

ORIGINAL

Decision No. 68580

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
rates and practices of D. C.)
BACCUS, an individual, doing)
business as BACCUS TRUCKING.)

Case No. 8048
(Filed October 27, 1964)

D. C. Baccus, in propria persona, for
respondent.
B. A. Peeters and J. B. Hannigan, for
the Commission staff.

O P I N I O N

By its order dated October 27, 1964, the Commission instituted an investigation into the operations, rates and practices of D. C. Baccus, an individual, doing business as Baccus Trucking, hereinafter referred to as respondent, for the purpose of determining whether in the operation of his transportation business respondent violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting sums less than the applicable charges prescribed in Minimum Rate Tariff No. 2 and supplements thereto.

A public hearing was held before Examiner Mooney at Bakersfield on January 6, 1965, on which date the matter was submitted.

It was stipulated that respondent was issued Radial Highway Common Carrier Permit No. 15-2157; that he was served with Minimum Rate Tariff No. 2 and Distance Table No. 4, with all supplements and additions thereto; that Cal-Cot Cotton Company, is located 8.7 actual miles south of the highway junction which is

0.5 constructive miles west of Brawley; that Blythe Alfalfa Growers Assn. is located 1.5 actual miles south of Blythe; and that Growers' Westmoreland Gin is located 8.7 actual miles south of Kane Springs and is not served by rail facilities.

A Commission representative testified that he visited respondent's office and terminal, which are located at his home in Bakersfield, on March 30, 1964 and again on June 23, 1964, and that he reviewed all of respondent's transportation records for the period October 1963 through May 1964. The witness stated that respondent transported approximately 200 shipments during the period covered by his review; that the majority of the shipments were interstate; that he made true and correct photostatic copies of 15 freight bills which covered shipments of bagging, used bags, ties and buckles; that the photostatic copies are all included in Exhibit No. 1. He testified that he personally observed certain origins and destinations shown on the 15 freight bills and determined their precise location and whether they were served by rail facilities. The representative stated that at the time of his investigation respondent operated three flat bed trucks and trailers, drove one of the units himself and employed two drivers. The witness testified that respondent's gross revenue for the four quarters ending September 30, 1964, was \$88,684 and that this amount included both interstate and intrastate revenues.

A rate expert of the Commission staff testified that he took the set of documents included in Exhibit No. 1 and formulated Exhibit No. 2, which shows the charges computed by the respondent, the minimum charges computed by the staff and the resulting undercharges for the transportation covered by each freight bill in Exhibit No. 1. The witness explained that respondent had assessed

rates below the applicable minimum distance rates provided in Minimum Rate Tariff No. 2 for each of the 15 shipments and the aggregate of the undercharges shown in Exhibit No. 2 is \$497.21.

Respondent testified as follows: Ninety-eight percent of the shipments transported by him during the period covered by the staff review moved in interstate commerce; during this period, he drove one of the trucks on weekdays and rated the freight bills on weekends; he apparently does not understand the application of Minimum Rate Tariff No. 2 and Distance Table No. 4; there was no intent on his part to undercharge on any of the shipments; a member of his family will obtain instructions on how to correctly apply the tariff and distance table and will perform the rating in the future.

According to the Commission records respondent was sent undercharge letters on August 11, 1960 and April 16, 1963.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 15-2157.
2. Respondent was served with appropriate tariffs and distance tables.
3. Respondent charged less than the lawfully prescribed minimum rate in the instances set forth in Exhibit No. 2, resulting in undercharges in the amount of \$497.21.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 3664 and 3667 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$497.21, and that in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$500.

The Commission expects that 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 \$997.21 to this Commission on or before the twentieth day after the effective date of this order.
2. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein, and shall notify the Commission in writing upon the consummation of such collections.
3. In the event undercharges ordered to be collected by paragraph 2 of this order, or any part of such undercharges, remain uncollected sixty 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 with the Commission, on the first Monday of each month after the end of said sixty days, 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 9th day of February, 1965.

Fredrick B. Halbach
President

George L. Hoover

William B. Brown

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.