

ORIGINALDecision No. 69649

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 JOSEPH P.)
 DELANEY, an individual doing business)
 as FRESNO MOTOR EXPRESS. }

Case No. 8116
 (Filed January 22, 1965)

Joseph P. Delaney, in propria persona,
 respondent.

Robert C. Marks, David R. Laryouy and
J. B. Hannigan, for the Commission staff.

O P I N I O N

By its order, dated January 22, 1965, the Commission instituted an investigation into the operations, rates, charges and practices of Joseph P. Delaney, doing business as Fresno Motor Express.

A public hearing was held before Examiner Fraser on May 5, 1965, at Fresno and the matter was submitted.

Respondent operated under the authority of Highway Contract Carrier Permit No. 38-7768 issued on December 19, 1961. This permit authorized the hauling of general commodities with the usual exceptions within a radius of 150 miles from Ceres, California. It has been in suspension since March 1, 1965, at the request of respondent.

Respondent last operated in 1964 out of a single terminal in Ceres. He had three trucks, two tractors and three van semitrailers. He employed three drivers and an office clerk. The gross income for the last quarter of 1963 and the first three quarters of 1964 was \$54,756. Copies of Minimum Rate Tariff No. 2 and Distance Table No. 4 were served on respondent.

A representative of the Commission testified that he visited respondent on February 19, 24, 25 and 26, 1964 and that there was a conference with respondent on March 6, 1964, at the Commission office in San Francisco. Respondent's shipping documents were checked for the period from August 1963 through January 1964 and 121 freight bills from respondent's files were photocopied. Said photocopies were submitted to the Rate Analysis Unit of the Commission's Transportation Division. Based upon the data taken from said photocopies a rate study was prepared and introduced in evidence as Exhibit 2. This exhibit shows that respondent deducted ten percent of the total charge for transportation due from each of its two principal shippers during the period under investigation. Said exhibit reflects purported undercharges in the amount of \$126.71.

The staff representative further testified that his investigation was complicated by respondent's failure to produce his bank deposit slips. Respondent refused to produce them unless required to do so by a court order. The staff counsel alleged that this action constituted a violation of the provisions of Section 3705 of the Public Utilities Code.

A second representative testified that he conducted a separate investigation of respondent on October 15, 16, 21 and 23 of 1963 and April 7, 8 and 9 of 1964. This investigation covered transportation performed during five-day periods in May, June, July, August and September of 1963 and revealed that respondent was providing a five-day week service from Fresno to Modesto; from San Francisco to Modesto; and from San Francisco to Fresno (Exhibits 3 and 4). The witness testified that respondent did not have a certificate of public convenience and necessity to operate as a highway common carrier between the named points.

Respondent and his manager provided the following testimony:

The ten percent deduction allowed on transportation provided for two shippers was in partial satisfaction of money owed by respondent. One of the shippers filed a damage claim on goods transported by respondent and the latter paid off on the claim by deducting a percent of the shipper's bill each month. Respondent did not produce written evidence of claim and stated most claims were verbally adjusted. The second shipper installed a carpet and was paid for the job in the same manner as the other shipper. Respondent was forced to pay by this method because he is a very small operator and any cash he received had to be used for payments on equipment and other things. Respondent stated that he hauled from Fresno to Modesto and San Francisco for a limited number of shippers under oral contracts and hauled only floor coverings. He never advertised but did provide cards to inform his shippers of the points he served (Exhibit 4). He considered a certificated carrier as one who hauls many items for a large number of shippers. He refused to provide his bank deposit slips because he did not think they were required for the Commission investigation and because they contained confidential entries on his personal accounts.

After consideration the Commission finds that:

1. Respondent operated pursuant to Highway Contract Carrier Permit No. 38-7768.
2. Respondent's sole operating authority, Highway Contract Carrier Permit No. 38-7768, has been in suspension since March 1, 1965, at the request of respondent.
3. Respondent charged less than the lawfully prescribed minimum rate in the transactions set forth in Exhibit 2. ✓
4. Respondent failed to provide the bank deposit slips which concerned the deposits and withdrawals made in his transportation business, when they were demanded by a Commission representative.

5. The oral contracts used by respondent were illusory. The contracts had no terms; they could be terminated immediately, by either party, without notice or liability; and they were not binding on either party.

6. Respondent transported property for compensation on a daily basis from Fresno to Modesto during each of the five, five-day periods hereinabove mentioned. Respondent transported property for compensation on a daily basis from San Francisco to Fresno and from San Francisco to Modesto during four of the five-day periods.

7. Respondent's operations from Fresno to Modesto and from San Francisco to Fresno and Modesto were between fixed termini and over a regular route.

8. Respondent's operations were those of a highway common carrier.

9. Respondent did not have a certificate of public convenience and necessity to operate as a highway common carrier.

Respondent is hereby notified that no highway carrier permits will be issued to him in the future until the provisions of the following order have been complied with.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 3664, 3667, 3705, and 1063 of the Public Utilities Code.

Respondent discontinued his trucking operation several months ago and voluntarily put his permit in suspension.

The order which follows will direct respondent to review his records to ascertain all undercharges, including the ten percent deductions, that have occurred since August 1, 1963, 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 his attorney, has not been diligent, or has not taken all reasonable measures to collect all undercharges, including the ten percent deductions, 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. Highway Contract Carrier Permit No. 38-7768, now in suspension and issued to Joseph P. Delaney, doing business as Fresno Motor Express, is hereby revoked. Respondent will not be issued further operating authority until he has complied with the provisions of this order.
2. Respondent shall examine his records for the period from August 1, 1963, 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, including the ten percent deductions, 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.

6. Respondent shall pay a fine of \$250 to this Commission on or before the twentieth day after the effective date of this order.

7. Respondent shall cease and desist from operation as a highway common carrier until he shall have acquired a certificate of public convenience and necessity from this Commission authorizing such operation.

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 8th day of SEPTEMBER, 1965.

Frederick B. Hallock
President

John E. B. [unclear]

George L. Crover

August [unclear]

William [unclear]
Commissioners