

**ORIGINAL**

Decision No. 69703

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of investigation )  
into the operations, rates and )  
practices of GERALD P. KALIAN, )  
dba TRI-ANGLE FREIGHT LINES. }

Case No. 6430

Orville A. Schulenberg, for Gerald P. Kalian  
and James H. Kayian, respondents.  
William C. Bricca, Arthur J. Lyon and Gerald  
A. Laster, for the Commission staff.

O P I N I O N

This matter is on rehearing. On September 13, 1960, the Commission entered Decision No. 60747, which held that the respondents violated Sections 3664 and 3667 of the Public Utilities Code by collecting or receiving a lesser compensation than the applicable charges prescribed by the Commission in Minimum Rate Tariff No. 2. Respondents petitioned for a rehearing which was granted on February 14, 1961. A further hearing was held in this matter before Examiner Jarvis in San Francisco on August 24, 1961. The matter was submitted subject to the filing of briefs, which were received by November 24, 1961. On July 17, 1962, the Commission in Decision No. 63957 authorized the transfer of the radial highway common carrier permit from the respondents, as copartners, to respondent Gerald P. Kalian, an individual. Kalian stipulated that he would be bound by and accept any penalty assessed in this investigation based upon the conduct of the partnership, and he was substituted as the sole respondent herein.

The question of whether the alleged violations of the Public Utilities Code occurred relates primarily to matters involving

allowances and accessorial charges. These matters are among the issues under consideration in the Commission's general investigations in Case No. 5330 and related Cases Nos. 5432, 5433, 5435, 5436, 5437, 5438, 5439, 5440, 5441, 5603, 5604 and 6008, which cases were reopened on May 16, 1961. The Commission determined to hold the present matter in abeyance pending the resolution of the general investigations. On March 3, 1964, the Commission entered an order reopening Cases Nos. 5330 et al. for further hearing. These proceedings have not yet been submitted.

Decision No. 60747, issued in this proceeding in 1960, noted that certain questions herein were of first impression and stated:

"In view of the fact that this Commission has not previously found that payments by a carrier to a consignee for unloading services constitute a refund or remittance within the meaning of Sections 3664 and 3667 of the Public Utilities Code and in view of the fact that the total of the undercharges and the unlawful remittances is so small, respondents' permit will be suspended for a period of three days; however, the imposition of said suspension will be deferred and held in abeyance for a period of one year."

The order in Decision No. 60747 provided for a three day suspension of the radial highway common carrier permit involved; however, execution of the suspension was deferred for one year and the suspension was to be automatically vacated at the end of the year unless the Commission by further order provided otherwise.

The Commission is still of the opinion that the points of statutory and tariff construction should not be decided on the narrow facts of this case in view of the pendency of the other

proceedings heretofore noted. If rehearing had not been granted and Decision No. 60747 had taken effect, the cloud of this proceeding would have long been removed from respondent. We do not believe that respondent should be put to further delay in the resolution of this matter. We do not reach the merits of the matter.

The Commission finds that the interests of justice and the fair conduct of the administrative process require that Decision No. 60747 be vacated and this investigation be discontinued. We conclude that Decision No. 60747 should be vacated and this investigation discontinued.

O R D E R

IT IS ORDERED that:

1. Decision No. 60747 in Case No. 6430 is hereby vacated.
2. This investigation is hereby discontinued.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 21<sup>st</sup> day of SEPTEMBER, 1965.

Fredrick B. Hallock  
President

George H. Grover

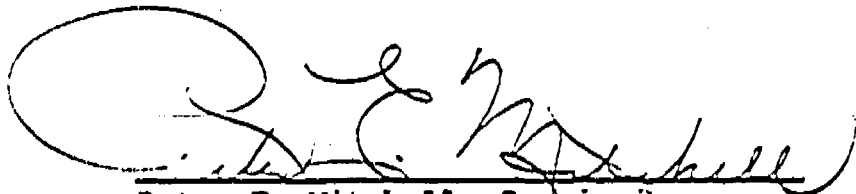
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Commissioners

*I concur and will file a separate opinion*  
*Eric E. Fisher*

COMMISSIONER PETER E. MITCHELL CONCURRING:

As I stated in my dissent in Case No. 8268, the time lapse shown herein (Case No. 6430 filed March 8, 1960) indicates "the enforcement program will become (and has become) bogged in a morass of procedure".



Peter E. Mitchell, Commissioner