

**ORIGINAL**

Decision No. 68387

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's) own motion into the operations, rates and practices of BULK TRANSPORTATION, a corporation.

Case No. 7826  
(Filed January 28, 1964)

Joseph Enright, for respondent.

Bernard A. Peeters, for the Commission staff.

O P I N I O N

By its order dated January 28, 1964, the Commission instituted an investigation into the operations, rates and practices of Bulk Transportation, a corporation.

A public hearing was held before Examiner Daly on September 22, 1964, at Los Angeles.

Respondent presently conducts operations pursuant to a highway contract carrier permit. Respondent has a terminal in Walnut, California. It owns and operates 14 units of equipment. Its total gross revenue for the last two quarters of 1963 and the first two quarters of 1964 was \$232,153. It was stipulated that copies of appropriate tariffs and a distance table were served upon respondent.

On May 22, and September 12, 1963, a representative of the Commission's field section visited respondent's place of business and checked its records for the period from October 1962 through March 1963, inclusive. The underlying documents relating to 18 shipments were taken from respondent's files and submitted to the License and Compliance Branch of the Commission's Transportation Division. Based upon the data taken from said shipping documents a rate study was prepared and introduced in evidence as Exhibit No. 3. Said exhibit reflects undercharges in the amount of \$796.83.

According to Exhibit No. 3 respondent violated the provisions of Minimum Rate Tariff No. 2 by collecting less than the rates provided therein; collecting less than the common carrier rates authorized by Item No. 200, neglecting to assess an off-rail rate factor as required by Item No. 210, and neglecting to present freight bills for collection within seven days of delivery as required by Item No. 250-A.

It was stipulated that Exhibit No. 3 accurately indicated undercharges on 15 shipments. Respondent took issue with the staff's rating of three shipments, two of which involved the transportation of alfalfa pellets in bulk from Betteravia to Lancaster. The staff rated said shipments under List No. 4 of Item No. 652½ of Minimum Rate Tariff No. 2. Respondent's rate expert, however, testified that the commodity is analogous to "oil cake pellets" and should be rated under List No. 6 of Item No. 652-3/4. It is quite obvious that where a commodity falls within a category specifically described in a tariff it is improper to apply a rate applicable to an analogous commodity.

The third shipment involved the transportation of two lots of limestone and, according to the staff, results in an undercharge of \$16.03. The freight bill referred to "ground limestone" which is ratable under Minimum Rate Tariff No. 2. Respondent testified that the commodity was "crushed limestone" which varied in size from one inch in diameter down to powder. According to respondent's rate expert "crushed limestone" is ratable under Minimum Rate Tariff No. 7. The staff did not see the commodity and relied upon the description in the freight bill. Respondent testified that the commodity was crushed and not ground and the Commission will accept the description given by respondent.

Glenn E. Walker, who is the sole stockholder of respondent, testified that his contract operations for the most part involve shipments of the same commodities between the same points. As a result, he stated, he rates about one shipment a week and in applying rail rates and in determining whether a point is on or off rail he relies to a great extent upon information received from outside sources, including that received from railroads. He further testified that his wife acted as his bookkeeper and on occasions failed to prepare and mail the statements for transportation service within the required seven-day period. According to the witness, he has since hired a bookkeeper and has sent his dispatchers to traffic school.

The Commission's records indicate that respondent has had no prior history of rate violations.

The staff recommended a fine in the amount of \$1,500. Respondent argued that such a fine would be excessive in view of the fact that the violations were unintentional, technical in nature and represent few mistakes in rating when compared to the 165 shipments which respondent transports on the average each month.

After consideration the Commission finds that:

1. Respondent operates pursuant to Highway Contract Carrier Permit No. 33-2502.
2. Respondent was served with appropriate tariffs and a distance table.
3. With the exception of Part 15, 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 \$780.80.

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 \$1,500.

The order which follows will direct respondent to review its records to ascertain all undercharges that have occurred since April 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 them. 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 \$1,500 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 April 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 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 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 22nd day of DECEMBER, 1964.

Frederick B. Holcroft  
President

John R. Mitchell

Robert A. [unclear]

George F. Hoover

William W. Bennett  
Commissioners