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Decision No. 69238

**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 THOMAS N.  
COOPER and CHESTER L. COOPER,  
doing business as COOPER TRANSPORT.

Case No. 8065  
(Filed November 24, 1964)

Chester Cooper and Edward Williams, for  
respondents.  
Elmer Sjostrom, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion to determine, with respect to certain specified transportation, whether the respondents violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging, demanding, collecting or receiving charges less than the applicable minimum rates set forth in Minimum Rate Tariff No. 2.

A duly noticed public hearing was held in this proceeding before Examiner Jarvis at Fresno on January 20, 1965, and the matter was submitted on that date.

Respondents employ one bookkeeper, one mechanic and sixteen drivers. Their gross operating revenues for the last quarter of 1963 and first three quarters of 1964 were approximately \$227,206. They have 34 pieces of operating equipment.

At the hearing the Commission staff adduced evidence which disclosed 90 violations of Minimum Rate Tariff No. 2. Respondents do not dispute these violations. Rather, respondents introduced evidence attempting to show extenuation and mitigation. This evidence indicates that prior to commencing their present

operations, neither respondent had previously been in business by himself; that they originally contemplated a small operation; that, in the beginning, they engaged Miller Traffic Service to rate shipments and do their billing; that they discontinued the traffic service and did their own billing to save money; that the violations indicated above resulted from unintentional errors made by respondents or their employees; and that they had engaged the Miller Traffic Service to again review their bills commencing January 1, 1965. The staff indicated that it believed the violations here involved to be the product of incompetence rather than willful acts. It indicated that an order assessing a small fine and directing the collection of undercharges would be appropriate in the circumstances.

Based upon the evidence of record in this matter, the Commission makes the following findings and conclusions.

Findings of Fact

1. At all times herein mentioned respondents held, and they presently hold, Radial Highway Common Carrier Permit No. 10-9541.
2. At all times herein mentioned the Commission's Minimum Rate Tariff No. 2 and all supplements thereto as well as the Commission's Distance Table No. 4 and all supplements thereto were served on respondents.
3. Respondents charged less than the lawfully prescribed rate in the instances set forth in Exhibit 2, resulting in undercharges in the amount of \$7,426.33.

Conclusions of Law

1. Respondents violated Sections 3664, 3667 and 3737 of the Public Utilities Code.

2. Respondents should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$7,426.33.

3. Respondents should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$200.

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 \$7,626.33 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 15th day of June 1965.

Fredling B. Holloff  
President  
Walter S. Kitchin  
George L. Trover  
Augusta  
William W. ...  
Commissioners