

ORIGINAL

Decision No. 68809

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,)
rates, charges, and practices of)
Joseph Gomes, Manuel Gomes, and)
Mary Gomes, doing business as)
Gomes Bros.)

Case No. 8075

Mervyn C. Hoover, for respondents.
Lawrence Q. Garcia, for the Commission
staff.

O P I N I O N

By its order dated December 9, 1964, the Commission instituted an investigation into the operations, rates, charges, and practices of Joseph Gomes, Manuel Gomes, and Mary Gomes, doing business as Gomes Bros.

A public hearing was held before Examiner Gravelle on January 19, 1965, at Sacramento.

Respondents presently conduct operations pursuant to Radial Highway Common Carrier Permit No. 57-489. Respondents have a terminal and shop in Clarksburg, California. They own and operate one bobtail truck, four trucks and four trailers, two tractors and two semi-trailers. They employ six drivers and one mechanic. Their gross revenue for the year ending September 30, 1964 was \$99,713. Copies of appropriate tariffs and the distance table were served upon respondents.

On May 18, 1964 and again in June 1964, a representative of the Commission's Field Section visited respondents' place of business and checked their records for the period September 20, 1963 through January 30, 1964, inclusive. During said period respondents

transported approximately 400 shipments of which 300 involved shipments exempted from regulation by this Commission. Of the remaining 100 shipments the underlying documents relating to 80 were taken from respondents' files. Copies of those 80 documents were made and said copies were submitted to the Rate Analysis Unit of the Commission's Transportation Division. Based upon the data taken from said shipping documents (Exhibit No. 1), and supplemental information supplied by the field representative, a rate study was prepared and introduced in evidence (Exhibit No. 2).

Exhibit No. 2 reflects undercharges in the purported amount of \$1,164.54.

The staff introduced into evidence as Exhibit No. 3, a copy of a letter from the Public Utilities Commission to respondents dated July 23, 1963. Said letter is signed by R. J. Pajalich, Secretary, and is a notice of suspension of permit for fee delinquency. In summary it serves as notification to respondents that they were delinquent to the extent of \$140 in the payment of fees pursuant to Public Utilities Code Section 5003 and that due to such fact Radial Highway Common Carrier Permit No. 57-489 was suspended as of July 23, 1963. Exhibit No. 4, introduced by the staff, is a copy of a letter from the Public Utilities Commission to respondents dated October 8, 1963. This letter is also signed by R. J. Pajalich, Secretary and is a notice of reinstatement of permit. In summary this latter letter serves as notification to respondents that since the required fees had been paid, Radial Highway Common Carrier Permit No. 57-489 had been reinstated effective October 7, 1963. Parts 10 through 17 of Exhibit No. 1 are copies of freight bills that reflect transportation performed by respondents during the period from July 23, 1963 to October 7, 1963, inclusive, when respondents' permit was under suspension by the Commission.

In addition to operating while their permit was under suspension, Exhibits Nos. 1 and 2 indicate that respondents failed to assess the proper minimum rates and failed to show the precise points of origin and destination on their shipping documents as required by the tariffs. They also indicate a failure to accurately compute the mileage between origin and destination.

Joseph C. Gomes testified on behalf of respondents. He stated that he thought some of the subject shipments were exempt from Public Utilities Commission rate regulation and that the rate could therefore be negotiated. As to the majority of the 80 parts in Exhibits Nos. 1 and 2, he admitted that respondents rating practices were in error but stated such errors were not intentional.

Under cross-examination by staff counsel it was developed that Part 8 of Exhibits Nos. 1 and 2 reflected a movement of onions to a processing plant. The staff rate expert later testified that such a movement has been exempted from rate regulation by this Commission. Staff counsel also brought out the fact that Parts 24 and 29 were actually one movement as were Parts 27 and 28. The rate expert recomputed the minimum charges as to these shipments and determined that as to Parts 24 and 29 there was no undercharge and as to Parts 27 and 28 the undercharge was actually \$20.08 instead of \$58.36. As to operation by respondents while their permit was under suspension, Mr. Gomes stated that he had probably overlooked the notice of suspension, because he was so busy; he stated that he works between 15 and 18 hours a day.

Staff counsel pointed out that respondents' permits had been suspended on other occasions for failure to pay fees and that respondents had been the subject of a previous Commission investigation; Case No. 7441, which resulted in Decision No. 64997 dated February 26, 1963 in which respondents' permit was suspended for a

period of five days or in the alternative a fine of \$3,000 was to be paid. He recommended a fine equal to the amount of the undercharges and an additional fine in the amount of \$1,500.

The appearance for respondents stated that any fine in excess of the amount of undercharges might take away respondents' livelihood.

After consideration the Commission finds that:

1. Respondents operate pursuant to Radial Highway Common Carrier Permit No. 57-489.
2. Respondents were served with the appropriate tariffs and the distance table.
3. Respondents engaged in transportation on the public highways of this State as a highway permit carrier while their permit was suspended by this Commission.
4. Respondents charged less than the lawfully prescribed minimum rates as shown by Exhibit No. 2 in Parts 1 through 7, Parts 9 through 23, Parts 25 and 26, Parts 30 through 80, and Parts 27 and 28 (as modified by the testimony of the staff rate expert), resulting in undercharges of \$1,034.19.

Based upon the foregoing findings of fact, the Commission concludes that respondents violated Sections 3664, 3667, and 3775 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$1,034.19, and in addition thereto respondents should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$750.

The Commission expects that respondents 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 thereof. If there is reason to believe that respondents, or their attorney, have not been

diligent or have not taken all reasonable measures to collect all undercharges or have 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. Respondents shall pay a fine of \$1,784.19 to this Commission on or before the twentieth day after the effective date of this order.
2. Respondents 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, respondents shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them; respondents 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 respondents. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 27th day of MARCH, 1965.

Frederic B. Halachoff
President

George T. Hoover

Augustine

William B. ...
Commissioners