

**ORIGINAL**

Decision No. 70721

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of WILLIAM F. WISE, dba WILLIAM F. WISE TRUCKING.

Case No. 8337  
(Filed January 18, 1966)

Walter M. Riess, for respondent.

Vincent V. MacKenzie and J. B. Hannigan, for the Commission staff.

O P I N I O N

A duly noticed public hearing was held before Examiner Power at Eureka on March 2, 1966 and the matter was submitted.

This investigation was instituted by an order dated January 18, 1966. It alleges that Wise, a permitted carrier, may have violated Sections 3664 and 3737 of the Public Utilities Code. Specifically it is alleged that Wise may have violated Items 210 and 710 of Minimum Rate Tariff No. 2 by charging or collecting rates less than the applicable minimum rates and by failing to assess off-rail charges on shipments of lumber.

The staff supported these allegations by two staff witnesses. One of these had copied documents and made the off-rail inspections. Based upon the documents and information assembled by this witness, a staff rate expert rated the shipments.

The rate expert found, in most cases, an undercharge equal to the off-rail charge provided by Item No. 710 of Minimum Rate Tariff No. 2. In a few cases the undercharge was less than the off-rail rate. In these cases it appeared that Wise had assessed a charge slightly higher than the rail rate, as for

example, Part 1 of Exhibit No. 6. In this case, the charge assessed was \$317.88, the correct rail charge was \$303 and the correct off-rail charge was \$34.33. The total correct charge was \$337.33 and the undercharge was \$19.45.

The rate witness found undercharges of \$1,626.48 in 48 shipments.

The respondent did not contest the ratings by the staff. He did put in some evidence in mitigation which was corroborated to some extent by staff evidence.

It will be recollected that around Christmastime in 1964, the northwest coast of California was visited by disastrous floods. The Northwestern Pacific Railroad, the area's only link to the National Rail System, sustained heavy damage. It did not resume service until June 1965. Temporary or emergency highway routes were restored in a comparatively short time.

Wise testified that, on the date of the hearing, he was not hauling for the shippers whose property was involved in this case. Apparently all of them were, to some extent at least, rail shippers. At any rate the shippers had found other means of moving their goods.

Wise further testified that only one of his three tractor-trailer units was in Humboldt County and that the other two were elsewhere hauling for the "government", presumably the federal government.

Wise's testimony gets some corroboration from the reports of gross revenue filed by him with the Commission. The staff put the gross revenue figures from some of these reports in evidence. Wise reported \$48,081 of gross revenue for the full year of 1964. In the first quarter of 1965 his gross leaped to

\$49,382. In the second quarter it held up at \$43,585, but in the third quarter it fell off to \$18,475. In the fourth quarter it fell further off to \$5,511.

The staff recommended a fine equal to the undercharges under Section 3800 but no punitive fine under Section 3774 of the Public Utilities Code. Under the circumstances present here this recommendation appears reasonable and will be adopted.

The Commission finds that:

1. At all times herein considered William F. Wise was a highway permit carrier subject to the jurisdiction of this Commission.

2. During the first half of 1965 William F. Wise transported 48 shipments of lumber under the alternative application of common carrier rates provided by Minimum Rate Tariff No. 2. All points of origin of these shipments were on rail and all points of destination were off rail.

3. William F. Wise, on these shipments, failed to assess off-rail delivery charges in violation of Items 210 and 710 of Minimum Rate Tariff No. 2. Such failure resulted in undercharges of \$1,626.48 to five shippers.

The Commission concludes that William F. Wise has violated Sections 3664 and 3737 of the Public Utilities Code.

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 either 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.

O R D E R

IT IS ORDERED that:

1. Respondent shall pay a fine of \$1,626.48 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 17<sup>th</sup> day of MAY, 1966.

Frederick B. Holmoff  
President

John E. [unclear]

George B. Crover

[unclear]

William B. [unclear]  
Commissioners