

ORIGINAL

Decision No. 67087

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own )  
motion into the operations, practices, )  
rates, and charges of BEN MOZZETTI, an )  
individual, doing business as FREMONT )  
FREIGHT LINES. )

Case No. 7702

Marvin J. Colangelo, for respondent.  
Elmer Sjostrom and George Kataoka, for  
the Commission staff.

O P I N I O N

By its order dated September 10, 1963, the Commission instituted an investigation into the operations, rates and practices of Ben Mozzetti, doing business as Fremont Freight Lines.

A public hearing was held before Examiner Porter on February 18, 1964, at San Francisco, on which date the matter was submitted.

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

Respondent has a terminal in Fremont, California. He owns and operates four power units and eight trailers. His total gross revenue for 1962 was \$94,350 and for the first three quarters of 1963 was \$84,622.

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

The Commission's staff presented evidence covering a period of the carrier's operations during October through December 1962. During said period respondent transported 95 shipments. The underlying documents relating to 20 shipments were taken from respondent's files and with information as to rail facilities at point of origin, submitted to the License and Compliance Branch of the Commission's Transportation Division. Based upon this data a rate study was prepared and introduced in evidence as Exhibit 2. Said exhibit reflects undercharges in the amount of \$795.85.

The main issue involved was whether the point of origin was served by rail facilities. A member of the Field Section testified that he had visited the point of origin and observed that there were no rail facilities available at the point of origin. The respondent testified that although he had observed railroad cars on a railroad track which was approximately 350 feet from the gravel pit where the trucks were loaded, he had never observed railroad cars being loaded there. The respondent further testified that he had been advised as to the rate by the shipper.

Exhibit 3 is an undercharge letter dated June 17, 1960, in which similar transportation to the transportation herein involved was subject to staff audit. The respondent testified that the documentation errors were pointed out to him at that time but the question as to rail facilities at point of origin was not discussed with him.

After consideration the Commission finds that:

- i. Respondent operates pursuant to a radial highway common carrier permit.

2. Respondent was served with appropriate tariffs and distance tables.

3. The point of origin in Parts 1 through 18 as set forth in Exhibit 2 was not served with rail facilities.

4. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibit 2, which totaled \$795.85.

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

The order which follows will direct respondent to review his records to ascertain all undercharges that have occurred since October 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 twenty days after the effective date of this order respondent shall pay to this Commission a fine of \$1,000.

2. Respondent shall examine his records for the period from October 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 14<sup>th</sup> day of April, 1964.

*William L. Bennett*  
President  
~~*John H. ...*~~  
~~*Robert ...*~~  
*George E. Trover*  
*Fredrick B. Halaloff*  
Commissioners