

Decision No. 68684**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of LEO B. CLAWSON, an individual.

Case No. 7969  
(Filed August 4, 1964)

Clawson and Jennings, by Lawrence W. Clawson, for respondent.  
B. A. Peeters and J. B. Hannigan, for the Commission staff.

O P I N I O N

By its order dated August 4, 1964, the Commission instituted an investigation into the operations, rates, and practices of Leo B. Clawson, an individual, hereinafter referred to as respondent, for the purpose of determining whether in the operation of his transportation business respondent violated Sections 3664, 3667, and 3737 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 and by transporting property without charge.

A public hearing was held before Examiner Mooney at Fresno on January 21, 1965, on which date the matter was submitted.

It was stipulated that respondent was issued Radial Highway Common Carrier Permit No. 16-152 on July 27, 1937; that he was served with Minimum Rate Tariffs Nos. 2, 3, 8, and 14, and Distance Table No. 4, with all supplements and additions to each; that the shipments to Triangle Grain Co. included in the staff exhibits were delivered to the company's main plant located at Artesia Place, Bellflower; that the Ralph Marshall Ranch is located 7.1 actual miles northwest of Grangeville; and that the Roberts Ranch is located five actual miles northwest of a point one mile north of Heinlen.

Respondent's office and terminal are located in Lemoore at the home of his son, Hiram Clawson. As of February 15, 1964, he operated eight tractors, eight semi-trailers, and seven full trailers. He employs five drivers. Respondent retired from active participation in the business six years ago, and Hiram Clawson has been the manager since then. Hiram Clawson's wife is the bookkeeper. The gross revenue from the business for the four quarters ending with the third quarter of 1964 was \$137,002.

A Commission representative testified that he visited respondent's place of business on February 27, 1964 and June 4, 1964, and that he reviewed all of respondent's transportation records for the period September 1, 1963 to January 31, 1964. He stated that during said period respondent transported approximately 200 shipments. The representative testified that he made true and correct photostatic copies of the freight bills and supporting documents covering 27 shipments of wheat, safflower flakes, copra pallets, milo, cottonseed hulls, corn, and empty pallets; and that they are all included in Exhibit 1. The witness stated that Exhibit 1 includes all freight bills which appeared to be incorrectly rated by respondent during the review period. He testified that his personal observation of the following points of origin or destination shown in Exhibit 1 disclosed that they are not served by rail facilities: Heng Miller, 1.9 miles southwest of Shandon (Part 1); Roberts Ranch, five actual miles northwest of a point one mile north of Heinlen (Parts 8 and 9); main plant of Triangle Co., Artesia Place, Bellflower (Parts 10 through 20); and Ralph Marshall Ranch, 7.1 actual miles northwest of Grangeville (Parts 21 through 27). He further testified that he was informed by Hiram Clawson that the Eranst Hahl Ranch is located 6.5 actual miles west of a point 1.5 miles west of Shandon.

A rate expert for the Commission staff testified that he took the set of documents which are included in Exhibit 1 together with the supplemental information testified to by the staff representative and formulated Exhibit 2, which shows the rate and charge assessed by respondent, the rate and charge computed by the Commission staff and the resulting undercharge for each of the freight bills in Exhibit 1. The witness explained the reasons for the undercharges as follows: An incorrect distance rate was applied on 2 shipments (Parts 1 and 2); an incorrect alternative rail rate was applied on one shipment (Part 3); one shipment of empty pallets was transported without charge (Part 4); a rail switching charge was not assessed on three shipments on which alternative rail rates were applied (Parts 5 through 7); two separate shipments were consolidated and a volume rate was applied to the combined weight (Parts 8 and 9); on 18 shipments an alternative rail rate higher than the applicable rail rate was assessed, but an off-rail charge at destination was not applied on 11 of the shipments (Parts 10 through 20) and an off-rail charge at origin was not applied on 7 of the shipments (Parts 21 through 27). The rate expert pointed out that the aggregate of the undercharges shown in Exhibit 2 is \$431.57.

Respondent's manager (Hiram Clawson) testified that he had rated the freight bills in Exhibit 1 and was not aware that his ratings were in error. He explained that he had used a shorter distance for the shipments covered by Parts 1 through 3 than the staff had; that the shipment of empty pallets in Part 4 for which no charge had been made was an oversight; that he was not aware that the origin and destination of each shipment in Parts 5 through 7 were served by different rail lines; that the two shipments

covered by Parts 8 and 9 would have been transported as a single load had weather conditions not made it impossible; that he had not been aware that the destination of the shipments covered by Parts 10 through 20 was not served by rail facilities; and that he had applied the 100,000-pound rail rate to each of the shipments covered by Parts 21 through 27. The witness pointed out that had he been familiar with the requirements of Item 85 of Minimum Rate Tariff No. 2, he could have handled the shipments in Parts 21 through 27 as a single multiple lot shipment, and there would have been no undercharge on this transportation.

Respondent was the subject of a prior investigation by the Commission (Decision No. 61273 dated December 28, 1960, in Case No. 6442, unreported). The manager testified that the instant proceeding is entirely different from the prior proceeding in that different shippers and violations are involved.

Closing statements were made by counsel for the respondent and by counsel for the Commission staff. Staff counsel requested that a fine be paid equal to the amount of the undercharges found pursuant to Section 3800 of the Public Utilities Code and an additional punitive fine in the amount of \$500 pursuant to Section 3774 of the Public Utilities Code. Counsel for respondent argued that the violations were de minimis when compared with the volume of respondent's business and that they were technical in nature. Respondent's counsel further argued that any fine in excess of the undercharges proved by the staff would be unreasonable.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 16-152.

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 2, resulting in undercharges in the amount of \$431.57.

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 pursuant to Section 3800 of the Public Utilities Code in the amount of \$431.57, 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 \$931.57 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 Los Angeles, California, this 2<sup>nd</sup> day of MARCH, 1965.

Frederick B. Hulsloff  
President

[Signature]

George H. Traver

Wogston

William A. Bennett  
Commissioners