

ORIGINAL

Decision No. 70434

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of STANLEY
RAULIEN, doing business as
RAULIEN TRUCKING.

Case No. 8292
(Filed November 2, 1965)

Stanley R. Raulien, in propria persona, respondent.
Elmer Sjostrom and Frank O'Leary, for the
Commission staff.

O P I N I O N

By its order dated November 2, 1965, the Commission instituted an investigation into the operations, rates and practices of Stanley Raulien, doing business as Raulien Trucking, for the purpose of determining whether respondent in the operation of his transportation business violated Section 3667 of the Public Utilities Code, by charging and collecting sums less than the applicable charges provided in Minimum Rate Tariff No. 2 and supplements thereto and whether respondent violated Section 3942 of the Code by operating as a city carrier without first having obtained a permit authorizing such operation.

A public hearing was held before Examiner Mooney on January 13, 1966, at Sacramento.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 34-3791 and Cement Contract Carrier Permit No. 34-4073. Copies of Minimum Rate Tariff No. 2 and Distance Tables Nos. 4 and 5 and all supplements thereto were served upon respondent.

A Commission representative testified that he visited respondent's office and terminal, which are located at his home in Florin, on March 17, 18, 19, 22 and 23, 1965, and that he reviewed all of respondent's transportation records for the period from July 1, 1964 to March 1, 1965. The witness stated that respondent issued approximately 300 freight bills during the review period; that approximately 120 of these were for subhaul shipments transported for other carriers; that he made true and correct photostatic copies of 76 freight bills and supporting documents covering shipments of solid and liquid asphalt, roofing material and lumber transported by respondent as a prime carrier; and that all of the photostatic copies are included in Exhibits 1 and 2. The representative stated that at the time of his investigation respondent operated four trucks and trailers and that in addition to respondent and his wife, who were actively engaged in the business, respondent employed four drivers. He stated that respondent's gross revenue for the year ending with the third quarter of 1965 was \$39,406.

Testimony regarding mileages and rail facilities in connection with a number of the shipments in Exhibits 1 and 2 was presented by the representative.

A rate expert for the Commission staff testified that he had taken the sets of documents in Exhibits 1 and 2, together with the supplemental information testified to by the representative, and formulated Exhibit 3 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 Exhibits 1 and 2. The undercharges resulted from assessing incorrect distance rates and alternative rail rates,

basing charges on net rather than gross weight, failure to assess off-rail charges, assessing incorrect off-rail charges, failure to assess charges for delay time in loading, assessing flat charges, failure to assess charges for transportation beyond the original billed destination and failure to comply with the documentation requirements for split delivery shipments. The rate expert stated that the total amount of undercharges shown in Exhibit 3 is \$4,327.99.

Respondent testified that the charge of \$28 for delay time shown by the staff in Part 5 of Exhibit 3 is not applicable. He explained that the "7:04 on rack" time and the "2:40 off rack" time shown on shipping ticket No. 014539 in Part 5 of Exhibit 1 are the times the equipment was weighed empty and full and are not the times loading was commenced and completed. He stated that the weighing was done at the carrier's convenience. As to the other rating errors shown by the staff in Exhibit 3, respondent testified that they were unintentional errors and due to his lack of knowledge of tariffs. He stated that many of the shippers had furnished him with rates and charges and that he had accepted them as correct. Respondent testified that he had employed a traffic consultant to do some of his rating but since most of his current hauling is subhauling for other carriers, he no longer uses the traffic consultant. The witness testified that he now operates only one unit of equipment which he drives and that he has been burdened with heavy expenses for equipment repairs lately.

According to Commission records respondent was sent an undercharge letter on January 13, 1964.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 34-3791 and Cement Contract Carrier Permit

No. 34-4073.

2. Respondent was served with appropriate tariffs and distance tables.

3. The "on rack" and "off rack" times shown on shipping ticket No. 014539 in Part 5 of Exhibit 1 are the times the equipment was weighed empty and loaded at the carrier's convenience and are not the times loading was commenced and completed.

4. The \$28 charge for delay time for loading shown by the staff in Part 5 of Exhibit 3 is not applicable.

5. Except as provided in Finding 4, respondent charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit 3, resulting in undercharges in the amount of \$4,299.99.

6. The record does not establish that applicant operated as a city carrier.

Based upon the foregoing findings of fact, the Commission concludes that:

1. Respondent violated Section 3667 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$4,299.99, and in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$250.

2. The record does not establish that respondent violated Section 3942 of the Public Utilities Code by operating as a city carrier without a city carrier permit.

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 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, 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.

Respondent is placed on notice that he may not operate as a city carrier within any city of this State without having first obtained from the Commission a city carrier permit.

O R D E R

IT IS ORDERED that:

1. Respondent shall pay a fine of \$4,549.99 to this Commission on or before the fortieth day 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 set forth herein and shall notify the Commission in writing upon the consummation of such collections.
3. Respondent shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges, and in the event undercharges ordered to be collected by paragraph 2 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, 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.

4. Respondent shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the minimum rates and charges prescribed by this 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 8th day of MARCH, 1966.

Frederick B. Holcomb
President

John E. Mitchell

George J. Brown

Augusta

William L. Brown
Commissioners