

ORIGINAL

Decision No. 66123

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of
J. C. McCLINTON, an individual,
doing business as McCLINTON
TRUCKING.

Case No. 7552

Dally & Clark, by Henry B. Niles, for
respondent.
Elmer Sjostrom, for the Commission
staff.

O P I N I O N

This investigation was instituted on the Commission's own motion into the operations, rates and practices of J. C. McClinton, an individual, doing business as McClinton Trucking, operating as a radial highway common carrier and city carrier pursuant to permits Nos. 19-33037 and 19-39489, respectively, which permits at all times hereinafter mentioned were and now are in full force and effect.

A public hearing was held on May 21, 1963, in Los Angeles before Examiner Chiesa, to determine whether said respondent violated Section 3667 of the Public Utilities Code by charging, demanding, collecting or receiving for the transportation of property, or for any service in connection therewith, rates or charges less than the minimum rates and charges applicable to such transportation established or approved by the Commission in its Minimum Rate Tariff No. 2 and supplements or amendments thereto.

Oral and documentary evidence having been adduced the matter was submitted for decision.

One staff witness testified and explained certain exhibits consisting of photographic copies of respondent's shipping documents and correspondence. A report summarizing respondent's shipping data was also offered in evidence by staff counsel. Respondent testified in his own behalf and his counsel assisted in the development of the record.

The evidence shows that respondent's principal place of business is in Oceanside, California; that practically all of his business is derived from one shipper the Crystal Silica Co., also of Oceanside. The latter company ships various sand and silica products principally to points within the State and uses respondent as its principal carrier. Respondent rents a small office at the shipper's plant and is allowed to park his trucks in the company yard. Respondent employs 6 drivers and 1 mechanic and his wife also assists in the operation of the business.

The staff witness testified that in September and October of 1962 he examined respondent's records covering a period from January through August of 1962; that of 425 shipments examined thirty-eight showed a transportation charge less than the applicable minimum rate (Parts 1 to 22, inclusive, of Exhibits Nos. 1 and 3); that the undercharges for said shipments varied from \$2.53 to \$42.49 and the total amount of said undercharges was \$355.91, all as more specifically set out in said Exhibits Nos. 1 and 3; that said undercharges resulted from applicant's misapplication or erroneous

interpretation of Minimum Rate Tariff No. 2 and Distance Table No. 4, which tariff and table had been served upon respondent soon after the issuance of the said radial and city permits; respondent's use of speedometer mileage instead of constructive mileage, failure to charge for split deliveries and loading or unloading services, all as particularly set forth and explained in "Reference Marks" (1) to (21) inclusive, on pages 1, 2 and 3 of Appendix "A" in Exhibit No. 3.

Respondent, who has been in the transportation business since 1937, testified that the said undercharges were not intentional but were the result of his misapplication or erroneous interpretation of the tariff and distance table and that some of the errors were due to misinformation he had concerning rail points. The evidence shows that respondent has cooperated with staff members in this investigation and has adjusted his billing and bookkeeping to conform with the Commission's regulations. On one prior occasion, in 1959, respondent was directed to collect, and did collect, undercharges in the total sum of \$113.03.

The Commission finds that:

1. Respondent was engaged in the transportation of property as radial highway common carrier and city carrier pursuant to permits Nos. 19-33037 and 19-39489, respectively, during the period the transportation referred to herein was performed.
2. All applicable minimum rate orders and distance tables and any supplements or amendments thereto were served upon respondent prior to shipments herein noted.
3. Respondent assessed and collected rates and charges less than the applicable minimum rates and charges prescribed in Minimum Rate Tariff No. 2, and supplements or amendments thereto,

which resulted in undercharges for thirty-eight separate shipments totaling \$355.91 as more specifically described and explained in Parts 1 to 22, inclusive, and Appendix "A" of Exhibit No. 3 in this proceeding.

4. Respondent charged for transportation of property and for service in connection therewith rates and charges less than the minimum rates and charges applicable to such transportation as established or approved by this Commission.

5. Respondent's failure to apply the proper rates and charges resulted from his inability to interpret and apply particular provisions of the said tariff and his erroneous use of speedometer mileage instead of the applicable constructive mileage.

Based upon the foregoing findings of fact, the Commission concludes that respondent J. C. McClinton has violated Section 3667 of the Public Utilities Code by charging, demanding, collecting and receiving a lesser sum for transportation than the charges prescribed by the Commission's applicable minimum rate order.

O R D E R

IT IS ORDERED that:

1. J. C. McClinton shall forthwith cease and desist from charging, demanding, collecting, or receiving for the transportation of property, or for any service in connection therewith, rates and charges less than the minimum rates and charges applicable to such transportation established or approved by the Commission, and shall observe the provisions of any tariff, decision or order applicable to respondent.

2. J. C. McClinton, respondent herein, shall on or before the thirtieth day after the effective date of this order, pay a fine of \$500.00.

3. Respondent shall examine his records for the period from January 1, 1962, to the effective date of this order, for the purpose of ascertaining all undercharges that have occurred.

4. Within ninety days after the effective date of this decision, 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.

The Secretary of the Commission is directed to cause personal service of this order to be made upon the respondent, J. C. McClinton.

The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California,
this 1st day of October, 1963.

William W. Bennett
President
George L. Trover
Frederick B. Halchoff
Commissioners