

ORIGINALDecision No. 69570

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations, rates,
charges, and practices of ED PROVENSAL,
doing business as SECURITY TRUCKING
COMPANY.

Case No. 8126
(Filed February 9, 1965)

Edward Provensal, in propria persona, respondent.

L. O. Garcia and J. B. Mannigan, for the Commission
staff.

O P I N I O N

On February 9, 1965, the Commission instituted an investigation into the operations, rates, charges, and practices of Ed Provensal, doing business as Security Trucking Company, hereinafter referred to as respondent.

A public hearing in this matter was held before Examiner Cline at Los Angeles on April 13, 1965. At the conclusion of the hearing the matter was taken under submission.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 36-3913 and Highway Contract Carrier Permit No. 36-3914. Respondent's place of business is Riverside, California. He owns and operates four tractors and four sets of doubles. His gross revenue for 1964 amounted to \$31,853. Copies of Minimum Rate Tariff No. 2 and Distance Table No. 4, and applicable supplements and additions thereto, were served upon respondent.

A representative of the Commission staff visited respondent's place of business February 18 and 19 and March 10, 11 and 12, 1964, and checked his records of shipments for the period

February 7 through September 9, 1963, inclusive. Exhibit No. 1 consists of 21 parts, each of which is a photostatic copy of a shipping order and freight bill for a shipment of rock or roofing granules.

Exhibit No. 6 was prepared by a rate expert of the Commission staff. This exhibit shows the rate and charge assessed by the respondent, the minimum rate and charge computed by the staff, and the amount of undercharge for each of the 21 parts in Exhibit No. 1. The total of the undercharges set forth in Exhibit No. 6 amounts to \$227.61.

The Commission staff witness testified that a representative of Lucerne Valley Limerock Products required respondent to make a \$1,164.88 payment as an unlawful rebate before Lucerne Valley Limerock Products would pay the freight bills which it owed to respondent. As respondent needed funds with which to pay his taxes, he made this payment on June 12, 1963, as evidenced by Exhibit No. 2.

Exhibit No. 7 is a document by which respondent acknowledged receipt of 560 wood pallets for the sum of \$1,164.88, from Lucerne Valley Limerock Products. Respondent testified that as the pallets had not been received, this amount was not actually owing to Lucerne Valley Limerock Products, and that the receipt had been given to conceal the circumstances of the payment of \$1,164.88.

Exhibit No. 5 consists of two statements from Pyramid Rock Company to Security Trucking Co. The earlier statement is dated September 10, 1963 and shows a charge of \$608.48 for one lot of used valve bags. Ten thousand bags comprise one lot. The second statement, dated September 11, 1963, shows a charge of \$520 for an air compressor with a Briggs and Stratton Gasoline Motor. The Commission staff witness testified that neither of these charges is proper.

Respondent testified that he had returned the used valve bags and that, even though a representative of Pyramid Rock Company had assured him he would receive full credit for the bags, he had received only one-half credit. Respondent further testified that Pyramid Rock Company in 1960 had given him the compressor covered by the second invoice instead of selling it to him in 1963 and that he actually owed nothing to Pyramid Rock Company by reason of said transaction.

Respondent was very cooperative in making his freight bills and related documents available to the Commission staff representative for examination. Exhibit No. 8 is a copy of an undercharge letter dated June 28, 1961, which was sent by the Commission's Secretary to respondent. The attorney for the Commission staff recommended that the Commission impose a fine of not more than \$3,500 upon respondent.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 36-3913 and Highway Contract Carrier Permit No. 36-3914.
2. The staff ratings of Parts 1 through 21, inclusive, as shown in Exhibit No. 6, are correct.
3. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Parts 1 through 21, inclusive, resulting in undercharges in the amount of \$227.61.
4. Respondent made an unlawful rebate of \$1,164.88 to Lucerne Valley Limerock Products.
5. To the extent respondent has made payments on the statements from Pyramid Rock Company dated September 10, 1963 in the

amount of \$608.48 and dated September 11, 1963 in the amount of \$520, respondent has made an unlawful rebate to Pyramid Rock Company.

Based upon the foregoing findings of fact, the Commission concludes that respondent has violated Sections 3664, 3667 and 3668 of the Public Utilities Code and should pay a fine in the amount of \$500 on or before the twentieth day after the effective date of the order herein and an additional fine of \$1,500 on or before the expiration of one year after the effective date of the order herein.

The Commission expects that respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges and to recover the unlawful rebates. 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 and recover all unlawful rebates, 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.

The Commission is aware of the fact that this carrier, with a gross annual revenue of approximately \$30,000, may have difficulty paying the additional fine of \$1,500 unless he can collect a substantial amount of the undercharges and unlawful rebates. If respondent is diligent, acts in good faith, and takes reasonable measures to collect all undercharges and recover all unlawful rebates, but is not able to recover undercharges and unlawful rebates in the amount of \$1,500 on or before the expiration

of ten months after the effective date of the order herein, respondent may petition the Commission to reopen this proceeding for the purpose of determining whether the additional fine of \$1,500 payable on or before the expiration of one year after the effective date of this order should be reduced.

O R D E R

IT IS ORDERED that:

1. Ed Provensal shall pay to this Commission a fine of \$500 on or before the twentieth day after the effective date of this order and an additional fine of \$1,500 on or before the expiration of one year 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 and unlawful rebates set forth herein, and shall notify the Commission in writing upon the consummation of such collections.

3. In the event undercharges and unlawful rebates ordered to be collected by paragraph 2 of this order, or any part of such undercharges and unlawful rebates, 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 17th day of August, 1965.

Friedrich B. Hlobuff
President

George G. Traver

Auguston

William L. Burnett
Commissioners

I will fill a dissent
[Signature]

COMMISSIONER PETER E. MITCHELL DISSENTING:

I dissent because of (1) the aleatory nature of the fine, and (2) no action is taken against the shippers.

The decision orders the respondent to pay the Commission a fine of \$2000. However, the amount will be reduced \$1500 or less if the respondent attempts to collect undercharges and rebates. A premium thereby is awarded for doing what the law already requires be done. A total fine of under \$500 is more appropriate with the usual conditions attached thereto. The gross revenue of the respondent in 1964 was only \$30,000.

Rebates were made by the respondent to two shippers. The decision indicates that the shippers were the prime protagonists in forcing the carrier to make improper payments. The Commission should institute both penal and civil action against the shippers.


Peter E. Mitchell, Commissioner