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ORIGINAL

Decision No. 68230

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
rates and practices of T. C. ASH,)
an individual.)

Case No. 7881
(Filed April 28, 1964)

T. C. Ash, in propria persona.
B. A. Peeters 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 T. C. Ash, an individual, hereinafter referred to as respondent, for the purpose of determining whether respondent unlawfully permitted persons to obtain transportation of property at less than the minimum rates prescribed or approved by the Commission in violation of Sections Nos. 3664, 3667, and 3668 of the Public Utilities Code.

A public hearing was held before Examiner Mooney on May 27, 1964, at Bakersfield.

It was stipulated that respondent was issued Radial Highway Common Carrier Permit No. 15-5871, that said permit is restricted to the transportation of agricultural products (excluding livestock), empty containers, and fertilizer within a 150 mile radius of McFarland, California, and that respondent has been served with Minimum Rate Tariffs Nos. 2, 8, and 14 and Distance Table No. 4 and all supplements and corrections thereto.

Respondent's terminal is located at his home in McFarland. He owns and operates one power vehicle and four trailers. He employs one driver and has no other employees. His gross revenue for the year 1963 was \$34,254 and for the first quarter of 1964 it was \$2,601.

A Commission representative testified that on various days during October, November, and December 1963, he contacted respondent and his accountant and reviewed all of respondent's records held by both parties for the period January 1 through October 15, 1963. The witness stated that during the period covered by the survey, respondent transported approximately 200 shipments of baled alfalfa hay for Jay Em Bee Farms, El Monte, and for another company.

The representative testified as follows regarding the hay shipments transported for Jay Em Bee Farms: all shipments were delivered to Jay Em Bee at El Monte; billing statements to Jay Em Bee showed a deduction from transportation charges for unloading by the consignee; in reviewing the records at the accountant's office, he discovered a letter dated August 9, 1963, from Jay Em Bee to respondent which was in the form of an agreement and stated that respondent was to transport all hay shipments for Jay Em Bee, with the exception of an occasional load, at the going rate less an eight percent allowance to the consignee for unloading; the letter was also signed by respondent. The witness stated that no deductions from transportation charges were made on the billing statements to the other company for whom respondent transported hay.

The representative testified that he made true and correct photostatic copies of four invoices to Jay Em Bee covering 42 shipments of baled alfalfa hay and also of the supporting shipping

documents and that they are all included in Exhibit No.2. He pointed out that on the back of each of the shipping documents, with the exception of one, was a notation of the amount of money paid by respondent's driver to helpers hired to assist with the unloading and that he copied this information on the photostatic copies of the documents. As to the single document on which no notation had been made, he stated that he did not know whether this was an oversight on the part of the driver or if no one had been hired to assist with the unloading.

A rate expert of the Commission staff testified that he had taken the set of documents included in Exhibit No. 2 and formulated Exhibit No. 3, which shows the charges computed by the respondent, the minimum charges computed by the staff and the resulting undercharges for the transportation covered by Exhibit No. 2. The rate expert stated that on each of the four invoices in Exhibit No. 2 respondent applied the applicable rates prescribed in Minimum Rate Tariff No. 14, which names minimum rates for the transportation of hay, but deducted eight percent from the resulting minimum transportation charges as an allowance to Jay Em Bee for unloading. He pointed out that the aggregate of the undercharges, which resulted from the eight percent deduction on the four invoices, was \$572.40.

Respondent testified on his own behalf as follows: he commenced hauling for Jay Em Bee in July 1963; Jay Em Bee was to furnish a man to unload the shipments but the man was never available so, rather than wait, he instructed his driver to hire helpers to assist with the unloading and reimbursed the driver for the cost;

the eight percent deduction was eliminated on January 1, 1964, and since that date, Jay Em Bee has paid the applicable minimum transportation charge with no deduction; transportation taxes have always been paid on the full minimum charge.

Discussion

The evidence establishes that respondent deducted eight percent from the minimum transportation charges on each of the invoices in Exhibit No. 2; that the eight percent was credited to Jay Em Bee for purportedly unloading each of the 42 shipments covered by said invoices; and that, with the possible exception of one shipment on which the evidence is not clear, Jay Em Bee did not unload any of the aforementioned shipments.

Section 3668 of the Public Utilities Code provides that it is unlawful for any highway permit carrier to allow any corporation or person by means of any device to obtain transportation of property at rates less than the minimum prescribed by the Commission. The Commission has held that a flat deduction of ten percent from minimum transportation charges allowed to a shipper for the loading of a carrier's equipment by the shipper's employees is an illegal device within the meaning of Section 3668.^{1/} The unloading allowance to Jay Em Bee is likewise a device within the meaning of this code provision irrespective of whether Jay Em Bee did or did not in fact perform the unloading service. The word "device" is to be interpreted so as to give the broadest

^{1/} Decision No. 60396 dated July 13, 1960, in Case No. 6420, Investigation of Ralph D. Jenner, unreported; Decision No. 60437 dated July 26, 1960, in Case No. 6421, Investigation of Theodore Leroy Wolfe, unreported.

possible protection to the minimum rate structure and includes any arrangement whereby a person or corporation obtains transportation at less than the prescribed minimum rates.

Furthermore, Minimum Rate Tariff No. 14 does not provide for or authorize the deductions from minimum rates here in issue.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 15-5871.

2. Respondent was served with appropriate tariffs and distance tables.

3. Respondent charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit No. 3, resulting in undercharges in the amount of \$572.40.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 3664, 3667, and 3668 of the Public Utilities Code and should pay a fine in the amount of \$2,000.

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 \$2,000 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, 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 17th day of NOVEMBER, 1964.

Frederick B. Halaloff
President

George E. Crow
Commissioners

William L. Bennett
Commissioners