

Decision No. 69374**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 JOHN R. WEBB,  
an individual, doing business as  
Webb Trucking Company.

Case No. 8074  
(Filed December 9, 1964)

John R. Webb, in propria persona, respondent.

Mitchell Brockman and J. B. Hannigan, for the  
Commission staff.

O P I N I O N

On December 9, 1964, the Commission instituted an investigation into the operations, rates and practices of John R. Webb, an individual, doing business as Webb Trucking Company, hereinafter referred to as respondent.

A public hearing was held before Examiner Cline at Los Angeles on June 3, 1965. At the conclusion of the hearing the matter was taken under submission subject to the receipt of late-filed Exhibit No. 5 on or before June 10, 1965. Said Exhibit No. 5 was filed on June 10, 1965, at which time the matter was taken under submission.

Respondent regularly conducts operations pursuant to Radial Highway Common Carrier Permit No. 19-52524. This permit authorizes respondent with certain exceptions to haul general commodities within a radius of fifty miles from Long Beach. Respondent has also been granted a certificate of public convenience and necessity by Decision No. 62797 issued November 14, 1961 in Application No. 43790. Under this certificate applicant is

authorized to transport general commodities between Los Angeles and Los Angeles Harbor but is limited to steamship traffic.

Applicant has an office and terminal in Long Beach. He employs three drivers and an office girl at the present time. He owns six tractors of which four are in operable condition and eight trailers. His total gross revenue for 1963 was \$69,166.98 and for 1964 was \$95,741.00. Copies of Minimum Rate Tariff No. 2 and Distance Table No. 4 were served upon respondent.

A representative of the Commission testified that he visited respondent's terminal in Long Beach during the four days May 25 through 28 and also on June 22, 1964, and checked respondent's shipping records for the period September 20, 1963 through March 20, 1964. Exhibit No. 1 consists of 22 parts, each of which consists of photostatic copies of invoices for shipments of steel items, scrap, or marine hardware with the supporting freight bills.

A rate expert of the Commission staff testified that she took the documents set forth in Exhibit No. 1 together with the supplemental information testified to by the representative of the Commission and prepared Exhibit No. 2, which shows the rate and charge assessed by respondent, the minimum rate and charge computed by the staff and the amount of undercharge for each of the 22 parts in Exhibits No. 1 and No. 2. The total of the undercharges set forth in Exhibit No. 2 amounts to \$1,288.13.

Evidence was introduced to show that on various occasions respondent has violated the terms of his operating permit by performing transportation as a radial highway common carrier in areas beyond the 50-mile radius limitation set forth in his operating permit. Evidence was also introduced to show that

respondent has violated Section 3942 of the Public Utilities Code by engaging in the transportation of goods for compensation by motor vehicle over the public highways within the exterior boundaries of the City of Vernon without first having obtained a city carrier permit from this Commission.

The respondent testified in his own behalf. He admitted that some of his deliveries had exceeded the 50-mile limitation of his radial highway common carrier permit, but he testified that for the past four years he has carried statewide insurance to cover his operations and that he intends promptly to apply to the Commission for statewide authorization for his radial highway common carrier permit. He testified that he will also apply for a city carrier permit.

Respondent stated he was unaware that the Gary Steel Co. plant at 7403 Telegraph is in Montebello as this company uses a Los Angeles address. He offered contradictory testimony only with respect to Parts 7, 14, 18 and 21 of Exhibits No. 1 and No. 2.

With respect to Part 7 respondent testified that: (1) Epps Industries has two plants in Vernon, one on 38th Avenue and the other at 50 Pacific Avenue; (2) the plant at 50 Pacific Avenue has a spur track; and (3) the shipments involved in Part 7 were delivered to the Epps Industries plant at 50 Pacific Avenue. If the rail rate is applied to these shipments in Part 7 there are no undercharges.

Respondent testified that the 125,000 pounds in weight indicated on the invoice in Part 14 was a high estimate and that the weight was more nearly 105,000 pounds. The indicated weight of 125,000 pounds was the weight for billing purposes which was agreed to both by the shipper and the carrier; however, and under the

circumstances of this proceeding, we conclude that respondent is estopped from denying that 125,000 pounds is the weight of the shipments.

