

Decision No. 67061

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion into the operations, rates and)
practices of ADOLFO S. GONZALES, an)
individual. }

Case No. 7745

William Barrett Witherow, for respondent.
Elinore Charles and Charles P. Barrett,
for the Commission staff.

O P I N I O N

By its order dated October 15, 1963, the Commission instituted an investigation into the rates and practices of Adolfo S. Gonzales, an individual.

A public hearing was held before Examiner Porter on February 6, 1964, at Bakersfield, on which date the matter was submitted.

Respondent presently conducts operations pursuant to a radial highway common carrier permit.

Respondent has a terminal in Bakersfield, California. He owns and operates 17 tractors, one bobtail, 14 semitrailers and 12 pull trailers. His total gross revenue for the fourth quarter of 1962 and the first three quarters of 1963 was \$296,954.

It was stipulated that respondent had been served with Minimum Rate Tariffs Nos. 2 and 8, Distance Table No. 4 and applicable supplements thereto.

The Field Section of the Commission's staff presented evidence covering a period of the carrier's operations for a

six-month period December 1, 1962 through May 31, 1963. Copies of documents relating to 16 shipments were taken from respondent's files and, based upon the data taken from said shipping documents along with information as to mileage between points of origin and destination, a rate study was prepared and introduced in evidence as Exhibit 3. The rate study shows undercharges in each instance.

The respondent did not take issue with the rate statement, Exhibit 3.

The primary cause of the undercharges was the failure to compute the constructive mileage correctly from point of origin to destination. The commodity transported, except in two instances, was potatoes and if the mileage had been not in excess of 50 constructive miles, the commodity would have been exempt from rate regulation. The distance was, in fact, over the 50 miles.

A representative of the respondent testified that processing sheds are located more than 50 miles from the points of origin, and if higher charges had to be assessed, local growers would suffer from out-of-state competition.

A copy of Commission Decision No. 66615, Exhibit 5, was introduced in evidence wherein the 50-mile exemption was extended to 75 miles effective February 22, 1964.

After consideration the Commission finds that:

1. Respondent operated pursuant to a radial highway common carrier permit.
2. Respondent was served with appropriate tariffs and distance tables.

3. Respondent charged less than the lawfully prescribed minimum rates in the instances as set forth in Exhibit 3, which total \$5,521.62.

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

The order which follows will direct respondent to review his records to ascertain all undercharges that have occurred since December 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.

O R D E R

IT IS ORDERED that:

1. Within one hundred twenty days after the effective date of this order respondent shall pay to this Commission a fine of \$5,000.

2. Respondent shall examine his records for the period from December 1, 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, respondent shall complete the examination of his 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. Respondent shall take such action, including legal action, as may be necessary to collect the amount 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, 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. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 7th day of April, 1964.

William Bennett
President
[Signature]
[Signature]
George L. Trover
Commissioners

Commissioner Frederick B. Soloboff
present but not voting.