the public highways under Highway Contract Carrier Permit No. 49-1756, which authorizes the statewide hauling of hay, grain and stock feed; also, that respondent was served a copy of Minimum Rate Tariff No. 2 and Distance Table No. 4 and the pertinent amendments and supplements thereto prior to the transportation

referred to herein. It was further stipulated that the rates computed by the staff rate expert in Exhibit No. 4 are correct and that the total undercharges therein amount to \$189.42.

A Commission representative testified that he first visited the office of respondent on August 29 and 30, 1962, when he reviewed 207 shipments, which was all of the transportation performed by respondent from July 1 through 31, 1962, inclusive. He stated he returned to the carrier's office on November 15, 1962 and made true and correct photostatic copies of 26 of the 207 freight bills and the 26 copies are all in evidence herein as Exhibit No. 1.

An undercharge letter from the Transportation Division of the Commission, dated March 20, 1962, which directed respondent to review its records and to collect all undercharges found from July 1, 1961, was placed in evidence as Exhibit No. 2. Respondent's reply to Exhibit No. 2 was accepted as Exhibit No. 3.

The witness further testified that the reason he checked respondent's records was to determine if the undercharges noted in Exhibit No. 2 had been collected by respondent. He therefore also checked respondent's files for the period from July 1, 1961 to March of 1962, for the purpose of determining whether specific previously noted undercharges had been collected. He stated he found five freight bills on transportation performed during July of 1961, on which the undercharges were not collected. These are included as Part 1 of Exhibits Nos. 1 and 4, with total undercharges of \$25.92. The remaining 21 freight bills concern transportation performed in July of 1962.

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 presented by the prior witness and formulated Exhibit No. 4, which gives the rate charged by respondent and the rate computed by the Commission staff on each of the 26 freight bills included in the 7 parts of Exhibit No. 1. He stated the rates assessed, charged and collected by respondent on the 26 freight bills in Exhibit No. 1 are lower than the lawful minimum rates allowed by Minimum Rate Tariff No. 2 and Distance Table No. 4. The witness stated the undercharges in Exhibit No. 4 total \$189.42.

A staff witness testified that the Commission records show respondent's gross revenue for the last four quarters was \$237,713, with \$37,083 for the first quarter of 1963; \$59,212 for the fourth quarter in 1962, \$66,341 for the third quarter and \$75,077 for the second quarter. The witness stated the records further show that on November 15, 1962 respondent had seven drivers, plus Mike Brocco as manager-dispatcher and his two sons as combination drivers and mechanics; also that respondent operates out of a combination office, shop, and terminal located at Sonoma, California, with one truck, eight tractors, eleven semitrailers, nine full trailers and two dollies.

The president of respondent corporation testified that he has been in business for 15 years at the same location and that respondent's entire business consists of hauling hay, grain and livestock feed for only 5 customers as a contract carrier; the witness stated that he has done all of the rating for the past 15 years; he has no formal education and has been using the "Alan Silvius Grain Rate Book" as a guide; he has never given any shipper a discount or

rebate and has endeavored to obey the law and tariffs in every way. About six or seven years ago respondent's records were checked by a Commission representative and respondent was never notified to collect undercharges. As soon as he was notified of the undercharges listed in Exhibit No. 2 they were all collected, except the \$25.92 represented by the five freight bills in Part 1 of Exhibits Nos. 1 and 4. These five freight bills were inadvertently overlooked at the time, although they have since been collected on May 20, 1963, as indicated by the first five entries on Exhibit No. 7.

The witness stated that he rated the freight bills in Part 1 by applying a rate based on the total mileage from Woodland to Napa, plus the 3½ miles from the Napa city limit to the point of delivery. He did not realize that the Distance Table requires the courthouse be used to compute the mileage from Napa to the consignee.

The witness testified he visited his birthplace in Switzerland during July of 1962 and the rating in July was done by his niece who had no transportation or rate experience. She rated Parts 2, 3, 5 and 7 (Exhibits Nos. 1 and 2) under a 48,000 pound minimum, instead of the applicable 40,000 pound minimum; on Part 6 she based her rate on a distance of sixty (60 to 70) miles rather than seventy miles (70 to 80) as required by Distance Table No. 4. The witness testified that he has checked his records and all undercharges on transportation performed between July 1, 1961 and May 20, 1963 have already been collected, including those alleged in Parts 2, 3, 4, 5, 6 and 7 (Exhibits Nos. 1 and 4).

The Commission finds that:

1. At all times mentioned herein respondent M. Brocco & Sons, Inc., was transporting property over the public highways under the authority of Highway Contract Carrier Permit No. 49-1756, which authorizes the statewide hauling of hay, grain and stock feed.

2. Respondent was served with Minimum Rate Tariff No. 2, Distance Table No. 4 and the pertinent supplements and amendments thereto, prior to the transportation performed under the documents listed herein.

3. Respondent has transported 26 shipments at rates less than the minimum rates authorized by the Commission's Minimum Rate Tariff No. 2, which resulted in the undercharges enumerated in Exhibit No. 4, in the total sum of \$189.42.

4. Respondent has reviewed its records and has collected approximately \$600 in undercharges, including the \$189.42 mentioned above. The undercharges collected resulted from transportation performed from July 1, 1961 to May 20, 1963, inclusive.

5. The evidence does not justify the imposition of a fine or penalty. The respondent will be ordered to cease and desist from charging less than the proper minimum rate as a warning that future violations will not be tolerated.

The Commission concludes that respondent has violated Sections 3664, 3667 and 3737 of the Public Utilities Code.

O R D E R

IT IS ORDERED that M. Brocco & Sons, Inc., cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith, in a lesser

amount than the minimum rates and charges prescribed by law and the regulations of this Commission.

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 21st day of JULY 1, 1963.

William L. Beunell
President

George T. Hoover
Commissioners

Fredrick B. Holbrook
Commissioners