

ORIGINAL

Decision No. 66191

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 charges, rates and practices of)
 BOB WILLEMS; PHILLIP FITZGERALD) Case No. 7592
 and EDNA FITZGERALD, doing busi-)
 ness as FITZGERALD TRUCKING;)
 LAVERN H. AHL, doing business as)
 VERN'S TRUCKING; and LEON W. BUCK.)

Bob Willems, Phillip Fitzgerald, Edna
Fitzgerald, Lavern H. Ahl and
Leon W. Buck, in propria personae.
Lawrence Q. Garcia, for the Commission
staff.

O P I N I O N

By its order of April 9, 1963, the Commission instituted an investigation into the operations, charges, rates and practices of Bob Willems, 690 Bates Street, Dinuba, California; Phillip Fitzgerald and Edna Fitzgerald, doing business as Fitzgerald Trucking, 924 P Street, Sanger, California; Laverne H. Ahl, doing business as Vern's Trucking, 3404 Culver, Bakersfield, California; and Leon W. Buck, 1787 Queens Road, Concord, California, for the purpose of determining, among other things, whether each of them by the device of an alleged lease arrangement, permitted Forest Products Sales Company, doing business as Clay Lumber Company, 8404 Crenshaw Boulevard, Inglewood, California (hereinafter referred to as Forest Products), to obtain transportation for property between points within the State of California at less than the minimum rates prescribed by this Commission.

A public hearing was held before Examiner Daly on August 15, 1963, at Fresno and the matter was submitted.

Respondents operate pursuant to radial highway common carrier permits with the exception of Mr. and Mrs. Fitzgerald who operate pursuant to a highway contract carrier permit. (Said permit was voluntarily suspended for the period November 1, 1962 to November 1, 1963). Each was served copies of Minimum Rate Tariff No. 2 and Distance Table No. 4 with the exception of Leon Buck. Respondent Buck's permit is restricted to operations as an independent subhauler and therefore he was not so served.

Forest Products has been adjudged bankrupt. Prior to bankruptcy respondent Willems operated as a subhauler for the prime carrier used by Forest Products. When Forest Products discontinued the use of its prime carrier respondent Willems entered into a lease arrangement with Forest Products. The lease was prepared by an attorney and was submitted to and approved by Forest Products. To obtain additional equipment respondent Willems solicited the leasing of equipment by placing an advertisement in a Fresno newspaper. In response to the advertisement the other respondents, as equipment owners, entered into a lease arrangement with Forest Products. Besides leasing equipment to Forest Products respondent Willems was also employed by said company. He was paid \$200 a month by the company and also received 10 percent of the gross monthly rental revenue, which was deducted from the amount paid to the lessors.

The leases were of indefinite duration, subject to termination upon thirty days written notice by either party. Under the terms of the leases the lessors agreed to maintain the vehicles in good, safe running condition; keep said equipment duly licensed; and carry at their own expense fire, theft, and collision insurance. It was further agreed that the lessee would have absolute control and use of said equipment; maintain and pay all Workmen's Compensation Insurance; carry and maintain public liability insurance and

property damage insurance; and pay lessors a fixed sum based on the board feet of lumber carried per trucking mile.

There is nothing in the record to indicate that the provisions of the agreements were not fully complied with.

Following an investigation by a Commission representative conducted on November 13, 20, 21, 1962, certain documents were taken from the files of respondents relating to 20 shipments. Each of the shipments indicated that before the lessors received their agreed hauling fee, deductions for the following items were withheld by Forest Products: Willems ten percent, Fuel, Wages, Employer's Share of Payroll Taxes and Insurance.

Photostatic copies of the documents were forwarded to the Rate Analysis Unit of the Commission. A Commission rate expert testified that each shipment was studied in relation to the provisions of Minimum Rate Tariff No. 2 and in doing so the gross hauling fee was used and not the net fees actually received by the lessors. In each instance the gross hauling fee was less than the applicable minimum rate. If the provisions of Minimum Rate Tariff No. 2 are applicable four shipments transported by the equipment of Willems would result in undercharges in the amount of \$279.91; six shipments transported by the equipment of the Fitzgeralds would result in undercharges in the amount of \$658.92; nine shipments transported by the equipment of Ahl would result in undercharges in the amount of \$1,018.54 and the one shipment transported by the equipment of Buck would result in undercharges in the amount of \$96.07.

