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Decision No. 69088

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 PETER DURAN.)

Case No. 8101

Peter Duran, in propria persona.
Elmer Sjostrom and J. B. Hannigan, for the
Commission staff.

O P I N I O N

By its order dated January 12, 1965 the Commission instituted an investigation into the operations, rates, and practices of Peter Duran.

A public hearing was held before Examiner Porter on March 18, 1965, at Fresno. The purpose of this investigation was to determine whether respondent had violated Section 3667 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for transportation of property than the applicable charges prescribed in Minimum Rate Tariffs Nos. 14 and 14-A.

Respondent presently conducts operations pursuant to a radial highway common carrier permit and has a terminal in Caruthers, California. He operates two tractors and two sets of double trailers and employs one driver and one general employee. His gross revenue for the four quarters ending with the third quarter 1964 was \$24,733. Copies of appropriate tariffs and distance table were served upon respondent.

A representative of the Commission's License and Compliance Branch visited respondent's place of business and checked his records for the year 1964. Underlying documents

relating to 170 shipments and supplementary information supplied by the representative were the basis of a rate study which was prepared and introduced in evidence as Exhibit 2. Said exhibit reflects undercharges in the amount of \$3,240.35 and that there was one shipper involved. A rate expert testified that the underlying cause of these undercharges was the use of a flat rate rather than a rate based on commodity and mileage as provided in the tariffs and distance table.

The respondent testified that he had taken over this account from another trucker and just continued to apply the flat rate that had been previously applied which was \$3.00 per ton. Subsequently the flat rate was increased to \$3.50 per ton.

After consideration the Commission finds that:

1. Respondent operates pursuant to a radial highway common carrier permit.
2. Respondent was served with appropriate tariffs and distance tables. There is no provision for a flat rate charge in the applicable tariffs for the transportation involved.
3. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibit 2 resulting in undercharges in the amount of \$3,240.35.

Based on the foregoing findings of fact, the Commission concludes that respondent violated Section 3667 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$3,240.35.

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 \$3,240.35 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 18th day of May, 1965.

Frederick B. Holdhoff
President
George E. Hoover
Augusta

Commissioners

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