

ORIGINALDecision No. 68655

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of FRED N.
WHITEHEAD.

Case No. 7756

Mervyn C. Hoover, for respondent.
B. A. Peeters, for the Commission staff.

O P I N I O N

By its order dated October 29, 1963, the Commission issued its order instituting an investigation into the operations, rates and practices of Fred N. Whitehead.

A public hearing was held before Examiner Gravelle on November 26, 1963, at Sacramento.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 31-558 issued August 23, 1954. Respondent has a terminal in Roseville, California. He owns and operates seven trucks and six trailers. His total gross revenue for the year ending September 30, 1963 was \$112,340.

It was stipulated at the hearing that respondent had been issued Radial Highway Common Carrier Permit No. 31-558 on August 23, 1954, that Minimum Rate Tariff No. 3-A, Distance Table No. 4 and all corrections, amendments and supplements thereto had been served on respondent, that respondent had been issued three previous undercharge letters dated January 18, 1957, March 11, 1958 and May 22, 1961, respectively. Additionally, the locations of certain points of destination shown in Exhibit No. 5 were agreed to by stipulation.

From May 6, 1963 through May 10, 1963 and again on May 14, 1963 a representative of the Commission's field section visited respondent's place of business and checked his records for the period from September 1, 1962 through March 31, 1963, inclusive. During said period respondent transported 694 shipments. Copies of the underlying documents relating to 20 shipments were submitted to the License and Compliance Branch of the Commission's Transportation Division. These documents were introduced in evidence as Exhibit No. 1. Based upon the data taken from said shipping documents and information supplied by the field representative a rate study was prepared and introduced in evidence as Exhibit No. 5.

Exhibits Nos. 1 and 5 together with the testimony of the field representative and the Commission rate expert show that respondent has violated Sections 3664, 3667 and 3737 of the Public Utilities Code of the State of California in several respects. Respondent, a livestock hauler, has charged rates less than the minimum provided in Minimum Rate Tariff No. 3-A in that he has used improper weights on which he has computed charges, he has used improper rates in computing charges, he has utilized different units of measurement than provided in said tariff and he has employed incorrect points of origin and destination in his computation of charges. In addition to the above practices, he has improperly combined shipments on four occasions to produce higher minimum weights, has not provided for split pickup charges, has failed to obtain weight certificates as provided by Item 130 of Minimum Rate Tariff No. 3-A and has not retained weight certificates for the three-year period provided by Item 140 of Minimum Rate Tariff No. 3-A.

Respondent testified in his own behalf and admitted the mistakes or errors in 19 of the 20 instances set forth in the order instituting investigation and contained in Exhibit No. 5. Part 10 of Exhibit No. 5 was a duplication of billing covered by another freight bill which respondent produced and which was examined by staff counsel who thereupon moved to withdraw said part as an alleged violation of Minimum Rate Tariff No. 3-A. Respondent explained that in some instances enumerated in Exhibit No. 5 his drivers had performed the rating, that when he examined the freight bills, he knew they were incorrect but that he had made no attempt to collect the undercharges. He testified that in one instance he had attempted to collect an undercharge from the shipper but that the shipper had left the country and his whereabouts were unknown to respondent. Respondent testified that he was aware that weight certificates were required by Minimum Rate Tariff No. 3-A and that he so instructed his drivers but that they did not always comply with his instructions; he further testified he was aware of the fact that he was responsible for the acts or failures to act of his employees with regard to compliance with Minimum Rate Tariff No. 3-A and the Public Utilities Code.

Staff counsel in his closing statement requested that the Commission order respondent to review his records, collect undercharges and impose a fine on respondent in the amount of \$1,000. The field representative of the staff testified that the 20 instances of alleged violations he had selected from the 694 freight bills in the six-month period of review were all the instances in which violations had occurred. The staff rate expert testified that undercharges shown in Exhibit No. 5, exclusive of Part 10 which was withdrawn by the staff, aggregated \$558.45.

After consideration, the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 31-558 dated August 23, 1954.
2. Respondent was served with appropriate tariffs and distance tables.
3. Respondent charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit No. 5 excluding Part 10 therefrom.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 3664, 3667 and 3737 of the Public Utilities Code. In view of the nature and extent of the violations shown herein the Commission will impose a fine of \$600.

The order which follows will direct respondent to review his records to ascertain all undercharges that have occurred since September 1, 1962 in addition to those set forth herein. The Commission expects that when undercharges have been ascertained, respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them. The staff of the Commission will make a subsequent field investigation into the measures taken by respondent and the results thereof. If there is reason to believe that the respondent, or his attorney, has not been diligent, or has not taken all reasonable measures to collect all undercharges, or has not acted in good faith, the Commission will reopen this proceeding for the purpose of formally inquiring into the circumstances, and for the purpose of determining whether further sanctions should be imposed on respondent.

O R D E R

IT IS ORDERED that:

1. Respondent shall examine his records for the period from September 1, 1962 to the present time for the purpose of ascertaining all undercharges that have occurred.

2. Within ninety days after the effective date of this order, respondent shall complete the examination of his records required by paragraph 1 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.

3. 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 1 of this order, and shall notify the Commission in writing upon the consummation of such collections.

4. In the event undercharges ordered to be collected by paragraph 3 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.

5. Respondent shall pay a fine of \$600 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 2nd day of January, 1964.

Hallen L. Beard
President

Arthur E. Hildick

Robert J. King

George T. Hoover

Friedrich B. Holakoff
Commissioners