

ORIGINAL

Decision No. 66193

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of CHOZEN TRUCKING CO., INC., a California corporation.

Case No. 7624

Perry Bertram and Myer K. Chozen, for the respondent.  
Elinore Charles and Charles P. Barrett, for the Commission Staff.

O P I N I O N

This is an investigation into the operations, rates, charges and practices of Chozen Trucking Co., Inc., a California corporation.

Public hearing was held before Examiner DeWolf on August 8, 1963, at Los Angeles, on which date the matter was submitted.

The purpose of this investigation is to determine whether respondent has violated Sections 3664 and 3737 of the Public Utilities Code by charging, demanding, collecting and receiving lesser sums for compensation for the transportation of property than the applicable charges prescribed by this Commission in Minimum Rate Tariffs No. 2 and No. 5, and supplements thereto.

The staff selected a review period of June through September 1962, during which period about 50 per cent or about 400 of the shipments were examined. Eighteen shipments were selected as representative and forwarded to the Rate Analysis Unit of the Commission and undercharges were found in each instance. The undercharges

resulted in general from (1) a failure to assess off-rail charges and to secure written documents in support of split pickups and hourly rates when applicable and (2) assessing a rail rate but not observing applicable minimum weights.

Respondent's defense was to the effect that it had relied on a freight bill (Exhibit No. 6) from Ampruff Paint Company, Inc., to secure the applicable rate as to Parts 15 through 18 of Exhibit No. 5. Respondent further contended that the violations were not willful and did not show any intent to violate the tariff regulations, and offered Exhibits Nos. 2, 6 and 7 in support of the claim. Respondent testified that the great majority of its traffic consists of hauling lumber and that the errors resulted from its infrequent handling of other products such as steel and paint (Parts 3, and 15 through 18, Exhibit No. 5) and from a single infrequent load to an out-of-the-way place, Palm Desert (Part 14, Exhibit No. 5). Respondent did not deny the truth of the exhibits, but as to Parts 5, 10, 12, and 13 of said Exhibit No. 5, respondent testified that none of its trucks ever handled such small loads, except as parts of other orders.

It was stipulated that Radial Highway Common Carrier Permit No. 19-32424, Highway Contract Carrier Permit No. 19-32425 and City Carrier Permit No. 19-38302 were issued to respondent and that respondent was served with Minimum Rate Tariffs No. 2 and No. 5 and Distance Table No. 4 and applicable supplements thereto.

Based upon the evidence, we find that:

1. Respondent is engaged in the transportation of property over the public highways for compensation as a radial highway common carrier, a highway contract carrier and a city carrier.

2. Respondent assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate Tariffs No. 2 and No. 5, which resulted in undercharges as follows:

<u>PART</u>	<u>FREIGHT BILL NUMBER</u>	<u>DATE</u>	<u>CHARGE</u>	<u>MINIMUM</u>	<u>UNDERCHARGE</u>
1	11767	7-7-62	\$ 66.19	\$ 94.50	\$ 28.31
2	11794	7-12-62	175.36	256.00	80.64
3	11824	7-13-62	218.30	292.30	74.00
4	Unnumbered	7-14-62	72.00	93.02	21.02
5	11990	8-6-62	15.60	26.00	10.40
6	11994	8-6-62	155.61	225.88	70.27
7	12030	8-13-62	45.81	54.00	8.19
8	12038	8-15-62	84.45	114.09	29.64
9	12048	8-15-62	85.98	119.57	33.59
10	12061	8-16-62	11.40	22.00	10.60
11	12076	8-22-62	109.67	156.21	46.54
12	12078	8-22-62	28.50	36.48	7.98
13	12133	8-30-62	13.40	38.00	24.60
14	12184	9-12-62	82.26	102.55	20.29
15	11710	6-28-62	721.40	784.55	63.15
16	11769	7-9-62	315.10	363.55	48.45
17	11919 & 11937	7-26 & 30-62	1,535.79	1,748.14	212.35
18	12062	8-16-62	568.06	893.00	324.94
					<u>\$1,114.96</u>

3. The aforesaid undercharges resulted from the following violations of the minimum rates:

The charges assessed by respondent in Parts 1, 2, 6, 8, 9 and 11 of Exhibit No. 5 were computed to take advantage of split delivery and/or split pickup provisions of Items 160 and 170 of Minimum Rate Tariff No. 2, but the documentation requirements of said items were not complied with. Rating each pickup separately requires a higher charge than that billed.

The charges assessed by respondent in Parts 7 and 13 of Exhibit No. 5 were based upon a truckload rate requiring a minimum weight of 40,000 pounds. The lawful minimum rates for the weights transported produce a charge higher than that assessed.

The charges assessed by respondent in Parts 3, 4 and 14 of Exhibit No. 5 are not supported by any rate. The lowest rates lawfully applicable to these shipments produce charges higher than the charges billed by respondent.

The charges assessed by respondent in Parts 5, 10 and 12 of Exhibit No. 5 were computed to take advantage of an hourly rate. In all of these parts the documentation requirements were not complied with, in that no writing was issued by the shipper as required to support the hourly rate.

The charges assessed by respondent in Parts 15, 16, 17 and 18 of Exhibit No. 5 were computed to take advantage of rail rates, privileges and hourly rates to team tracks. In all of these parts the hourly rates could not be applied because the point of origin and the team track were not located within an incorporated city. In each instance calculation of the lawful rate results in higher charges than those assessed, and no hourly rates were applicable in any event.

Undercharges for these shipments amounted to \$1,114.96.

Based on the foregoing findings we conclude that respondent violated Sections 3664 and 3737 of the Public Utilities Code by charging and collecting a compensation less than the minimum established by this Commission in Minimum Rate Tariffs No. 2 and No. 5.

O R D E R

IT IS ORDERED that:

1. If, on or before the twentieth day after the effective date of this order, respondent has not paid the fine referred to in paragraph 7 of this order, then Radial Highway Common Carrier Permit No. 19-32424, Highway Contract Carrier Permit No. 19-32425 and City Carrier Permit No. 19-38802 issued to Chozen Trucking Co., Inc., a California corporation, shall be suspended for five consecutive days, starting at 12:01 a.m., on the second Monday following the twentieth day after said effective date. Respondent 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, respondent shall post at its 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 its radial highway common carrier permit, highway contract carrier

permit and city carrier permit have 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 its records for the period from January 1, 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 its 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.

7. As an alternative to the suspension of operating rights imposed by paragraph 1 of this order, respondent may pay a fine of \$3,000 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 22nd day of OCTOBER, 1963.

*[Signature]* President  
*[Signature]*  
*[Signature]*  
*[Signature]* Commissioners

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