

ORIGINAL

Decision No. 67455

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion into the operations, practices,)
rates and charges of BOJOCK TRANSPORT)
CO., a corporation. }

Case No. 7750

Robert C. Petersen, for respondent.

B. A. Peeters, for the Commission staff.

O P I N I O N

By its order dated October 22, 1963, the Commission instituted an investigation into the operations, rates and practices of Bojock Transport Co., a corporation, for the purpose of determining whether in the operation of its for-hire transportation business, respondent violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging and collecting a lesser sum for such transportation than the applicable charges prescribed in Minimum Rate Tariff No. 2 and supplements thereto.

A public hearing was held before Examiner Mooney on March 5, 1964, at San Francisco.

It was stipulated that respondent was issued Radial Highway Common Carrier Permit No. 23-1017 and Highway Contract Carrier Permit No. 23-1251; that both permits contain a restriction which provides that if respondent engages other carriers for the transportation of property for Bojock Lumber Company, or its customers, said carriers shall not be paid less than the applicable minimum charge; and that respondent was served a copy of Minimum Rate Tariff No. 2 and Distance Table No. 4, with all supplements and corrections thereto.

Respondent has a terminal in Point Arena, California. The president of respondent corporation owns four power vehicles and four trailers and leases them to respondent. It employs four drivers and a part-time mechanic. Respondent's gross revenue for the last quarter of 1962 and the first three quarters of 1963 was \$154,796.

On February 13 and 14, 1963, a representative of the Commission's Field Division visited respondent's place of business and checked its records for the period from October 1962 through January 1963, inclusive. During said period respondent transported approximately 207 shipments. The representative testified that he returned to respondent's office on June 20, 1963 and made true and correct photostatic copies of 25 freight bills and supporting documents covering shipments of lumber and that they are all included in Exhibit 1. He further testified that he personally checked all rail facilities and all mileages for all shipments included in Exhibit 1 on which there was any question.

A rate expert for the Commission staff testified that she took the set of documents which are included in Exhibit 1 and formulated Exhibit 2, which shows the rate charged by the respondent, the rate computed by the Commission staff and the resulting undercharge on each of the freight bills in Exhibit 1. The witness explained the reasons for the undercharges as follows: An off-rail charge at destination was not assessed on 14 shipments; an incorrect rail rate was applied and an off-rail charge at destination was not assessed on two shipments; an incorrect rail rate was applied on two shipments; a mileage less than the applicable mileage was used on four shipments; and charges were based on actual weight rather than on a higher minimum weight on two shipments. The rate expert further

testified that the aggregate of the undercharges shown in Exhibit 2 was \$1,019. Respondent stipulated that the undercharges are correct.

The respondent corporation is managed by a husband and wife who are the president and secretary-treasurer, respectively. The secretary-treasurer testified that the president has been ill and that she has assumed much of the burden of running the business. She stated that she does most of the bookkeeping and rating of freight bills. There has never been any intent, she alleged, to undercharge on any shipment transported by respondent. The witness testified as follows regarding the rate errors disclosed in Exhibit 2: She was not aware that the destination in Southern California was not served by rail facilities in those instances where an off-rail charge at destination had not been assessed; she checked all rail rates before using them and apparently misunderstood the application of the rail rate on those shipments on which an incorrect rail rate was applied; she did not know it was necessary to base charges on the higher minimum weight rather than on actual weight on several of the shipments; and as to the few remaining errors, she was not aware of the application of certain tariff rules.

The secretary-treasurer further testified that a rate consultant has been engaged to review respondent's records and will continue to do so in the future. She alleged that the undercharges disclosed by the review together with those shown in Exhibit 2 totaled \$1,136.56 and that they have all been collected. ✓

An undercharge letter to respondent dated July 11, 1962 was received in evidence as Exhibit 3. The record shows that respondent complied with the undercharge directive.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 23-1017 and Highway Contract Carrier Permit No. 23-1251.
2. Respondent was served with Minimum Rate Tariff No. 2 and Distance Table No. 4, with all supplements and additions thereto.
3. Respondent charged less than the lawfully prescribed minimum rate in the instances set forth in Exhibit 2, resulting in undercharges in the amount of \$1,019.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 3664, 3667 and 3737 of the Public Utilities Code and should pay a fine in the amount of \$1,000.

The order which follows will direct respondent to review its records to ascertain all undercharges that have occurred since September 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 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 its 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 pay a fine of \$1,000 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondent shall examine its records for the period from September 1, 1962 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 its 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 a 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 30th day of JUNE, 1964.

[Signature] President
[Signature]
[Signature]
[Signature] Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.