

ORIGINALDecision No. 67088

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates, charges, and practices of)
 LEONARD PAYNE, an individual.)

Case No. 7788

Leonard Payne, in propria persona.
Robert Marks and Charles Barrett, for
the Commission staff.

O P I N I O N

By its order dated November 26, 1963, the Commission instituted an investigation into the operations, rates and practices of Leonard Payne.

A public hearing was held before Examiner Daly on March 3, 1964, at Bakersfield.

Respondent presently conducts operations pursuant to a radial highway common carrier permit. Respondent operates from his residence in Bakersfield, California. He owns and operates eight units of equipment. His total gross revenue for the fourth quarter of 1962 and the first three quarters of 1963 was \$45,149. It was stipulated that copies of appropriate tariff and distance tables were served upon respondent.

On June 18, 19 and 20, 1963, a representative of the Commission's field section visited respondent's place of business and checked his records for the period from December 12, 1962 through May 31, 1963, inclusive. During said period respondent transported 115 shipments subject to rate regulation. The underlying documents relating to 33 shipments were taken from respondent's 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 2. Said exhibit reflects undercharges in the amount of \$385.53.

Parts 1 through 21 relate to shipments of paper assessed at 30 cents per hundredweight instead of 32 cents per hundredweight. Parts 22, 23 and 25 relate to shipments of animal feed wherein respondent charged 10 cents and 13 cents per hundredweight rather than 13 cents and 18½ cents per hundredweight. Parts 24 and 26 relate to shipments of animal feed involving more than one delivery point. Respondent's shipping order and freight bills did not show the points of destination nor describe the shipments in compliance with Item No. 255-E of Minimum Rate Tariff No. 2. As a consequence the staff rated each component part as a separate shipment. Part 27 involved the shipment of steel beams at an assessed rate of 60 cents per hundred pounds rather than 67 cents. Parts 28, 29 and 30 involved shipments wherein respondent failed to show the point of origin and to describe the shipment in compliance with Item No. 255-E of Minimum Rate Tariff No. 2. Part 31 relates to a shipment of rock where respondent failed to indicate on the freight bill the point of origin as required by Item 255 of Minimum Rate Tariff No. 2. Part 32 related to a shipment of steel pipe where respondent failed to show on the freight bill the point of origin and destination and also failed to identify the equipment used as required by Item No. 720-1 of Minimum Rate Tariff No. 2. In Part 33 relating to a shipment of plywood, respondent failed to show the point of origin.

The staff pointed out that by Decision No. 62270 dated June 27, 1961 in Case No. 7065 respondent's operating authority

was suspended for prior violations. In several instances the prior violations were similar in nature to the shipment of paper covered by Parts 1 through 21 and the shipment of steel beams covered by Part 27. As a result of the ~~order directing~~ review of records the respondent collected undercharges in the amount of \$8,458. It was the recommendation of the staff that a fine in the amount of \$2,500 be imposed upon respondent in the instant proceeding.

Respondent pleaded ignorance as a defense. Although he received the supplements to the Minimum Rate Tariffs he testified that because of the demands made upon him as a driver he doesn't have sufficient time or knowledge to properly rate the shipments. He further testified that he has recently hired another driver and has arranged to have his shipments rated by a traffic consultant. According to respondent he is trying to support a family, including two school age children, on an average of \$450 a month. Respondent testified that a fine in the amount recommended by the staff would put him out of business.

After consideration the Commission finds that:

1. Respondent operates 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 rate in the instances as set forth in Exhibit 2, resulting in undercharges in the amount of \$385.53.

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

It appears that respondent's difficulties are attributable to a lack of knowledge. The total amount of undercharges due is estimated at approximately \$750. The Commission investigations of his operations have prompted respondent to seek technical help.

The order which follows will direct respondent to review his records to ascertain all undercharges that have occurred since January 1, 1963 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 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. Respondent shall examine his records for the period from January 1, 1963 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 proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them; respondent shall file 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 \$1,000 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 14th day of April, 1964.

William Bennett
President
George J. Cover
Frederic B. Holloff
Commissioners