

**ORIGINAL**Decision No. 67524

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
 own motion into the operations, )  
 rates and practices of JAMES )  
 MEDEIROS. )

Case No. 7803

Gil Medeiros and E. H. Griffiths, for respondent.  
Timothy E. Treacy and Frank O'Leary, for the  
Commission staff.

O P I N I O N

By its order dated December 17, 1963, the Commission issued its order instituting an investigation into the operations, rates and practices of James Medeiros, an individual,<sup>1</sup> operating as a radial highway common carrier, for the purpose of determining whether in the operation of his transportation business respondent violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging and collecting a lesser sum for transportation than the applicable charges prescribed in Minimum Rate Tariff No. 2 and supplements thereto, and by failing to adhere to the provisions of Items 60-C and 170 of said tariff.

A public hearing was held before Examiner Mooney at San Francisco on March 10 and April 16, 1964, on which latter date the matter was submitted.

It was stipulated that respondent was issued Radial Highway Common Carrier Permit No. 21-490 and that he was served a copy of Minimum Rate Tariff No. 2 and Distance Table No. 4, with all supplements and additions thereto.

---

<sup>1</sup> Also known as Medeiros Trucking.

Respondent has a terminal in Novato, California. He owns and operates two tractors, four semitrailers and two trailers. He employs one driver. All of respondent's records are filed in his accountant's office in Novato. Prior to August 31, 1963, his records were located at the office of H. Pini Co., Inc., a grain dealer in Novato served by respondent. Respondent's total gross revenue for the year 1963 was \$30,761.

A Commission representative testified that he visited the office of respondent's accountant on September 16, 20 and 24, 1963 and reviewed approximately 600 freight bills which covered all transportation performed by respondent during the period December 1962 through August 1963, inclusive. The witness further testified that he made true and correct photostatic copies of 19 freight bills which covered transportation of bulk barley, beet pulp, alfalfa and similar commodities and that they are all included in Exhibit 1.

The representative testified that respondent rated each truckload of beet pulp covered by each of the four freight bills included in Parts 7, 10, 11 and 12 of Exhibit 1 as a single straight shipment from Tracy or Alvarado to one destination in Novato when in each instance half of the load was delivered to H. Pini at one location in Novato and the other half was delivered to Dairymen's Milling Co. at another location in Novato. He stated that no documentation other than the freight bill was issued for any of the truckloads. The witness further testified regarding commodity descriptions, points of origin and destination and documentation for various other parts of the exhibit. He stated that respondent's freight bills were rated by an employee of H. Pini until August 31, 1963 and that subsequent thereto they were to have been rated by an employee of respondent's accountant.

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 included in Exhibit 1.

Respondent testified on his own behalf as follows: He drives one of his units of equipment; he had relied upon a salesman of H. Pini to do his rating prior to the transfer of his records to the accountant's office and was not aware that rate errors had occurred; the rating was performed by the salesman on his own time without compensation as a favor to respondent; the employee of the accountant who is presently preparing the billing is familiar with the tariff rules and rate applications necessary to rate the type of shipments transported by respondent; and he has retained two tariff consultants to review his freight bills and will continue to retain them to assure that rate errors do not occur in the future.

Respondent further testified that although the freight bill included in Part 16 of Exhibit 1 shows an incorrect rate, the proper rate shown in Exhibit 2 was actually collected. The Commission staff requested that Part 16 be canceled from Exhibits 1 and 2.

With respect to the transportation covered by each of the four freight bills in Parts 7, 10, 11 and 12 of Exhibit 1, the record shows that part of each truckload was delivered to one destination and the balance was delivered to a second destination. The record further shows that the provision of the Split Delivery Rule in Item 170 of Minimum Rate Tariff No. 2 which requires that written instructions for a split delivery shipment be issued to the carrier at the time of or prior to pickup was not complied with in connection with any of the four truckloads. Item 170 further provides that if the required written instructions are absent, each delivery must be

rated as a separate shipment. Item 60-C of the tariff states that each shipment shall be rated separately and shall not be consolidated or combined by the carrier. It is evident that the transportation represented by each of the four freight bills in Parts 7, 10, 11 and 12 must be rated as two separate shipments as shown in Exhibit 2 and cannot be rated as a single consolidated shipment.

An undercharge letter dated August 21, 1961 was received in evidence.

The Commission staff recommended that respondent be fined \$1,500. Respondent's counsel contended that respondent was not aware that rate violations had occurred; that he is making a diligent effort to prevent such errors in the future; and that the facts in this proceeding do not justify a fine. After eliminating Part 16 from Exhibit 2, the undercharges shown for the remaining 18 parts of the exhibit total \$319.30.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 21-490.
2. Respondent was served with Minimum Rate Tariff No. 2 and Distance Table No. 4, with all supplements and additions thereto.
3. Respondent collected the applicable minimum charge for the transportation covered by Part 16 of Exhibits 1 and 2.
4. Except as provided in Finding 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 \$319.30.

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 \$750.

The order which follows will direct respondent to review his records to ascertain all undercharges that have occurred since

December 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 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 pay a fine of \$750 to this Commission on or before the twentieth day after the effective date of this order.
2. Respondent shall examine his records for the period from December 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 his records required by paragraph 2 of this order and shall file with this 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 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 respondent. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 14<sup>th</sup> day of JULY, 1964.

Fredrick B. Hallock  
President

John E. ...

George H. Crover

William W. ...

Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.