

**ORIGINAL**

Decision No. 70676

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of ROBERT R. BARKLEY, an individual.

Case No. 8297  
(Filed November 9, 1965)

Robert R. Barkley, in propria  
persona.  
G. Fuller, for Bellflower Hay Co., Inc.  
interested party.  
Elinore C. Morgan, for the Commission  
staff.

O P I N I O N

By its order dated November 9, 1965, the Commission instituted an investigation into the operations, rates and practices of Robert R. Barkley, an individual.

A public hearing was held in Los Angeles on January 12, 1966, before Examiner DeWolf, to determine whether or not respondent violated Sections 3664 and 3737 of the Public Utilities Code of California by charging, demanding, collecting or receiving lesser compensation for the transportation of property than the applicable charges prescribed by Minimum Rate Tariffs Nos. 14 and 14-A and supplements thereto and by failing to adhere to the provisions of said tariff. The matter was submitted on the same date.

The parties stipulated that at all times concerned in this proceeding the respondent held Radial Highway Common Carrier Permit No. 19-54131, dated April 17, 1961, and that respondent

had received the undercharge letter, dated April 23, 1964, a copy of which is Exhibit No. 1.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 19-54131 and owns and operates one truck and trailer. Respondent has no terminal and operates from his residence and performs his own rating and office work. Respondent's total gross revenue for the year ending September 30, 1965, was \$25,724. Copies of the appropriate tariffs and the distance table were served upon respondent.

On July 12, 1965, a representative of the Commission's field section visited respondent's home and place of business and checked his records for the period from March 1, 1964, through June 1, 1965, and examined 235 shipments. Copies of the underlying documents relating to 63 shipments were made and submitted to the License and Compliance Branch of the Commission's Transportation Division (Exhibit No. 2). Based upon the data taken from said shipping documents a rate statement was prepared and introduced in evidence (Exhibit No. 3). This exhibit reflects alleged undercharges of \$1,053.44; of this amount, \$86.72 concerns 7 shipments transported during the period of review directed by the undercharge letter.

Exhibit No. 2 and the testimony of two representatives of the Commission's field section establish that respondent apparently failed to use applicable distance table mileages in figuring the rates on the shipments surveyed. In all of the shipments in Exhibits Nos. 2 and 3 respondent assessed a rate of 30 cents per hundred pounds of alfalfa hay, which was the only commodity handled. The evidence shows that the correct rate should have been 31 cents to 34 cents per hundred pounds when figured on the correct distance table.

Respondent stated in his own behalf that he was unable to determine the correct zone for each of the shipments, that the errors made were not willful or intentional and that he did not know how he would be able to get the correct rates in the future to quote to his shipper.

All of the shipments were made from one point of origin for one consignor, the Bellflower Hay Co., to various points of destination. The representative of the hay company stated that the hay business is highly competitive, that it is conducted on quoted firm prices figured on a round dollar basis and that fluctuation in prices, caused by variable freight charges, would make it impossible to do business.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 19-54131.
2. Respondent was served with the appropriate tariffs and distance table.
3. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibit No. 3, resulting in undercharges in the amount of \$1,053.44.

Based upon the foregoing findings of fact the Commission concludes that respondent 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 \$1,053.44, 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 results thereof. If there is reason to

believe that respondent 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. Robert R. Barkley shall pay a fine of \$1,553.44 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 13<sup>th</sup> day of MAY, 1966.

Frederick B. Halaloff  
President

George J. Hoover

Augusta

William G. Bennett  
Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.