

ORIGINALDecision No. 68032

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates and practices of PAUL)
 KENNETH HAMETT.)

Case No. 7880

Philip C. Fullerton, for respondent.

Lawrence Q. Garcia and J. B. Hannigan, for
 the Commission staff.

O P I N I O N

By its order dated April 28, 1964, the Commission instituted an investigation into the operations, rates and practices of Paul Kenneth Hamett.

A public hearing was held before Examiner Gravelle on June 30, 1964, at Fresno.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 10-8566 dated October 30, 1956.

Respondent has a terminal located at his home in Fresno. He owns and operates five trucks and five trailers, all of which are flatbed equipment. He employs from four to five drivers depending upon whether or not he drives a piece of his equipment. His total gross revenue for the year ending with the first quarter of 1964 was \$91,841. Copies of the appropriate tariff and distance table were served upon respondent.

On October 1 - 4, 1963 and again on January 8 and 9, 1964, a representative of the Commission's field section visited respondent's place of business and the office of respondent's accountant and checked his records for the period from January through September

of 1963. Copies of the underlying documents relating to 17 shipments were made from the originals in respondent's files, said copies were submitted to the License and Compliance Branch of the Commission's Transportation Division (Exhibit No. 1). Based upon the data taken from said shipping documents and information supplied by the field representative a rate study was prepared and introduced in evidence (Exhibit No. 2). Said exhibit reflects alleged undercharges in the amount of \$355.58.

Part No. 4 of Exhibits Nos. 1 and 2 reflected a shipment in which respondent allegedly consolidated two movements which should have been rated separately. The documents in Exhibit No. 1 show that one truck and trailer load moved on March 8, 1963 and the other on March 20, 1963. The time differential is in excess of the allowable limit provided in Minimum Rate Tariff No. 2. Each shipment should have been rated separately and an undercharge of \$25.38 as shown in Exhibit No. 2 exists with regard to said Part No. 4.

The remaining 16 parts of Exhibits Nos. 1 and 2 deal with shipments in which the Commission staff contends that either an incorrect rate was applied, or the destination shown on the freight bill was not the actual destination of the shipment, resulting in an incorrect rate lower than the minimum. In order to prove this contention the staff presented the testimony of one Piatt Bliss who is an employee of the consignee of each of the 16 shipments in question. Mr. Bliss had prepared, at the request of respondent, a list of actual destinations of various shipments transported by respondent. This list was sent in letter form to the Public Utilities Commission. It was introduced in evidence as Exhibit No. 3. Staff counsel also presented the testimony of Joe Angel, an employee of Commercial Work Products Co. in North Hollywood. He testified

to the receipt for his employer of 4 shipments at North Hollywood, each of which were contained in Exhibit No. 1, showing destinations at Van Nuys.

The Commission staff offered no evidence relative to the actual destination of Parts 6 or 11 of Exhibits Nos. 1 and 2 but rated each of those parts in Exhibit No. 2 as delivered to a destination other than that shown in Exhibit No. 1. As to those two movements there is insufficient evidence to find an undercharge. As to the other 14 parts, however, the staff has shown and the Commission finds undercharges in the amount of \$279.60.

Respondent offered no evidence in his defense, but argued through his counsel that the staff had not shown these violations to have been committed "knowingly and willfully" as provided in Section 3668 of the Public Utilities Code. He stated that the violations were at the most technical, and that respondent should not be fined nor should his operating authority be suspended, but rather that he should be ordered to cease and desist from any further violations.

Staff counsel argued that respondent, while not aware of the actual points of destination, was aware that the destinations shown on his freight bills were incorrect, and that respondent had voluntarily accepted the duty of compliance with the provisions of the Public Utilities Code when he applied for and received his permit to operate as a highway carrier, and could not now claim that his noncompliance was done unknowingly and unwillfully. Staff counsel recommended a fine of \$1,000 or in the alternative a suspension of five days.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 10-8566.

2. Respondent was served with the appropriate tariff and distance table.

3. Respondent charges less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit No. 2, save and except for Parts Nos. 6 and 11 thereof, resulting in undercharges in the amount of \$304.98.

Based upon the foregoing findings of fact the Commission concludes that respondent violated Sections 3364, 3667, 3668, and 3737 of the Public Utilities Code and should pay a fine in the amount of \$500.

The order which follows will direct respondent to review his records to ascertain all undercharges that have occurred since January 1, 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.

ORDER

IT IS ORDERED that:

1. Respondent shall pay a fine of \$500 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 January 1, 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 a certified copy 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 13th day of OCTOBER, 1964.

Fredrick B. Holbrook
President
John Mitchell
George G. Grover
William K. Grund

Commissioner George G. Grover, being necessarily absent, did ~~Commissioners~~ in the disposition of this proceeding.