Respondent testified that the shipper and he entered into a verbal agreement for the shipment covered by Part 18 on an hourly basis. Such verbal agreement does not alter the manner in which the minimum rate and charge for the shipment is computed.

In Part 21 respondent deducted \$31.00 for fork lift rental on the invoice for the Gary Steel Co. shipment. He testified that this deduction was for a fork lift furnished to respondent for use in connection with an unrelated shipment which had been billed to Gary Steel Co. for the account of respondent. To avoid the confusion which has arisen in connection with this shipment, respondent should in the future arrange for separate billings by Gary Steel Co. for such fork lift rentals which will indicate the independent nature of the fork lift rental charge. ✓

The attorney for the Commission staff pointed out that respondent has consolidated shipments and billed the shippers on one invoice without instructions from the shippers which would authorize such type of billing, and on various occasions he has shown flat charges on the invoice without sufficient information to enable a rate expert to compute the minimum charge under the Commission's minimum rate tariffs. He recommended that in view of the violations of the Public Utilities Code the Commission impose a fine on respondent equal to the total amount of the undercharges plus \$500 as a punitive fine. In making such recommendation the staff attorney took into consideration the fact that this is respondent's first offense and that respondent was fully cooperative during the Commission investigation.

After consideration the Commission finds:

1. Respondent operates pursuant to a radial highway common carrier permit authorizing respondent with certain exceptions to haul general commodities within a radius of fifty miles from Long Beach.

2. Respondent has performed transportation as a radial highway common carrier in areas beyond the 50-mile radius from Long Beach limitation set forth in his operating permit.

3. Respondent has performed transportation of goods for compensation by motor vehicle over the public highways within the exterior boundaries of the City of Vernon without first having obtained a city carrier permit.

4. Respondent was served with the appropriate tariff and distance table.

5. The staff ratings of Parts 1 through 6, Parts 8 through 20, and Part 22 of Exhibit No. 2 are correct.

6. The shipment involved in Part 7 was delivered to the Epps Industries plant at 50 Pacific Avenue, and for the purposes of this hearing the rail rate should be applied in computing the minimum rate.

7. The \$31.00 for fork lift rentals deducted on the invoice in Part 21 was for a fork lift furnished to respondent for use in connection with an unrelated shipment which had been billed to Gary Steel Co. for the account of respondent, and there is no undercharge involved in Part 21.

8. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Parts 1 through 6, Parts 8 through 20, and Part 22 of Exhibit No. 2, resulting in undercharges in the amount of \$1,235.77.

Based upon the foregoing findings of fact, the Commission concludes as follows:

1. Respondent should be ordered to cease and desist from violating the terms of his operating permit by performing transportation as a radial highway common carrier in areas beyond the 50-mile radius limitation from Long Beach set forth in his Permit No. 19-52524.

2. Respondent has violated Section 3942 of the Public Utilities Code and should be ordered to cease and desist from engaging in the business of transportation of property for compensation by motor vehicle over any highway within the exterior boundaries of any city in this State without first having obtained a city carrier permit from this Commission.

3. Respondent has violated Sections 3664 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$1,235.77, and in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$500.

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 result 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. John R. Webb, respondent herein, shall henceforth cease and desist from violating the terms of his operating permit by performing transportation as a radial highway common carrier in areas beyond the 50-mile radius limitation from Long Beach set forth in his Permit No. 19-52524.

2. Respondent shall henceforth cease and desist from engaging in the business of transportation of property for compensation by motor vehicle over any highway within the exterior boundaries of any city in this State without first having obtained a city carrier permit from this Commission.

3. Respondent shall pay a fine of \$1,735.77 to this Commission on or before the twentieth day after the effective date of this order.

4. 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.

5. In the event undercharges ordered to be collected by paragraph 4 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 7th day of JULY, 1965.

Fredrick B. Holbrook  
President

John E. [unclear]

George J. Hoover

Augusta

William W. Bennett  
Commissioners