

ORIGINAL

Decision No. 68034

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)	
own motion into the operations,)	
rates, charges and practices of)	
CLAUDE A. WALL, an individual,)	Case No. 7888
doing business as SIERRA FREIGHT)	
LINE.)	

Mervyn C. Hoover, for respondent.
Robert C. Marks and George Kataoka,
 for the Commission staff.

O P I N I O N

By its order dated May 5, 1964, the Commission instituted an investigation into the operations, rates, charges and practices of Claude A. Wall, an individual, doing business as Sierra Freight Line.

A public hearing was held before Examiner Gravelle on July 23, 1964, at Susanville.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 18-591 dated December 20, 1954. Respondent has a terminal and garage in East Susanville. He owned and operated three trucks, three trailers, one tractor and two semitrailers in October of 1963, but when the hearing was held he was operating only one truck and trailer and had either sold or put up for sale the balance of his operating equipment. At the time of the investigation respondent employed four drivers, but by the date of hearing he had no employees and was doing his own driving, rating, billing, and repair work. His total gross revenue for the year ending with the first quarter of 1964 was \$59,849. Copies of appropriate tariffs and the distance table were served upon respondent.

On October 14, 15 and 25, 1963, a representative of the Commission's field section visited respondent's place of business and

checked his records for the period from January 1, 1963 through October 10, 1963. The representative checked 250 freight bills within said period. Copies were made of the underlying documents relating to 30 of such shipments and were submitted to the License and Compliance Branch of the Commission's Transportation Division (Exhibit No. 1). Based upon the data taken from said copies of the shipping documents a rate study was prepared and introduced in evidence (Exhibit No. 2). Said exhibit reflects alleged undercharges in the amount of \$903.91.

It was contended by the staff that respondent had failed to assess off-rail charges, had failed to protect the minimum weight requirements when the charges were based upon a lower volume rate and had prepared freight bills without sufficient information to enable the determination of a minimum rate and charge. Parts 1 through 24 of Exhibit No. 1 reflect the first two of the above contentions. Parts 25 through 30 of that exhibit reflect the latter contention.

Parts 25 through 30 were charged for by respondent on a flat charge basis of \$250 per load. There was no quantity specified and no weight tag secured, hence the staff rate expert was unable to rate these shipments. Respondent testified with regard to these movements that he thought the charge was all right because the loads were "light" but that he was aware that he was required to enter sufficient information on his shipping documents to allow rating. He said this incorrect practice had been corrected and that he would probably lose the business involved in these shipments in the future.

With regard to Parts 1 through 24, respondent testified that he was not well educated and found rating difficult, that he had depended upon his shippers or railroad employees for his rail rates, that he had taken the word of his employee drivers or of shippers with regard to destinations being on or off rail and that he had not intentionally committed any of the alleged violations. He

claimed that Wirth Lumber Co., the consignor in Parts 3, 4, 6, 7, 20, 21 and 24, was out of business and that its former owner was now in Idaho hence he was unable to collect some \$444.44 of the alleged undercharges. He admitted on cross-examination, however, that with regard to some of those parts Wirth Lumber Co. was not the entity responsible for the shipping charges and he might effect collection from a party other than Wirth.

Exhibit No. 3, offered by the Commission staff and received in evidence, indicates that respondent has received undercharge letters on four occasions from 1958 through 1962 and had received two notices of rate violations during the same period. Respondent testified that he had retained the services of a rating consultant to aid him in assessing the correct rates and had purchased a "rail rate book," that he had collected all past undercharges and corrected his rating errors as he became aware of them, that he had taken no salary from his business for the last 7 or 8 years and was operating at a loss at the present time. He stated that a fine of \$1,000 as recommended by staff counsel would "break him at present."

It must be noted, however, that the rate consultant who represented respondent and who had already reviewed his freight bills stated that the total undercharges respondent would be able to collect would be about \$1,000.

While this proceeding and order herein may work a hardship upon respondent, it is the duty of the Commission to enforce the Public Utilities Code. The record reveals that respondent has had ample warning on an informal basis that his operations were not in conformity with the law.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 18-591.
2. Respondent was served with the appropriate tariffs and the distance table.
3. Respondent charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit No. 2, resulting in undercharges in the amount of \$903.91.

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 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.

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 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 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 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. Abbott
President

John J. Hatchett

Robert W. King

William L. Duvall

Commissioners

Commissioner George G. Grover, being necessarily absent, did not participate in the disposition of this proceeding.