

Decision No. 69281**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 HUGH T. )  
 WALTERS, doing business as )  
 INDUSTRIAL TRANSPORT. )

Case No. 7771  
 Filed November 5, 1963

John W. McDonnell, for respondent.  
William C. Bricca and J. B. Hannigan,  
 for the Commission staff.

O P I N I O N

By its order dated November 5, 1963, the Commission instituted an investigation into the operations, rates and practices of Hugh T. Walters, an individual, doing business as Industrial Transport, hereinafter referred to as respondent, for the purpose of determining whether in the operation of his transportation business respondent violated Section 3664 of the Public Utilities Code by charging and collecting less than the applicable charges prescribed in Minimum Rate Tariff No. 2 and supplements thereto.

Public hearing was held before Examiner Mooney at Torrance on March 2, 1965, on which date the matter was submitted.

It was stipulated that respondent was issued Radial Highway Common Carrier Permit No. 19-56827, Highway Contract Carrier Permit No. 19-49146 and City Carrier Permit No. 19-56828, and that respondent was served with Minimum Rate Tariff No. 2 and Distance Table No. 4, with all supplements and additions thereto.

A Commission representative testified that he visited respondent's office and terminal in Torrance during April and again in June of 1963, and that he reviewed all of respondent's transportation records for the period August 1, 1962 to April 10, 1963. The

witness stated that he made true and correct photostatic copies of 13 freight bills and various supporting documents covering return shipments of empty carrying baskets and rejected castings and shipments of iron castings, pipe and pipe fittings. He testified that the photostats together with carbon copies of numerous supporting documents and delivery receipts, which were furnished to the witness by respondent, are all included in Exhibit 1.

The witness testified that the documents in Part A of Exhibit 1 show that during February 1963 respondent consolidated as a single shipment for rating purposes four separate shipments of empty baskets returning from outbound movements; that a flat monthly charge which the shipper and respondent had agreed upon for such transportation was assessed; and that no weights were shown on the documents for the individual shipments.

The representative testified as follows regarding the remaining 12 parts of Exhibit 1 which are numbered from 1 to 12, inclusive: The written instructions issued by the shipper and/or the master document issued by the carrier for the multiple lot, split delivery shipments represented by the documents in Parts 1, 2, 4, 6, 7, 10, 11 and 12 were not issued in accordance with the documentation requirements in Items 85 and 170 of Minimum Rate Tariff No. 2; two components of the multiple lot, split delivery shipment represented by the documents in Part 3 were picked up after the expiration of the two day limitation in Item 85; the two separate shipments represented by the documents in Part 5 were consolidated as a separate shipment for rating purposes without complying with the documentation requirements for a multiple lot shipment in Item 85. He further testified that the following locations are not served by rail facilities: Universal Cast Iron Manufacturing Co., 5404 Tweedy Place, South Gate

(origin in Parts 3, 5, 7, 8 and 9); Austing Co., 1964 Auburn Blvd., Sacramento (destination in Part 8); Central Valley Plumbing Co., 3320 Auburn Blvd., Sacramento (a second destination in Part 8); Shasta Pipe and Supply Company, 3110 Railroad Avenue, Redding (destination in Part 9).

The representative testified that at the time of his survey respondent had a terminal, office and shop at Torrance and also a terminal at San Leandro and that respondent employed nine drivers, two dispatchers, four mechanics and helpers and an office staff of three. He stated that respondent's gross revenue for the four quarters ending with the first quarter of 1963 was \$150,103 of which \$41,729 was paid to subhaulers.

The representative introduced in evidence as Exhibit 3 copies of a group of corrected invoices which were furnished to the witness by respondent prior to the hearing. The documents are corrected invoices for seven of the shipments in Exhibit 1.

A rate expert of the Commission staff testified that he took the set of documents included in Exhibits 1 and 3 together with the supplemental information testified to by the representative and formulated Exhibit 2, which shows the charge computed by the respondent, the minimum charge computed by the staff and the resulting undercharge for the transportation covered by each freight bill in Parts 1 through 12 of Exhibit 1. He pointed out that he has also shown for Parts 1, 2, 4, 6, 10, 11 and 12 of Exhibit 1 the amount rebilled by the carrier for the transportation covered by each of said parts and that on six of the seven parts undercharges still remained. The witness stated that the amount rebilled by the carrier was shown on the aforementioned seven parts for information only and that the staff had not verified that respondent had collected the additional amounts shown on the corrected invoices.

