

Decision No. 66038

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of Carl Painter.)

Case No. 7489

Gerald K. Hoyt and Robert K. Hoyt, for respondent.
Lawrence Q. Garcia for the Commission staff.

O P I N I O N

On November 27, 1962, the Commission instituted this investigation into the operations, rates and practices of Carl Painter, who transports property, mostly hay, as a radial highway common carrier pursuant to Permit No. 24-1948.

A public hearing was held in Los Banos on February 14, 1963, to determine whether respondent has violated Sections 3664, 3667 and 3737 of the Public Utilities Code by assessing and collecting rates which are less than the applicable minimum rates set forth in Minimum Rate Tariff No. 2, by the application of incorrect rates, by calculating rates as if the conditions set forth in Item 85 had been fulfilled when such conditions in fact had not been fulfilled, by transporting pallets free of charge, and by remitting a prescribed amount per ton to the shipper for loading and unloading services. Other issues were whether respondent's rights should be cancelled or a fine imposed, whether he should be ordered to cease and desist unlawful practices or ordered to collect undercharges and search his records therefor.

According to the evidence, respondent is a small carrier with gross revenues of less than \$12,000 per year. Under his radial permit he has been carrying hay for four shippers who are all so

related financially and under similar management that they may be considered as one. Respondent's representatives at the hearing stated that they also represented the farmers and that these shippers would comply fully with any Commission order either as to paying undercharges or as to directions relative to compliance with minimum tariffs.

The staff introduced evidence to show that respondent had on several occasions transported multiple shipments at the lower rate even in situations where the shipper had failed to issue written instructions as required by the tariff. Respondent testified that he had been told that the shipper did not have the time or facilities to issue such instructions.

A problem developed from the use of pallets. The shipper insisted that the hay be transported on pallets which required heavy equipment to load and unload. This equipment was owned by the shippers who permitted respondent to use it but charged him 5 cents per ton loaded by their loader and 25 cents per ton unloaded by their forklift. No such allowance, charge or deduction may be made under the provisions of Minimum Rate Tariff No. 2.

A Commission staff rate expert testified to the undercharges shown from a study of the documents considered by the staff. Since no shipping documents were issued for the empty pallets transported, no freight bill numbers can be assigned for these shipments. Undercharges are found with respect to the following bills:

<u>No. of Freight Bill (if issued)</u>	<u>Date</u>	<u>Charge Collected by Respondent</u>	<u>Correct Minimum Charge</u>	<u>Undercharge</u> ✓
1757	10/2/61	\$56.65	\$67.98	\$11.33
None	10/2/61	-	8.40	8.40
1758	10/3/61	87.43	115.35	27.92
None	10/3/61	-	13.68	13.68
1759	10/4/61	63.07	96.00	32.93
None	10/4/61	-	10.56	10.56
1760	10/5/61	77.08	107.93	30.85
None	10/5/61	-	13.20	13.20
1793	12/7/61	28.18	44.00	15.82
1791	12/13/61	42.12	84.00	41.88
None	12/13/61	-	7.80	7.80
1795	12/15/61	44.23	84.00	39.77
None	12/15/61	-	7.80	7.80
0563	12/21/61	21.49	45.00	23.51
None	12/21/61	-	4.38	4.38
0570	1/ 6/62	54.55	96.00	41.45
None	1/ 6/62	-	8.76	8.76
0571	1/10/62	26.09	48.00	21.91
None	1/10/62	-	4.38	4.38
0572	1/11/62	52.48	62.99	10.51
None	1/11/62	-	8.76	8.76
0573	1/14/62	82.70	144.00	61.30
None	1/14/62	-	13.14	13.14
0574	1/15/62	55.35	96.00	40.65
None	1/15/62	-	8.76	8.76
0575	1/16/62	57.10	96.00	38.90
None	1/16/62	-	8.76	8.76
0576	1/17/62	54.51	96.00	41.49
None	1/17/62	-	8.76	8.76
0577	1/17/62	55.03	96.00	40.97
None	1/17/62	-	8.76	8.76
0578	1/18/62	54.13	96.00	41.87
None	1/18/62	-	8.76	8.76

Total Undercharges \$707.72

Respondent should also be required to go through his books and records in order to ascertain whether there are further undercharges to be collected.

Having found facts as hereinabove set forth, the Commission concludes that Carl Painter has violated Sections 3664, 3667 and 3737 of the Public Utilities Code and the provisions and requirements of Minimum Rate Tariff No. 2 by charging and collecting a lesser compensation for the transportation of property as a permit

carrier than the minimum charges prescribed in the Commission's Minimum Rate Tariff No. 2 and that he should be required to collect all undercharges.

O R D E R

IT IS ORDERED that:

1. If on or before the twentieth day after the effective date of this order Carl Painter, respondent, has not paid the fine referred to in paragraph 7 of this order, then Radial Highway Common Carrier Permit No. 24-1948 issued to Carl Painter is 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. Respondent shall not, by leasing the equipment or other facilities used in operations under the permit 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. 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 has been suspended by the Commission for a period of five 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 January 19, 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 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 in the foregoing opinion, 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 right imposed by paragraph 1 of this order, respondent may pay a fine of \$1,000 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 17th day of September, 1963.

William W. Brundage
President

Charles W. Rago

George H. Hoover

Fredrick B. Holbrook
Commissioners

I dissent
John E. Merrill