

ORIGINAL

Decision No. 67111

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 )  
 William E. Stringfellow. )

Case No. 7607

Thompson and Colgate, by Don C. Brown, for the  
 respondent.  
Timothy E. Treacy and Charles P. Barrett, for  
 the Commission staff.

O P I N I O N

On May 1, 1963, the Commission instituted its investigation into the operations, rates, charges and practices of William E. Stringfellow, to determine whether respondent has violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging and collecting a lesser sum for transportation performed than the applicable charges prescribed in Minimum Rate Tariff No. 7, and Item 94-C of Minimum Rate Tariff No. 7, by failing to pay all subhaulers 95 percent of the applicable minimum rate adopted and promulgated by this Commission.

A duly noticed public hearing was held before Examiner Fraser on December 17, 1963, at Riverside, and the matter was submitted.

The records of the Commission show respondent is operating under the authority of Radial Highway Common Carrier Permit No. 33-2239 and Highway Contract Carrier Permit No. 33-2515, and that respondent was operating under these permits at the time the transportation referred to herein was performed. The records of the Commission also reveal that a copy of Minimum Rate Tariff No. 7 and

the pertinent supplements thereto were served on respondent prior to the time the transportation referred to herein was performed.

A Commission representative testified that he visited the office of respondent on October 1, 1962 and reviewed the records on transportation performed by respondent during the months of May, June, July and August, 1962. He testified he prepared Exhibit No. 1, which consists of true and correct copies of certain documents he found in respondent's files. He further testified that respondent owns no trucks, that he uses subhaulers exclusively and operates as a dump truck hauler; also that respondent operates out of a small office with only one part-time employee, a billing clerk.

The staff witness further testified that respondent informed him on October 1, 1962 of a discussion, which took place prior to the transportation noted herein, between respondent and the president of Corona Quarries, Inc., wherein it was agreed that respondent would haul 329,500 tons of stone from the quarry to a construction job located at the Dominguez Channel in the City of Wilmington; respondent further advised the staff witness that the rate to be charged was discussed and the president of Corona Quarries, Inc. stated the rail rate of \$1.40 a ton was applicable, but since trucks were being used he would pay \$1.80 a ton. Respondent further advised the staff witness that it was agreed bills would be submitted by respondent to Corona Quarries, Inc. each month giving the total tonnage hauled during the month on which the \$1.80 rate was to apply.

The staff witness testified that Exhibit No. 1 consists of five pages, with each of the first four pages showing the hauling performed by respondent during a single month (May, June, July, August of 1962); that Exhibit No. 2 is the (blank) form used by respondent to send his monthly bills; and that Exhibit No. 3 is a map of The Atchison, Topeka and Santa Fe Railway Company which shows the

railroad right-of-way and track in the South Corona section of the portion of the rail line between Corona and Elsinore. The map has an overlay attached to it which shows the exact location of Corona Quarries, Inc. and the Weisel spur track. Exhibit No. 4 is an admonishment notice from the Commission staff dated June 21, 1961 to respondent.

The freight and passenger agent for the Corona area of The Atchison, Topeka and Santa Fe Railway Company testified as follows: the rail line passing in front of Corona Quarries is a single track and cannot be used for loading or unloading because it is the main line between Corona and Elsinore; it is used for two unscheduled freight trains a day, on six days a week; the Weisel spur track (located six tenths of a mile from Corona Quarries) is a private track leased by the Owens Illinois Glass Co. and is used for the unloading of sand and other raw material for the glass company; it has never been used to load or unload stone and there are no leases or agreements on file with the Santa Fe Railway authorizing Corona Quarries to use the spur; there is also a Deleo spur (Arcilla) located three miles from Corona Quarries, but it has never been used to load or unload stone for Corona Quarries; there are no facilities for loading or unloading rail cars at Corona Quarries and the quarry is outside the switching limits of Corona; it would not be possible for a rail car to be stopped for unloading at a siding within his jurisdiction without his knowledge.

A rate expert from the Commission staff testified that she took the set of documents now in evidence as Exhibit No. 1 along with other information presented, and formulated Exhibit No. 5, which gives the rate charged by respondent and the rate computed by the Commission staff on the monthly tonnage hauled by respondent during the four months (May - August, 1962) covered in Exhibit No. 1. She

testified the rates assessed, charged and collected by respondent on the transportation described in Exhibit No. 1 are lower than the lawful minimum rates prescribed by Minimum Rate Tariff No. 7 and that the correct rates and undercharges are set out in Exhibit No. 5. The witness stated the undercharges in Exhibit No. 5 total \$34,310.85 and the undercharges on the hauling of the 329,500 tons of stone amount to \$131,800. The witness further testified that the staff applied a rate of \$2.20 a ton on all of the stone hauled by respondent from the quarry to the Wilmington job site. The staff applied rate consists of 56 cents per ton as the rate from the off-rail point of origin 6.8 miles to the Santa Fe team track in Corona; \$1.25 per ton as the rail rate (on a minimum of 80,000 pounds) from Corona to Wilmington; 27 cents per ton for the 1.3 miles from the Santa Fe team track in Wilmington to the off-rail destination and a 12-cent per ton loading and unloading charge.

Respondent's counsel moved for a continuance on the basis that respondent was ill and could not attend the hearing. The motion was denied since two continuances had been granted, the business was still operating, and it did not appear that respondent's condition would ever improve. Respondent's counsel also moved to dismiss the proceeding on the basis that respondent is entitled to a jury trial. That motion was taken under submission.

