

ORIGINAL

Decision No. 67114

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation upon the Commission's
own motion into the operations,
rates and practices of SAM KORA.

Case No. 7707

Sam Kora and Nicholas Blum, for
respondent Sam Kora.
Hugh N. Orr, 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 Sam Kora for the purpose of determining whether respondent had acted in violation of Public Utilities Code Sections 3664, 3667 or 3737.

A public hearing was held before Examiner Chiesa on November 7, 1963, at Los Angeles.

The evidence adduced at said hearing shows that:

Sam Kora, respondent herein, holds Radial Highway Common Carrier permit No. 15-791 issued March 6, 1941, and Highway Contract Carrier permit No. 19-49701 issued November 1, 1955. Copies of Minimum Rate Tariff No. 2 and Distance Table No. 4 were mailed to respondent on July 14, 1948 and August 20, 1951, respectively, and were received by him. Respondent restricts his transportation service to shipments of fresh and frozen meats.

On February 1, 1960, the Commission mailed to respondent a so-called "undercharge" letter calling attention to transportation services performed by him in violation of section 3664 of the Public Utilities Code by charging less than the minimum rates prescribed in Minimum Rate Tariff No. 2, and ordering him to review his records, to report to this Commission and to collect any undercharges found. Pursuant to said letter respondent reviewed his records, reported the information and instituted legal proceedings to collect certain undercharges (Exhibit No. 3).⁽¹⁾

Respondent conducts his business at 2601 South Soto Street in Los Angeles, he employs eight drivers, one mechanic, a part-time accountant, and a dispatcher who is also assistant to respondent. Respondent also employs the Miller Traffic Service to assist him in determining rates. For the last three quarters of 1962 and the first quarter of 1963 respondent's gross revenue was \$187,555.

Two staff witnesses testified and five exhibits were placed in evidence by staff counsel. Respondent did not testify, but he and his representative, Nicholas Blum, cross-examined staff witnesses and assisted in the development of the record.

A staff witness testified that in March of 1963 he conducted a three-day investigation of respondent's operations for the months of October, November, and December, 1962; that in addition to the examination of respondent's books and records he interviewed respondent and his assistant; and that he selected twenty shipments

(1) As of December 1962, respondent had collected undercharges of \$6,995.62 and two suits, one for \$10,655.01 and the other for \$19,317.14, were still pending.

which were representative of respondent's operations.

A rate expert from the Commission staff testified that the twenty shipments resulted in undercharges in violation of certain provisions of Minimum Rate Tariff No. 2, Pacific Southcoast Freight Bureau Tariff No. 294-D, and Southern Pacific Company Freight Tariff No. 230-K, as specifically set forth in Parts 1 to 20, inclusive, and Appendix "A" of Exhibit No. 4. Said undercharges resulted from respondent's failure (1) to assess the prescribed rates for the transportation of property or for services performed in connection therewith, (2) to issue the appropriate shipping documents, (3) to apply the proper combination of rail and trucking rates, and (4) the improper consolidation of multiple lot shipments. Total undercharges shown in said exhibit were \$1,359.15.

Based upon the evidence the Commission finds that:

1. Respondent was engaged in the transportation of property as a radial highway common carrier and highway contract carrier pursuant to permits Nos. 15-791 and 19-49701, respectively, during the period the transportation referred to herein was performed.

2. All applicable minimum rate orders and distance tables, and any supplements and amendments thereto, were served upon respondent prior to the time the shipments referred to herein were transported.

3. Respondent charged and collected for transportation at rates less than the minimum rates established by this Commission (Parts 3, 4, 6, 14, 18 and 20); failed to assess a required switching charge (Part 11); applied the split delivery provision of Minimum Rate Tariff No. 2 without the written shipper's instructions required by Minimum Rate Tariff No. 2, Item 170(d) (Parts 7 and 15);

applied the multiple lot provision of Minimum Rate Tariff No. 2 without issuing the multiple lot document required by Minimum Rate Tariff No. 2, Item 85(a)3 (Parts 1 and 2); issued the multiple lot document required by the multiple lot provision of Minimum Rate Tariff No. 2 after the first pickup, in violation of Item 85(a)3 (Parts 8, 9, 10, 12, 13, 17 and 19); and failed to pick up the component parts of multiple lot shipments within the time limit set by Minimum Rate Tariff No. 2, Item 85(a)4 (Parts 5 and 16). The undercharges involved in said violations total \$1,359.15.

Based upon the foregoing findings of fact, the Commission concludes that respondent Sam Kora has violated Sections 3664, 3667, and 3737 of the Public Utilities Code by charging, demanding, collecting and receiving a lesser sum for transportation than the applicable charges and by failure to use or issue appropriate shipping documents as prescribed by the Commission's minimum rate order.

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 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. Sam Kora, respondent herein, shall forthwith cease and desist from charging, demanding, collecting, or receiving for the transportation of property, or for any service in connection therewith, rates and charges less than the minimum rates and charges or greater than the maximum rates and charges applicable to such transportation established or approved by the Commission, and shall observe the provisions of any tariff, decision or order applicable to respondent.
2. Respondent shall, on or before the twentieth day after the effective date of this order, pay a fine of \$1,800 to this Commission.
3. Respondent shall examine his records for the period from October 1, 1962, to the effective date of this order, for the purpose of ascertaining all undercharges that have occurred.
4. Within ninety days after the effective date of this decision, respondent shall complete the examination of his records required by paragraph 3 of this order, and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.
5. 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 3 of this order, and shall notify the Commission in writing upon the consummation of such collections.
6. In the event undercharges ordered to be collected by paragraph 5 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 Sam Kora.

The effective date of this order shall be twenty days after such service.

Dated at San Francisco, California, this 21st day of April, 1964.

Hallequela Bennett
 President

Walter P. Bennett

Walter W. Kays

George A. Trover

Fredrick B. Hallock
 Commissioners