

ORIGINALDecision No. 68874

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of JACK
THOMPSON TRUCKING, INC., a
corporation.

Case No. 8059

Martin J. Rosen, for respondent.
Elmer Sjostrom and George Kataoka, for the
Commission staff.

O P I N I O N

By its order dated November 10, 1964, the Commission instituted an investigation into the operations, rates and practices of Jack Thompson Trucking, Inc., a corporation.

A public hearing was held before Examiner Gravelle on January 7, 1965, and on February 9, 1965, at San Francisco.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 15-2092 and Highway Contract Carrier Permit No. 15-5851. Respondent has terminals in Shafter and Sacramento. It owns and operates one truck, sixteen tractors, twenty-one semi-trailers and eleven full trailers. It employs twenty-one persons of whom two are corporate officers. Its gross revenue for the year ending September 30, 1964 was \$461,570.00. Copies of the appropriate tariff and the distance table were served upon respondent.

On January 21 through 24 and again on July 2 and 3 of 1964 a representative of the Commission's Field Section visited respondent's place of business and checked its records for the period July through December, 1963, inclusive. The representative examined documents relating to 2162 shipments during that period. The documents underlying 83 shipments were taken from respondent's files

and copies were made. Said copies were 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. The copies of the shipping documents were introduced in evidence as Exhibit No. 1 and the rate study as Exhibit No. 2. The latter exhibit reflects undercharges in the amount of \$1,426.11. The 83 shipments involved in Exhibits Nos. 1 and 2 constitute all the violations that the field representative could find save for some which he characterized as "very minor ones".

Each of the 83 shipments involved in this proceeding is a shipment of seed potatoes moving from Shafter to Bakersfield. Respondent in each case assessed a rate of 12 cents per hundredweight. The Commission rate expert assessed a rate of 16 cents per hundredweight on the vast majority of said shipments and in some few cases rates of 16½, 18 or 22 cents per hundredweight.

Counsel for respondent readily admitted the violations as enumerated by the staff exhibits. He offered no evidence to deny the fact of their occurrence but frankly and openly directed his entire defense to mitigation. He explained through argument and confirmed through the testimony of Billy J. Thompson, a corporate officer of respondent, that respondent had overlooked certain rate changes. Respondent also showed that it overlooked various changes in Items 40 and 41 of Minimum Rate Tariff No. 8 which encompass exceptions to the regulation of the movement of certain produce, including seed potatoes under certain conditions. Respondent claimed that had it not overlooked the changes in Items 40 and 41, it would have been able to prove that at least a portion of the transportation reflected by Exhibits Nos. 1 and 2 would have been exempt since certain portions of those seed potatoes moved to cold storage plants for

interim holding on the way to processing plants and certain other portions of those seed potatoes moved between packing plants. Respondent also showed that the rate it charged was 1/2 cent per hundredweight more than the rate proposed by the staff in Case No. 5438, Petition No. 30, which may result in further changes in the rate governing the subject transportation. The purpose of this evidence was to show that the violation which occurred here is not one that strikes at the basis of minimum rates by providing a service at less than actual cost.

Respondent called as a witness a representative of the California Potato Growers Association who testified to the good character, honesty and integrity of the respondent.

Respondent has employed a person to keep an accurate record of minimum rate changes and the rates assessed in an effort to avoid any future violations through inadvertence. Its counsel argued vigorously that the case was one in which justice demanded a close look by the Commission at the overall picture of respondent's operation; he pointed out that the violations, all that could be found, involved one commodity, one shipper and movements between the same points. He urged that respondent was not a chiseler or a cheater and that in a case of oversight such as this the dispensing of justice by way of "automatic" fine should not be imposed.

The Commission takes official notice of the fact that undercharge letters were mailed to the respondent in January of 1960 and in June of 1963.

Staff counsel recommended a fine in the total amount of \$2,000.00.

The Commission has carefully considered both the merit and the urgency of respondent's plea in mitigation and while we have no doubt that the violations by respondent were the result of honest error we are also cognizant of the fact that respondent as a licensee of this Commission is under a strict duty to be aware of and comply with the minimum rate orders which this Commission promulgates.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 15-2092 and Highway Contract Carrier Permit No. 15-5851.
2. Respondent was served with the appropriate tariff and the distance table.
3. Respondent charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit No. 2, resulting in undercharges in the amount of \$1,426.11.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Section 3667 of the Public Utilities Code and should pay a fine in the amount of \$1,750.00.

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 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 \$1,750.00 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 13th day of APRIL, 1965.

Frederick B. Hallock
President
John E. Mitchell
George L. Hoover
Augustus
William L. Daniels
Commissioners