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ORIGINAL

Decision No. \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own }  
motion into the operations, rates and }  
practices of Gordon Larry West and }  
Wynn Killian, a copartnership, doing }  
business as W & K TRUCKING. }

Case No. 7674

Marvyn C. Hoover, for respondents.  
B. A. Peeters, for the Commission staff.

O P I N I O N

By its order dated July 23, 1963 the Commission issued its order instituting an investigation into the operations, rates and practices of Gordon Larry West and Wynn Killian, doing business as W & K Trucking.

A public hearing was held before Examiner Power on October 3, 1963, at Auburn, California.

Respondents presently conduct operations pursuant to a radial highway common carrier permit. Respondents have a terminal in Auburn, California. They own and operate two tractors and two trailers. Their total gross revenue for the year July 1, 1962 to June 30, 1963 was \$51,279.

On December 21, 1962 and January 25, 1963, a representative of the Commission's field section visited respondents' place of business and checked their records for the period from June 1, 1962 through September 5, 1962, inclusive. During said period respondents

transported 165 shipments. The underlying documents relating to 11 shipments were taken from respondents' files and submitted to the License and Compliance Branch of the Commission's Transportation Division. Based upon the data taken from said shipping documents a rate study was prepared and introduced in evidence as Exhibit 4.

The specific violations established by the staff were of items in Minimum Rate Tariff No. 2 and involved shipments of lumber. In the following enumeration the tariff items violated will be shown in parentheses. One was failure to enter necessary information on shipping documents (255). A second was consolidation of shipments by the carrier (60 and 85). A third was failure to assess correct rail rates (200). A fourth was failure to assess off-rail charges when required (210). The fifth was failure to apply correctly the rates in Minimum Rate Tariff No. 2 (690). All were sustained by the evidence. Staff Exhibit 4 reveals undercharges totaling \$618.57.

Respondents indicated at the hearing that they were out of business and that their equipment was for sale. One respondent is employed by one of the shippers involved in this evidence. It is apparent that a suspension would not be useful here and a fine will be imposed.

According to the Commission records, respondents were sent an undercharge letter on July 18, 1961.

After consideration the Commission finds that:

1. Respondents operate pursuant to a radial highway common carrier permit.

2. Respondents were served with appropriate tariffs and distance tables.

3. Respondents charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit 4.

Based upon the foregoing findings of fact, the Commission concludes that respondents violated Sections 3664, 3667 and 3737 of the Public Utilities Code.

The order which follows will direct respondents to review their records to ascertain all undercharges that have occurred since June 10, 1962 in addition to those set forth herein. The Commission expects that when undercharges have been ascertained, respondents 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 respondents and the result thereof. If there is reason to believe that respondents, or their attorney, have not been diligent, or have not taken all reasonable measures to collect all undercharges, or have 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.

O R D E R

IT IS ORDERED that:

1. On or before the twentieth day after the effective date of this order, respondents shall pay to this Commission a fine of \$1,000.

2. Respondents shall examine their records for the period from June 10, 1962 to the present time, for the purpose of ascertaining all undercharges that have occurred.

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

4. Respondents 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 2 of this order, and shall notify the Commission in writing upon the consummation of such collections.

5. In the event undercharges ordered to be collected by paragraph 4 of this order, or any part of such undercharges, remain uncollected one hundred twenty days after the effective date of this order, respondents 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 respondents. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 18th day of February, 1964.

William B. Bennett  
President  
George H. Brewer  
Frederic B. Holhoff  
Commissioners