

Decision No. 67065

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the rates,
charges, operations and prac-
tices of WILLIAM T. BURROW,
doing business as BURROW'S
TRUCKING CO.

Case No. 7650

William Thomas Burrow, in propria persona.
Timothy E. Treacy and George Kataoka, for
the Commission staff.

O P I N I O N

On June 18, 1963, the Commission issued its order insti-
tuting investigation into the operations, rates and practices of
William T. Burrow, doing business as Burrow's Trucking Co., for the
purpose of determining whether respondent, a permitted highway car-
rier, has violated Sections 3664, 3667, and 3737 of the Public
Utilities Code by charging, demanding, collecting and receiving
lesser sums for the transportation of property than the minimum
applicable charges prescribed by this Commission in Minimum Rate
Tariff No. 2, and supplements thereto.

Public hearing was held on February 4, 1964, before
Examiner DeWolf at Los Angeles, California, and the matter was
submitted on the same date.

It was stipulated between the parties that respondent
holds Radial Highway Common Carrier Permit No. 19-49240, dated
June 2, 1955. It was also stipulated that Minimum Rate Tariff

No. 2 and Distance Table No. 4, together with all amendments and supplements, were properly served upon respondent.

A representative of the Commission's Field Section testified that on December 17 and 18, 1962, and January 21 and 22, 1963, he visited respondent's place of business and checked his records for the period from August 1, 1962, through November 30, 1962, inclusive. During said period, respondent transported 225 shipments, and approximately 60 percent of these shipments were transported by the respondent as a subhauler. He further testified that the dates on some of the shipping documents were altered and that the shipments were delivered to points other than those shown on the shipping documents. In support thereof, the staff called five witnesses who testified to the identity of their signatures on certain shipping documents in Exhibit No. 1. Copies of the underlying documents relating to 62 truckloads covered by 15 freight bills were submitted to the License and Compliance Branch of the Commission's Transportation Division. These copies 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.

The Commission representative further testified that the respondent received two official notices of violations dated March 31, 1961, and July 10, 1961, and an undercharge letter dated January 18, 1962. (Exhibits Nos. 2, 3, and 4) The staff witness testified that although the respondent collected undercharges of \$1,479.18 referred to in the letter of January 18, 1962, the respondent failed to review his records as directed. The Commission representative also testified that the respondent operated five power units and five trailers and that the respondent reported a gross operating revenue of \$165,547 for the four quarters ending September 30, 1963.

Respondent testified in his own behalf and admitted the failure to assess correct charges in the 15 instances contained in Exhibit No. 5 and the alterations on the shipping documents. Respondent further testified that he has no rate expert employed regularly, but that his bookkeeper also acts as a salesman and reports to him for fixing rates. Respondent also testified that the illegal consolidations were caused by failure of the drivers to make the pickups within the time limit on account of unforeseen delays and unavoidable accidents. Respondent conceded that the violations had occurred and, by way of extenuation and mitigation, stated that the lack of experience of his clerk-salesman, who did the billing and who called him for rates, caused him to incorrectly consider the rules, resulting in the undercharges. Respondent admitted that errors were made in rate calculations and rate billing, but he contended that these violations were not willful, and also stated that he now has seven trucks and a more efficient operation, and would prevent future violations.

Exhibit No. 1 contains 17 parts which are photocopies of respondent's shipping documents, invoices, and statements.

