

ORIGINAL

Decision No. 67306

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation by the Commission's )  
own motion into the operations, )  
rates, charges and the practices )  
of LONNIE H. ROSS, SR., an )  
individual. )

Case No. 7818

Lonnie H. Ross, Sr., respondent.

John C. Gilman, for the Commission staff.

O P I N I O N

By its order dated January 14, 1964, the Commission instituted an investigation into the operations, rates, charges and practices of Lonnie H. Ross, Sr., an individual.

A public hearing was held before Examiner Gravelle on March 26, 1964, at Los Angeles.

Respondent presently conducts operations pursuant to Highway Contract Carrier Permit No. 30-3595 originally issued October 27, 1961 and subsequently transferred on October 25, 1963 to Lonnie H. Ross, Sr., and Lonnie H. Ross, Jr., doing business as Ross Trucking. Respondent maintains a terminal at his home in Buena Park, California. He owns and operates two tractors and two semi-trailer dumps. His only employee is his son, Lonnie H. Ross, Jr. His total gross revenue for the year ending September 30, 1963 was \$24,916. Copies of the appropriate tariff and distance table were served upon respondent.

On October 2, 1963, a representative of the Commission's Field Section visited respondent's place of business and checked his records for the period from September 1960 through March 1963,

inclusive, but with particular emphasis on the month of February 1963. The underlying documents relating to the transportation performed in February 1963 were taken from respondent's files and photocopied and the copies were 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 4. Said exhibit reflects undercharges in the amount of \$207.02.

Staff counsel in his opening statement alleged that respondent would be shown to have violated Sections 3664 and 3737 of the Public Utilities Code in that he had charged and collected rates less than those provided in Minimum Rate Tariff No. 7 for the transportation of sand and gravel for a shipper, one Earl W. Lumley; he alleged further that respondent would be shown to have violated Section 3668 of the Public Utilities Code in that he rebated to the said Lumley 5 percent of the total transportation charges assessed in the form of a fee for "brokerage" or "bookkeeping".

The representative of the Field Section, called as a staff witness, testified his investigation disclosed that respondent prior to 1961 had been an employee of Earl W. Lumley serving in the capacity of a driver, that Lumley had sold respondent a truck and included in the price thereof a "spot", i.e., a right to act as a carrier for Lumley, that Lumley dictated the rates which respondent would be paid for the transportation performed, and that Lumley insisted a 5 percent deduction be made from such gross transportation charges as a "brokerage" or "bookkeeping" fee. His investigation also disclosed that Lumley did not actually perform any bookkeeping service for respondent. He cannot obtain discounts in freight rates by declaring himself to be broker.

Exhibit 1 introduced through the staff witness contains the delivery receipts which reflect the individual shipments transported by respondent for Lumley during February of 1963. Exhibit 2 is a recapitulation of those delivery receipts showing the delivery receipt number, the tonnage hauled, the delivery zones involved, the rate, and the total charge. Exhibit 3 is a statement reflecting the "Total February Haul" and indicates a gross charge of \$1,387.60 from which has been deducted \$17.10 for "Health & Welfare" and \$69.38 for "5% of Haul". The "Health & Welfare" deduction was explained as the sum owed by respondent to the union for his drivers. This sum was paid by Lumley for respondent and then deducted from the gross transportation charge. Part of the transportation reflected by Exhibit 2 involved a "special" zone rate and carried a 60 cents per ton transportation rate. A Transportation Rate Expert called as a staff witness testified that this transportation should have actually taken a minimum rate of 67 cents per ton (Exhibit 4). The Field Section witness testified that respondent was aware of the proper rate as was Lumley but that Lumley had refused to pay more than 60 cents per ton despite the protestations of respondent. Respondent severed his relationship with Lumley in March of 1963 and is presently engaged in subhaul operations for a permitted carrier. He has had no past history of violations with this Commission and was extremely cooperative with the Commission investigator. The Field Section witness testified that his investigation disclosed the 5 percent rebate applied to the total transportation performed by respondent for Lumley for the period September 1960 to March 1963 resulted in undercharges of \$1,554.76.

Respondent testified in his own behalf and corroborated the testimony of the staff witnesses; he stated that although he knew what he was doing was wrong he felt constrained to give in to the demands made by Lumley because of his indebtedness to him on the equipment purchase. He testified that at the present time his remuneration from his for-hire transportation never exceeds \$100 a week and that in the recent past has been about \$25 per week.

Staff counsel recommended that in view of the facts in this case no fine or suspension be imposed by the Commission, but that respondent be directed to cease and desist from any further unlawful practices and be ordered to review his records and collect any undercharges thereby disclosed.

After consideration the Commission finds that:

1. Respondent operates pursuant to Highway Contract Carrier Permit No. 30-3595.
2. Respondent was served with the appropriate tariff and distance table.
3. Respondent charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit 4, resulting in undercharges in the amount of \$207.02.
4. Respondent has unlawfully paid a rebate of 5 percent to Earl W. Lumley for all the transportation performed by respondent for Lumley during February 1963.
5. Respondent has made an unlawful remittance to Earl W. Lumley in the form of payment to said Lumley 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 October 27, 1961 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 October 27, 1961 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.

Dated at San Francisco, California, this 3rd day of June, 1964.

William L. Beards  
President

George T. Grover  
Commissioners

Fredrick B. Holbrook  
Commissioners