

Decision No. 67273**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation by the Commission's)
 own motion into the operations,)
 rates, charges and practices of) Case No. 7815
 DONALD E. BAKER, an individual.)
)

Nathan W. Tarr, for respondent.
John C. Gilman and Harold J. McCarthy,
for the Commission staff.

O P I N I O N

By order dated January 14, 1964, the Commission instituted an investigation into the operations, rates, charges and practices of Donald E. Baker.

A public hearing was held before Examiner Porter on March 24, 1964, in Los Angeles, on which date the matter was submitted.

Respondent conducts operations pursuant to Highway Contract Carrier Permit No. 30-3897 and has been served with Minimum Rate Tariff No. 7, and applicable supplements thereto. He owns and operates one truck and for the year 1963 has a total gross revenue of \$15,805.

The Commission staff presented evidence as to carrier's operations for the month of June 1963 as being representative of carrier's operations. This evidence reveals that respondent was allowing the shipper to deduct five percent of the total transportation charges as a broker fee or bookkeeping fee. The shipper performed no bookkeeping for respondent. He cannot obtain discounts in freight rates by declaring himself to be a broker.

Evidence was also presented which discloses that the shipper sold respondent a truck. There was included in the price the cost for a "spot" i. e., a right to act as a carrier for the shipper.

The respondent did not controvert this evidence but explained that this deduction was allowed on representations by the shipper that it was a legal deduction. When the illegality of the practice was pointed out to respondent by members of the Commission staff, the practice was discontinued. Respondent no longer performs transportation for this shipper and is attempting to recover the amount deducted.

Exhibit No. 5, in evidence, shows that for the month of June 1963 the total amount of this five percent deduction was \$35.10.

After consideration the Commission finds that:

1. Respondent operates pursuant to Highway Contract Carrier Permit No. 30-3897.
2. Respondent was served with the appropriate tariff and distance table.
3. Respondent charged less than the lawfully prescribed minimum rates in the instance as set forth in Exhibit No. 5 resulting in undercharges in the amount of \$35.10.
4. Respondent has unlawfully paid a rebate of five percent to the shipper for all the transportation performed by respondent for the shipper during June 1963.
5. Respondent has made an unlawful remittance to the shipper in the form of payment to said shipper for the "spot" described herein.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 3664, 3668 and 3737 of the Public Utilities Code.

The order which follows will direct respondent to review his records to ascertain all undercharges that have occurred since February 13, 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 the undercharges. 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 cease and desist from any further violations of the Public Utilities Code or the orders of this Commission.
2. Respondent shall examine his records for the period from February 13, 1963 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 amounts 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 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.

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.

San Francisco

Dated at _____, California, this 26th day of May, 1964.

William S. Burnett
President
George T. Hoover
Fredrick B. Hallock
Commissioners