The rate expert explained that the minimum charge for the four separate shipments covered by Part A of Exhibit 1 could not be determined because no weight was shown on the individual shipping documents for each shipment. The witness explained the staff ratings shown in each of the 12 parts of Exhibit 2. He testified that the undercharges resulted from failure by respondent and the shipper to comply with the documentation requirements of the multiple lot and split delivery rules in Items 85 and 170 of Minimum Rate Tariff No. 2, illegal consolidation of separate shipments for rating purposes and failure to assess "off-rail" charges in connection with transportation rated under the alternative application provisions of Minimum Rate Tariff No. 2.

Respondent testified that his gross revenue for the year 1964 was \$480,682; that he operated during the early part of January 1965 and then discontinued operations; and that his gross revenue for the first quarter of 1965 was \$5,000. He stated that he has collected all undercharges from the shipper shown in Parts A of Exhibit 1 and Parts 1, 2, 4, 6, 10, 11 and 12 of Exhibits 1 and 2 and that he has lost this and other accounts as a result of being investigated by the Commission staff.

With respect to Part 8 of Exhibit 2 respondent agreed with the staff that the two consignees were not served by rail facilities. However, he testified that delivery of both components of the split delivery shipment was made to a team track where the consignees accepted delivery. He explained that the plants of both consignees were on strike at the time and that delivery could not be made to the plants. For this reason, he stated, no "off-rail" charge at destination was assessed.

Respondent testified as follows regarding the other parts of Exhibit 2: For his convenience, he would leave trailer equipment

at the plant of each of the two consignors involved; as freight was available, it would be loaded on the trailer equipment and the consignor would prepare a component document or weight tag for each lot loaded; when the trailer equipment was fully loaded, a master document was prepared and the trailer was picked up by respondent.

Respondent testified that the weight of the shipments of empty baskets covered by Part A of Exhibit 1 was very light; that they were transported along with other shipments going to the same destination; and that had each of said shipments been rated separately, the total minimum charge for the transportation would have been substantially less than the agreed flat monthly charge.

The evidence in the record is conflicting as to whether the transportation covered by each of the freight bills in Parts 1, 2, 4 through 7, and 9 through 12 of Exhibits 1 and 2 was picked up by respondent from the consignor involved at one time or at different times as evidenced by the dates shown on the supporting documents accompanying each freight bill. The documents themselves are the best evidence. Furthermore, respondent rated the corrected invoices for Parts 1, 2, 4, 10, 11 and 12 in accordance with the dates shown on the supporting documents.

After consideration the Commission finds that:

1. Respondent has been issued Radial Highway Common Carrier Permit No. 19-56827, Highway Contract Carrier Permit No. 19-49146 and City Carrier Permit No. 19-56828.
2. Respondent was served with appropriate tariffs and distance table.
3. Respondent assessed an agreed flat charge for the transportation covered by Part A of Exhibit 1 in violation of Item 60 of Minimum Rate Tariff No. 2 which provides that each shipment shall be rated separately.

4. The minimum charge for each of the shipments covered by Part A of Exhibit 1 cannot be determined because of failure by respondent to show the weight of each shipment on the individual shipping documents.

5. The transportation covered by Part 8 of Exhibit 2 was delivered to a railhead location.

6. The staff ratings shown in Parts 1 through 7 and 9 through 12 of Exhibit 2 are correct.

7. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Parts 1 through 7 and 9 through 12 of Exhibit 2, resulting in undercharges in the amount of \$718.52.

8. Respondent has issued corrected invoices for the transportation covered by Parts 1, 2, 4, 6, 10, 11 and 12 of Exhibit 2. The transportation charges shown in said corrected invoices are \$83.07 less than the applicable minimum charges.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Section 3664 of the Public Utilities Code and should pay a fine in the amount of \$1,500.

The order which follows will direct respondent to review his records to ascertain all undercharges that have occurred since August 1, 1962 in addition to those set forth herein. The Commission expects that when undercharges have been ascertained, respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them. 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 \$1,500 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondent shall examine his records for the period from August 1, 1962 to the present time, for the purpose of ascertaining all undercharges that have occurred.

3. Within ninety days after the effective date of this order, respondent shall complete the examination of his records required by paragraph 2 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.

4. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein, together with those found after the examination required by paragraph 2 of this order, and shall notify the Commission in writing upon the consummation of such collections.

5. In the event undercharges ordered to be collected by paragraph 4 of this order, or any part of such undercharges, remain uncollected one hundred twenty days after the effective date of this order, respondent shall institute legal proceedings to effect collection and shall file with the Commission, on the first Monday of each month thereafter, 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 22nd day of JUNE, 1965.

Frederick B. Hallock  
President

John E. Hatchell

George H. Grover

Augustus

William W. Bernard  
Commissioners