The president of Corona Quarries testified as follows: prior to furnishing the stone for the job referred to herein, he contacted the freight agent for the Santa Fe Railway and was told that the rail rate from the Weisel spur to the job site at Dominguez Channel was \$1.30 a ton on stone; he then called the Los Angeles office of the Public Utilities Commission and was advised he could use the rail rate, with the addition of a 10-cent loading and unloading charge per ton; he then computed his charge on the basis of the

\$1.30 rail rate, plus 10 cents loading and unloading charge, plus about 22 cents additional per ton as the off-rail surcharge on the distance from the job site to the Wilmington team track of the Santa Fe, which is less than a mile; he was advised by respondent that truckers would not operate for \$1.62 per ton, so the rate was raised to \$1.80 per ton; he considers Corona Quarries as being on rail because it can receive rail shipments at the private rail spur owned by Mr. Deleo (Arcilla siding), which is three miles east of the quarry; he has had an oral agreement with Mr. Deleo since 1962 that Corona Quarries can use the siding to load or unload rock at any time; he has never used the siding due to a preference for truck service; it is also possible to go from the Corona Quarries to the Deleo siding without leaving private property, by a private road which connects the Deleo siding with Corona Quarries; the quarry has permission to use the Deleo siding without being charged for it as part of an agreement wherein Deleo has been authorized by the quarry to use the latter's private haul road whenever needed.

The witness further testified that rail cars have been stopped at Corona Quarries for unloading; in February of 1963 five rail cars were parked there for 24 hours so machinery could be unloaded at the quarry (it was stipulated that six other witnesses, if called, would also testify as to when and where the machinery was unloaded); this was allowed as a favor by the Santa Fe Railway Company, since the shipping documents have the five carloads routed to the Weisel siding (Exhibit 6).

Closing statements were made by the staff and respondent. The latter maintains Corona Quarries is on rail because rail cars have been stopped there for unloading and because Corona Quarries has the use of a rail spur owned by Mr. Deleo.

Based upon the evidence we hereby find that:

1. Respondent is engaged in the transportation of property over the public highways for compensation as a radial highway common carrier under Radial Highway Common Carrier Permit No. 33-2239 and as a highway contract carrier under Highway Contract Carrier Permit No. 33-2515.

2. Respondent was served with Minimum Rate Tariff No. 7 and the pertinent amendments and supplements thereto, prior to the transportation performed under the documents listed herein.

3. A shipper, located on a single track main line between two municipalities, without facilities for the loading or unloading of property from rail cars, will not be considered as on rail because of a single instance in which the railroad stopped five cars adjacent to the shipper's premises for the unloading of heavy machinery and structural steel.

4. A shipper, without facilities for the loading or unloading of property from rail cars, is not on rail because of an oral agreement which authorizes the shipper to use a private rail spur located on the property of another three miles distant, which can be reached by a private road, where no deliveries have ever been received at the private spur, and trucks deliver to the shipper's premises.

5. Respondent assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate Tariff No. 7, which resulted in the undercharges enumerated in Exhibit No. 5, in the total sum of \$34,310.85.

6. Respondent has failed to pay the subhaulers employed by respondent 95 percent of the correct minimum rate established by this Commission.

Based upon the above findings, we conclude that:

1. The motion of respondent to dismiss the proceeding should be denied.

2. Respondent has violated Sections 3664, 3667 and 3737 of the Public Utilities Code.

3. Respondent has violated Item 94-C of Minimum Rate No. 7.

Respondent has neither terminals nor trucking equipment and a suspension of operating authorities would therefore not be practical. Respondent will be required to pay a fine of \$5,000 and to collect all undercharges which resulted from transportation service provided on or after May 1, 1962.

The order which follows will direct respondent to review his records to ascertain all undercharges that have occurred since May 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 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. The motion to dismiss the proceeding is denied.
2. Respondent shall pay a fine to the Commission in the sum of \$5,000 of which \$2,500 shall be paid on or before one hundred twenty days after the effective date of this order, and \$2,500 on or before ✓

January 1, 1965, unless the time within which to pay is extended, or the second installment is canceled by further order of the Commission.

3. Respondent shall review his records from May 1, 1962 to the present time and shall remit to each of the subhaulers used during this period the difference between the amount paid to the subhauler and 95 percent of the applicable minimum rate listed in Minimum Rate Tariff No. 7 and the supplements thereto. Payments to individual subhaulers will not become due until the undercharges have been collected from the shipper on the transportation performed by the subhauler.

4. Respondent shall examine his records for the period from May 1, 1962 to the present time, for the purpose of ascertaining all undercharges that have occurred and shall notify the Commission in writing upon the completion of such examination.

5. Within ninety days after the effective date of this order, respondent shall complete the examination of his records required by paragraphs 3 and 4 of this order and shall file with the Commission a report setting forth the subhaulers by name and the amount owed to each. The report shall also include a list of the total undercharges found pursuant to the examination of respondent's records ordered by paragraph 4 herein.

6. 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 4 of this order, and shall notify the Commission in writing upon the consummation of such collections.

7. In the event undercharges ordered to be collected by paragraph 6 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.

8. In the event any payments to be made, as provided in paragraph 3 of this order, remain unpaid one hundred twenty days after the effective date of this order, respondent shall file with the Commission on the first Monday of each month thereafter a report setting forth the action taken to pay the subhaulers and the result of such action until payments have been made 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 21<sup>st</sup> day of April, 1964.

William C. Bunch  
President

Robert E. D'Amico

Walter W. Hayes

George T. Hoover

Frederick B. Holhoff  
Commissioners