

**ORIGINAL**Decision No. 67113

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own )  
 motion into the operations, rates and )  
 practices of HOWARD J. MAINWARING, )  
 HOWARD C. MAINWARING and FRANKLIN C. )  
 ROBERTSON, co-partners, doing business )  
 as SPECIAL DELIVERY SERVICE. )

Case No. 7660

Kellogg & George, by Marquam C. George,  
 for respondents.  
Philip A. Winter, for Delivery Service Company,  
 interested party.  
Elmer J. Sjostrom and Frank O'Leary, for the  
 Commission staff.

O P I N I O N

The Commission on July 9, 1963 issued its order instituting investigation into the operations, rates and practices of Howard J. Mainwaring, Howard C. Mainwaring and Franklin C. Robertson, doing business as Special Delivery Service.

Public hearings were held before Examiner Power on October 17 and 18, 1963, January 9 and 10, February 10 and 11, 1964.

Respondents presently conduct operations pursuant to city carrier and highway contract carrier permits. Respondents have a terminal in Oakland, California. They own and operate four panel trucks and four vans. Their total gross revenue for the year July 1, 1962 through June 30, 1963 was \$86,209. Copies of the appropriate tariffs and the distance table were served upon respondents.

On April 3, 4, 5, 12 and 16, 1963, representatives of the Commission's field division visited respondents' place of business and checked their records for the period March and May 1962 and January and February 1963, inclusive. The underlying

documents relating to more than 1,200 shipments were submitted to the License and Compliance Branch of the Commission's Transportation Division. Based upon the data taken from said shipping documents rate studies were prepared and introduced in evidence as Exhibits Nos. 12, 13, 14 and 15.

Respondents are accused in the order instituting this investigation of violating both the Highway Carriers' Act and the City Carriers' Act. Specifically the alleged violations are:

1. Violation of Sections 3664 and 4013 of the Public Utilities Code by assessing rates less than the minimums prescribed by Minimum Rate Tariff No. 2 and City Carriers' Tariff No. 2-A.
2. Violation of Sections 3705 and 4045 of the Code by refusing to give authorized Commission employees access to records.
3. Discounting or assessing no charge at all as an inducement to secure the transportation of property, which violates Sections 3667 and 4016 of the Code.

All of the above charges and specifications were fully established by the evidence.

Respondents, in the cases of certain favored shippers, had quoted rates on a per week basis. The billing clerks were instructed to rate the shipments at the applicable Commission minimum rates up to an agreed weekly total figure. The billing clerks (two of them were produced as witnesses by the staff) would then put the remaining bills aside and they were removed from the office by the partners.

On August 1, 1962 respondents had filed an application, No. 44675. This was amended on January 28, 1963 and denied on July 9, 1963 by Decision No. 65687. In it respondents sought authority to assess charges by the week. These charges were

proposed to be in brackets limited by maximum pounds per month and maximum deliveries per month. There were to be two pickups per day in all brackets. It is plain from the evidence in the instant proceeding that respondents have been applying a rate structure resembling the one proposed in Application No. 44675.

In the case of one shipper, staff witnesses had come into possession of 627 bills of lading. These had not been rated nor had charges been assessed. During the periods covered by these bills, namely, May 1962 and January 1963, ledger entries indicated regular payments of \$355 per week.

The staff's rate witness rated 63 of the 627 uncharged shipments. Fifty from May 1962 added to \$509.76. Thirteen from January 1963 added to \$88.97, a total for the 63 of \$598.73.

In the case of another shipper who paid \$300 a week the staff rate witness rated a sampling of 11 shipments which were never billed by the respondents. The charges on these shipments amounted to \$25.40.

In the two cases enumerated above the staff had obtained original bills of lading and presented a sampling of these in evidence. In order to prove that the transportation had been performed, this documentary evidence was bolstered by about 40 public witnesses representing both consignors and consignees.

In the case of a third shipper 688 delivery tags were rated and put in evidence as Exhibit No. 14. This exhibit originally showed 688 shipments with charges of \$1,922.37. During cross-examination the staff eliminated 61 of these in order to speed up the hearing. This left 627 shipments with charges of \$1,844.00 for the month of February. The record shows that the respondents assessed this shipper an aggregate sum of \$1,182.57

less a credit of \$17.43 for transportation services performed during the same month. The respondents in this regard billed the shipper \$237.50 a week and an additional charge of \$232.57 for excessive mileage.

A fourth shipper was afforded a 15 percent discount on most of its shipments. Thirty shipments for this customer revealed undercharges of \$28.30. Of the shipments rated in Exhibit No. 15, 23 were discounted in this way. The other seven were simple undercharges.

Respondents elected to present no evidence. At the conclusion of the staff's case, they submitted on the record as it then stood.

According to the Commission records, admonishment conferences were held with respondents on June 22, 1959 and March 14, 1962.

The staff proposed revocation of respondents' permits. While such a severe punishment could well be considered justified by the deliberate violations shown here, committed, as they were, by knowing violators, the Commission will impose instead the maximum fine of \$5,000.

After consideration the Commission finds that:

1. Respondents operate pursuant to city carrier and highway contract carrier permits.
2. Respondents were served with appropriate tariffs and distance table.
3. Respondents charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibits Nos. 12, 13, 14 and 15.

4. Respondents have performed transportation services for one or more shippers and applied a discount of 15 percent against the charges assessed therefor.

5. Respondents failed to give authorized Commission employees access to their records by removing portions thereof from their principal office and place of business.

6. Respondents have assessed no charges on portions of the traffic of certain shippers as an inducement to obtain the transportation of the property of such shippers.

Based upon the foregoing findings of fact, the Commission concludes that respondents violated Sections 3664, 3667, 3705, 4013, 4016 and 4045 of the Public Utilities Code.

The order which follows will direct respondents to review their records to ascertain all undercharges that have occurred since March 1, 1962 in addition to those set forth herein. The Commission expects that when undercharges have been ascertained, respondents 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 respondents and the results thereof. If there is reason to believe that respondents, or their attorney, have not been diligent, or have not taken all reasonable measures to collect all undercharges, or have 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. Respondents shall examine their records for the period from March 1, 1962 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, respondents shall complete the examination of their 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. Respondents 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, respondents 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.

5. Respondents shall pay a fine of \$5,000 to this Commission on or before the twentieth day after the effective date of this order.

C. 7660 YPO

The Secretary of the Commission is directed to cause personal service of this order to be made upon Howard J. Mainwaring, Howard C. Mainwaring, and Franklin C. Robertson, and this order shall become effective twenty days after the completion of service upon the first of such respondents.

Dated at San Francisco, California, this 21<sup>st</sup> day of APRIL, 1964.

William L. Bennett  
President  
John E. ...  
Wesley W. ...  
George A. ...  
Fredrick B. Hallock  
Commissioners