

**ORIGINAL**

Decision No. 71513

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates and practices of DENZIL E.  
SMITH, an individual, doing  
business as DEE SMITH TRUCKING CO.

Case No. 8425  
(Filed May 24, 1966)

Denzil E. Smith, in propria persona,  
respondent.  
Elinore C. Morgan and Jerome B. Hannigan,  
for the Commission staff.

O P I N I O N

By its order dated May 24, 1966, the Commission ordered an investigation into the operations, rates and practices of Denzil E. Smith, an individual, doing business as Dee Smith Trucking Co.

Public hearing was held before Examiner Mooney at San Francisco on August 23, 1966.

Respondent conducts operations pursuant to radial highway common carrier and city carrier permits. His office is located at his home in San Lorenzo. He does not maintain a terminal for the receipt and transfer of freight. Respondent operates four tractors, two refrigerated van trailers and two flat bed trailers. He employs two drivers and drives at times himself. All office and administrative work is done by respondent and his wife. His gross operating revenue for the last two quarters of 1965 and the first two quarters of 1966 was \$77,840. Respondent was served with Minimum Rate Tariff No. 2 and Distance Table No. 5, together with all supplements and additions thereto.

On October 5, 1965 and November 19, 1965, a representative of the Commission's Field Section visited respondent's place of business and checked his records for the period from January through June 1965. During said period respondent issued approximately 400 shipping documents. The representative testified that he made true and correct photostatic copies of 32 freight bills and supporting documents covering shipments of frozen foods and drinks, fresh and smoked meats, canned meats, bacon, cheese, lard, beef extract, dehydrated meat, type metal, type metal dross, crude aluminum and empty drums, and that the photostats are all included in Exhibit 1. He explained that the exhibit is divided into eight sections according to the party for whom the transportation was performed, as follows: Section 1 includes 4 parts and relates to transportation performed for the South San Francisco plant of A. Levy & J. Zentner Co.; Section 2 includes 4 parts and relates to transportation performed for the Sacramento plant of A. Levy & J. Zentner Co.; Section 3 includes 5 parts and relates to transportation performed for Wilson & Co., Inc.; Section 4 includes 10 parts and relates to transportation performed for Globe Metals Co.; Section 5 includes 2 parts and relates to transportation performed for Pet Milk Co.; Section 6 includes 3 parts and relates to transportation performed for Paramount Citrus Association, Inc.; Section 7 includes 3 parts and relates to transportation performed for Kerman Frozen Foods Co.; Section 8 includes 1 part and relates to transportation performed for Moreno Frozen Foods, Inc. The witness testified that the photostats in Parts 1, 2 and 5 of Section 3 of Exhibit 1 were made from documents in the custody of Wilson & Co. for whom said transportation was performed and that the photostats in all other parts were made from documents in respondent's files. An employee

from Wilson's plant in the City of Industry subpoenaed by the staff verified that the photostats in Parts 1, 2 and 5 of Section 3 were true and correct copies of documents in the files of his company.

Respondent stipulated that the commodity descriptions and weights which the representative testified were furnished to him by an employee of both Certi Fresh Foods and Rupert Fish Company, Inc. in connection with the frozen fish and related items covered by Parts 1, 2 and 3 of Section 1 and Part 2 of Section 2 of Exhibit 1 were correct (Exhibit 2). Witnesses from Wilson's Oakland plant, Globe Metals and the Santa Clara office of Levy & Zentner subpoenaed by the staff verified that the information which the staff representative testified had been furnished to him by their respective companies was correct.

The staff representative testified that respondent admitted to him that the components of the transportation covered by each part of Sections 1 and 2 of Exhibit 1 were not picked up at one location and that pickup instructions from the shipper were by telephone and not in writing. He stated that the plants of Globe Metals in Oakland and Los Angeles are not served by rail facilities. The witness explained that a paper mill directly across the street from the Los Angeles plant of Globe Metals is served by rail facilities but that the lead track to the private spur track does not run along the street that separates the two companies and is, therefore, not adjacent to the plant's property.

A rate expert from the Commission staff testified that she took the photocopies in Exhibit 1, together with the supplemental information testified to by the representative and the subpoenaed witnesses and the information to which respondent stipulated, and prepared Exhibits 3 through 10, which show the rate and charge

assessed by the respondent, the minimum rate and charge computed by the staff and the resulting undercharge for the various parts of each section of Exhibit 1. She explained that Exhibits 3 through 10 correspond in sequence with Sections 1 through 8 of Exhibit 1. The witness testified that rate violations resulted from failure to comply with the documentation requirements for split pickup and split delivery shipments in Items 160 and 170 of Minimum Rate Tariff No. 2; according both split pickup and delivery privileges to the same transportation in violation of the aforementioned tariff rules; assessing a flat charge in violation of Item 257 of Tariff No. 2 which provides that rates shall not be based on a unit of measure different from that provided in the tariff; illegally consolidating separate shipments in violation of Item 60 of Tariff No. 2; and assessing incorrect rates below the minimum rate level. As to the transportation from the plant of Globe Metals in Oakland to said company's plant in Los Angeles covered by Exhibit 6, the rate expert pointed out that a lower minimum charge resulted by applying distance rates in Tariff No. 2 to the transportation than would have resulted had alternative rail rates plus off-rail charges at origin and destination been applied.