The gross revenues of the respondents for the last two quarters of 1962 and the first quarters of 1963 are as follows:

	1962 Quarters		1963 Quarters	
	<u>Third</u>	<u>Fourth</u>	<u>First</u>	<u>Second</u>
Willems	\$6,505	\$7,645	\$ None	\$ None
Fitzgeralds	2,488	None	None	None
Ahl	8,493	5,008	4,128	7,153
Buck	None	None	10,716	None

After consideration the Commission finds that:

1. Respondents are holders of permits duly issued by this Commission and are subject to its jurisdiction.
2. Appropriate tariffs and distance tables were served upon respondents with the exception of respondent Buck.
3. According to the terms of the lease agreements and as a matter of actual practice Forest Products exercised exclusive control over the equipment leased.
4. As a result of the deductions, however, made by Forest Products from the gross hauling fee, respondents were actually paying for the dispatching services performed by Willems as an employee of Forest Products, for the fuel, the wages of the drivers and for the employer's share of the payroll taxes and insurance. Said deductions were not provided for in the lease agreements.
5. The lease agreements relied upon were in fact devices which permitted Forest Products to obtain the transportation of property between points within the State of California at less than the minimum rates then established and approved by this Commission by Minimum Rate Tariff No. 2 which governed the movements involved.
6. Respondents have charged and collected compensation for the transportation of property in a manner that permitted Forest Products to obtain transportation of its property at less than the minimum rates established by the Commission.

Conclusions

1. Respondents, and each of them, violated Section 3668 of the Public Utilities Code.

2. The operating authorities of respondents Fitzgerald, Ahl and Buck should be suspended for a period of three days or, in the alternative, each should pay a fine of \$1,000. The operating authority of respondent Willems should be suspended for a period of five days or in the alternative he should pay a fine of \$2,500.

3. The collection of undercharges will not be required inasmuch as Forest Products has been adjudged bankrupt.

O R D E R

IT IS ORDERED that:

1. If, on or before the twentieth day after the effective date of this order, respondents have not paid the respective fines referred to in paragraph 3 of this order, then Radial Highway Common Carrier Permits Nos. 15-6390 and 7-3661 issued to Lavern H. Ahl and Leon W. Buck, respectively, and Highway Contract Carrier Permit No. 10-9478 issued to Phillip Fitzgerald and Edna Fitzgerald shall be suspended for three consecutive days and Radial Highway Common Carrier Permit No. 54-4741 issued to Bob Willems shall be suspended for five days, starting at 12:01 a.m., on the second Monday following the twentieth day after said effective date. Respondents 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.

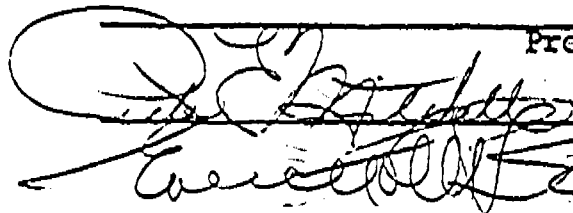
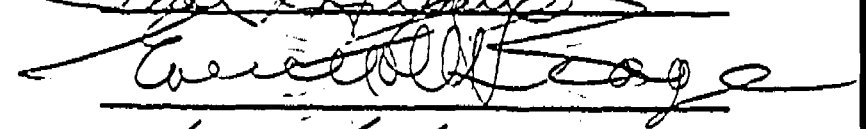
2. In the event the suspension as provided in paragraph 1 hereof becomes effective, respondents shall post at their terminals and station facilities used for receiving property from the public

for transportation, not less than five days prior to the beginning of the suspension period, a notice to the public stating that their permits have been suspended by the Commission and stating the period of the suspension. Within five days after such posting respondents shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

3. As an alternative to the suspension of operating rights imposed by paragraph 1 of this order, respondents Phillip and Edna Fitzgerald as well as each of the other respondents excluding Willems may pay a fine of \$1,000 to this Commission on or before the twentieth day after the effective date of this order. On or before the same date respondent Willems may pay a fine of \$2,500 as an alternative to the suspension.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Bob Willems, Phillip Fitzgerald, Edna Fitzgerald, Lavern M. Ahl and Leon W. Buck and the effective date of this decision shall, as to a particular respondent, be twenty days after the date of such service upon said respondent.

Dated at San Francisco, California, this 22nd day of OCTOBER, 1963.

 President

George T. Grover
Fredrick B. Holohoff
 Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.