Exhibit No. 5 contains a summary of shipping data concerning Parts Nos. 1 through 15 of Exhibit No. 1, and was introduced into evidence through the testimony of a Commission staff rate expert. It shows the differences between respondent's freight charges and the minimum rate calculated by the rate expert, and shows that respondent assessed and collected charges less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 2, which resulted in the following undercharges with respect

to Parts 1 through 15, inclusive, of Exhibits Nos. 1 and 5: ✓

<u>Respondent's Freight Bill No.</u>	<u>Date</u>	<u>Charge Collected by Respondent</u>	<u>Correct Charge</u>	<u>Under- charges</u>
None	9-8-62	\$ 828.79	\$ 939.72	\$110.93
None	9-24-62	1,941.78	2,403.94	462.16
222	9-30-62	1,466.94	1,593.81	126.87
227	No date	550.00	-	-
-	-	1,373.56	2,389.25	465.69
None	10-15 & 16-62	720.20	-	-
-	-	734.05	1,611.65	157.40
230	10-16 & 22-62	692.44	-	-
-	-	574.67	1,654.09	386.98
237	10-29-62	1,102.53	1,415.88	313.35
244	11-2 & 3-62	822.69	-	-
-	-	1,099.54	2,560.35	638.12
246	10-15-62	733.50	806.66	73.16
254	11-7-62	537.03	-	-
-	-	561.60	1,399.47	300.84
259	11-10-62	624.94	878.48	253.54
261	11-13 & 16-62	549.27	-	-
-	-	824.38	1,969.66	596.01
263	11-20-62	1,373.29	1,822.49	449.20
204	8-30-62	328.00	468.24	140.24
263	11-26-62	500.65	879.16	378.51
Total Undercharges				\$4,853.00

With respect to Parts 16 and 17 of Exhibit No. 1, the rate expert testified that the respondent assessed a flat charge and that he was unable to determine the rates and charges because the respondent failed to obtain the gross weights of the shipments.

Exhibit 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 lumber hauler, has charged rates less than the minimum provided in Minimum Rate Tariff No. 2 in that he has used improper weights on which he has computed charges, he has used improper rates in computing charges, and he has utilized different units of measurement than provided in said tariff. In addition to the above practices, he has improperly combined shipments on 12 occasions to produce higher minimum weights, has not provided for split pickup

charges, has failed to assess off-rail charges where necessary and has failed to prepare correct shipping documents, causing illegal consolidations. A detailed analysis of the violations is contained in Appendix A of Exhibit No. 5.

Staff counsel in his closing statement requested that the Commission order respondent to review his records, collect undercharges, and suspend respondent's permit for ten days. The field representative of the staff testified that the 17 instances of alleged violations he had selected from the 90 freight bills on which the respondent transported the freight as a prime carrier in the three months' period of review were all the instances in which violations had occurred. The staff rate expert testified that undercharges shown in Exhibit No. 5 aggregated \$4,853.00. Respondent replied that a 10-day suspension would put him out of business as he could not carry his payroll and truck payments or customers for that length of time and that would be too severe a penalty.

Upon the evidence the Commission finds that:

1. All applicable minimum rate orders were served upon respondent prior to the undercharges above set forth.
2. Respondent assessed and collected charges less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 2, which resulted in undercharges in the total amount of \$4,853.00.
3. In the performance of various transportation services hereinabove set forth and more particularly appearing in Exhibits Nos. 1 and 5, respondent has violated or failed to comply with the provisions of Minimum Rate Tariff No. 2.

Having found facts as hereinabove set forth, the Commission concludes that respondent, William T. Burrow, doing business as Burrow's Trucking Co., has violated Sections 3664, 3667 and 3737 of the Public Utilities Code and the provisions and requirements of Minimum Rate Tariff No. 2 by charging and collecting a lesser compensation for the transportation of property as a highway permit carrier than the minimum charges prescribed in the Commission's Minimum Rate Tariff No. 2 and respondent, William T. Burrow, doing business as Burrow's Trucking Co., should be required to pay a fine of \$5,000.

The order which follows will direct respondent to review its records to ascertain all undercharges that have occurred since August 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 its 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 twenty days after the effective date of this order William T. Burrow shall pay to this Commission a fine of \$5,000.

2. Respondent shall examine his records for the period from August 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 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, 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 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 L. Bennett
President
[Signature]
[Signature]

Commissioners

The violations are serious. I would impose a suspension.

George T. Grover

I agree with Commissioner Grover.

Frederick B. Holbrook