Respondent testified that the shipper for whom the transportation covered by Exhibits 3 and 4 was performed had in the past used its own equipment to bring freight from various locations to one point where it was tendered to respondent as a single shipment; that the shipper's trucks became too busy with other transportation and could not continue this practice; that since 1963 he has made multiple pickups for this shipper; and that he was unaware that the documentation was incorrect for this transportation. He stated that the shippers for whom he performed the transportation covered

by Exhibits 3, 4, 8 and 9 had furnished him with the rates he applied and that he thought the rates were correct. Exhibits 11, 12 and 13 are photocopies of the written rate quotations which the three shippers had given to respondent. He testified that a member of the Commission staff had furnished him with the rates he applied to the transportation covered by Exhibits 5 and 7.

With respect to Exhibit 6, respondent testified that the plants of Globe Metals at Oakland and Los Angeles are in his opinion railhead locations. He stated that a main line rail track runs alongside the Oakland plant. As to the Los Angeles plant, he testified that Globe Metals rents the property on which the plant is located; that there are rail facilities at the end of the block on which the leased property is located which Globe Metals can use; that the intervening property between the premises leased by Globe Metals and the rail facilities is leased by two other companies; and that it is necessary to travel along the public street when going between Globe Metals and the rail track.

Respondent testified that all of the rate errors in Exhibits 3 through 10 were unintentional. He explained that he drives part time and that all of the rating was done by either his wife or himself. He stated that immediately following the first visit by the staff representative, he engaged a reputable traffic consultant firm to do all of his rating and thus insure that errors of the type herein involved will not occur in the future.

#### Discussion

The fact that respondent relied upon rate information furnished to him by shippers and by a member of the Commission staff in connection with certain of the transportation involved herein does not relieve him of the obligation imposed upon him by

law to charge not less than the established minimum rates. "On numerous occasions in the past, we have declared that the carrier has the prime duty of ascertaining the applicable rate to be charged and that it cannot be relieved of this burden by relying on information supplied by its shippers or others connected with the transportation in question." In re Ross Trucking Co., Decision No. 59785, dated March 15, 1960, in Case No. 6216; unreported. Furthermore, "it is a well-established principle of administrative law that statements of policy, administrative opinions, or interpretations of laws or regulations by employees of such an agency cannot be used to preclude the agency from taking whatever action is necessary". In re Coast Trucking Co., 60 Cal. P.J.C. 67, 70 (1962). It is to be noted also that the record does not disclose whether the staff member who quoted the rates to respondent was informed of all the facts and circumstances surrounding the transportation in issue. Respondent must accept responsibility for any undercharges that result from assessing rates quoted to him by others.

As to the plant of Globe Metals located at Oakland, the record established that the only rail facility adjacent to said property is a main line rail track. It is a general rule that rail carriers will not stop rail cars on their main line tracks for the purpose of receiving or delivering rail shipments. There is no evidence to the contrary herein. Based upon the facts in this proceeding, the Oakland plant of Globe Metals is not a railhead location.

The property leased by Globe Metals in Los Angeles is likewise not a railhead location. According to the record, there is a rail track at the end of the property owned by the lessor; there are

two intervening parcels of property, which the lessor leases to other companies, between this rail track and the premises occupied by Globe Metals; and there are no other rail tracks that enter upon or are adjacent to the parcel leased by Globe Metals. The fact that the tenant is allowed the use of track facilities on or adjacent to other property owned by the lessor does not constitute the tenant's portion of the premises a railhead location. See In re Guerin Transportation Co., 55 Cal. P.U.C. 228 (1956).

Findings and Conclusions

The Commission finds that:

1. Respondent operates pursuant to radial highway common carrier and city carrier permits.
2. Respondent was served with Minimum Rate Tariff No. 2 and Distance Table No. 5, together with all supplements and additions thereto.
3. The carrier has the prime duty of ascertaining the applicable rates to be charged and is not relieved of this burden by relying on information furnished by its shippers or anyone else.
4. The plants of Globe Metals at Oakland and Los Angeles are not railhead locations.
5. Respondent charged less than the lawfully prescribed minimum rates in the instances as set forth in Exhibits 3 through 10 resulting in undercharges in the amount of \$3,375.45.

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 \$3,375.45, 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 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 \$3,875.45 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 9th day of NOVEMBER, 1966

[Signature]  
President

[Signature]

[Signature]

[Signature]

[Signature]  
Commissioners