

Decision No. 69085**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 JOE F. COSTA,
an individual, doing business as
JOE F. COSTA TRUCKING COMPANY, and
JOE COSTA TRUCKING, a corporation.

Case No. 7978
(Filed August 11, 1964)

Joe F. Costa, for respondents.
Elmer Sjostrom, for the Commission staff.

O P I N I O N

By its order dated August 11, 1964, the Commission instituted an investigation into the operations, rates and practices of Joe F. Costa, an individual, doing business as Joe F. Costa Trucking Company, (hereinafter referred to as Costa) and Joe Costa Trucking, a corporation, (hereinafter referred to as the corporation).

A public hearing was held before Examiner Mooney on November 5, 1964, at Eureka.

Costa was issued Radial Highway Common Carrier Permit No. 12-2109 on April 1, 1953 and Highway Contract Carrier Permit No. 12-2672 on May 22, 1956. The corporation was issued Radial Highway Common Carrier Permit No. 12-3107 on October 2, 1963 and Highway Contract Carrier Permit No. 12-3108 also on October 2, 1963. Joe F. Costa and his wife are the sole owners of the corporation. Costa and the corporation have a joint terminal at Korplex and use the same facilities. Costa has no employees and has one diesel Ford tractor which is leased to the corporation. The corporation employs six line haul drivers, three local drivers, four lease owner drivers, one mechanic and three office employees. The corporation operates

six tractors, one truck, twelve full trailers, nine semi-trailers, one full cement hopper and one semi-cement hopper. The gross income for the four quarters ending with the third quarter of 1964 was \$35,259 for Costa and \$453,461 for the corporation. Copies of Minimum Rate Tariffs Nos. 2, 10 and 12 and Distance Table No. 4, with all corrections and additions thereto, were served on both Costa and the corporation.

On February 25 and 27 and again on May 5, 6 and 21, 1964, a representative of the Commission's Field Section visited respondents' (Costa's and the corporation's) place of business and checked their records for the period from July 1, 1963 through December 31, 1963, inclusive. During said period Costa transported 800 shipments and the corporation transported 580 shipments. The underlying documents relating to 28 shipments of baled hay, lumber and forest products, motor vehicles, fork lifts and nails and wire transported by Costa between July 2, 1963 and September 12, 1963, and 12 shipments of lumber and forest products transported by the corporation between October 31, 1963 and December 21, 1963, were taken from respondents' files and photocopied. Said photocopies together with supplemental data introduced in evidence by the staff were submitted to the Rate Analysis Unit of the Commission's Transportation Division. The supplemental data included information regarding rail facilities at origin and destination, precise location of origin and destination and weight for certain of the shipments. Based upon the data taken from said photocopies and the aforementioned supplemental information, two rate studies were prepared. The copies of the shipping documents and rate study relating to Costa were introduced in evidence as Exhibits 1 and 3, respectively,

and the copies of the shipping documents and the rate study relating to the corporation were introduced in evidence as Exhibits 2 and 4, respectively. The shipments in the staff exhibits constitute all violations that the field representative found during his review.

Undercharges are shown in 23 of the 28 counts in Exhibit 3 (Costa rate study). The undercharges resulted from assessing incorrect rates and charges, illegal consolidation of separate shipments and failure to assess off-rail charges. The remaining five counts could not be rated by the staff because of insufficient information on the shipping documents and involve freight bill and unit of measure violations. The aggregate of the undercharges shown in Exhibit 3 is \$1,377.19.

Each of the 12 counts in Exhibit 4 (the corporation rate study) disclose undercharges which resulted from similar types of errors to those shown in Exhibit 3. The aggregate of the undercharges shown in Exhibit 4 is \$887.21.

Joe F. Costa testified as follows: The errors shown in Exhibits 3 and 4 were inadvertent mistakes; he had relied upon information furnished by his drivers and by shippers and consignees as to whether origins and destinations were served by rail facilities, and if errors did occur in connection with off-rail charges, they were due to inaccuracies in the information furnished; a number of the errors were due to technical mistakes in preparing documentation and had proper documentation been issued, no undercharges would have resulted. He testified that all hauling is now done by the corporation and that Costa is no longer actively conducting any operations.

Counsel for the Commission staff pointed out that Costa and the corporation hold duplicate operating authority. He

recommended that the permits held by Costa be canceled since all operations are presently being performed by the corporation.

Joe F. Costa stated that the Costa permits will probably be used again in the future.

Costa's operating rights were suspended for five days on January 8, 1958, by Decision No. 56046 in Case No. 5866, and for eleven days on August 2, 1960, by Decision No. 60499 in Case No. 6431, for violations of Commission minimum rate orders.

After consideration the Commission finds that:

1. Costa has been issued Radial Highway Common Carrier Permit No. 12-2109 and Highway Contract Carrier Permit No. 12-2672.
2. Although Costa is not actively engaging in transportation activities at present, it is the intent of Costa to probably commence hauling operations in the future.
3. The corporation operates pursuant to Radial Highway Common Carrier Permit No. 12-3107 and Highway Contract Carrier Permit No. 12-3108.
4. Both respondents were served with appropriate tariffs and distance table.
5. Costa charged less than the lawfully prescribed minimum rates in the instances as set forth in Exhibit 3, resulting in undercharges in the amount of \$1,377.19.
6. The corporation charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit 4, resulting in undercharges in the amount of \$887.21.
7. For the purposes of this proceeding, Costa and the corporation are one and the same.

Based upon the foregoing findings of fact, the Commission concludes that:

1. Respondents violated Section 3667 of the Public Utilities Code and should pay a fine in the amount of \$3,500.
2. There is not sufficient evidence in the record on which to make a determination as to whether the permits issued to Costa should be canceled.

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 into the measures taken by respondents and the results 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 \$3,500 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 Los Angeles, California, this 18th day of May, 1965.

Frederick B. Holdcroft
President
John E. Mitchell
George H. Moore
Augusta
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.