

**ORIGINAL**

Decision No. 65904

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's	)	
own motion into the operations,	)	Case No. 7163
rates and practices of SENATOR	)	
TRUCK SERVICE, INC.,	)	

Handler, Baker & Mastoris, by Daniel W. Baker, for respondent.  
Donald B. Day, for the Commission staff.

O P I N I O N

In Decision No. 63895 in Case No. 7163, dated July 2, 1962 (59 Cal. P.U.C. 777), respondent was ordered and directed to pay to the Commission the sum of \$957.98 as and for delinquent Transportation Rate Fund fees and penalties, required by Section 5003 of the Public Utilities Code. Respondent's permits were to be suspended until the aforementioned fees and penalties were paid.

By order dated October 23, 1962, the effective date of said decision was stayed and rehearing granted limited to the following question:

"Whether respondent has violated Section 5003 of the Public Utilities Code by failing to pay fees properly due under said section."

Public hearing was held before Examiner Porter on January 8, 1963, on which date the matter was submitted.

Respondent presented financial documents in support of its contention that the unreported revenue in question was in fact not subject to the Transportation Rate Fund fee. Books of account, as audited and adjusted by an accounting firm, were presented in support of the financial statements.

The staff of the Commission's Finance and Accounts Division was given an opportunity to compare the financial exhibits with the formal books of account. The staff determined, and we find, that the carrier had just cause for not including certain types of revenue in its gross operating revenue and that its deduction of revenues from operations wholly on private property was allowable. This determination had not been made at the prior hearing due to the condition of the carrier records. The excluded revenue consisted of revenue from the lease or rental of equipment to other carriers and from "subhaul commissions." The latter resulted from an incorrect bookkeeping entry which caused revenue as well as expenses to be overstated.

We find that respondent has paid all Transportation Rate Fund fees for the period January 1, 1958 through December 31, 1960, as required by Section 5003 of the Public Utilities Code.

O R D E R

IT IS ORDERED that finding 8 and ordering paragraphs 8 and 9 of Decision No. 63895 are set aside, and that ordering paragraphs 1 and 3 of said decision are amended to read as follows:

"1. If, on or before the fortieth day after personal service of this order upon respondent, respondent has not paid the fine referred to in paragraph 3 of this order, then Radial Highway Common Carrier Permit No. 57-1121 and Highway Contract Carrier Permit No. 57-1122 issued to Senator Truck Service, Inc., a corporation, shall be suspended for six consecutive calendar days starting at 12:01 a.m. on the second Monday following the fortieth day after such personal service."

"3. As an alternative to the suspension of the operating rights imposed by paragraph 1 of this order, respondent may pay a fine of \$4,000 to this Commission on or before the fortieth day after personal service of this order upon respondent."

IT IS FURTHER ORDERED that in all other respects Decision No. 63895 shall remain in full force and effect.

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 and of the order in Decision No. 63895, as here modified, shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 20<sup>th</sup> day of AUGUST, 1963.

*Stallman, Jr. Bennett*  
President

*W. J. [unclear]*

*W. J. [unclear]*

*George H. Crover*

*Frederick B. Hallock*  
Commissioners