

ORIGINAL

Decision No. 71731

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the rates, operations and practices of LEONARD F. SCHEMP.

Case No. 8416
(Filed May 17, 1966)

Leonard F. Schempp and Olympia P. Schempp, for the respondent.
David R. Larrouy and E. E. Cahoon, for the Commission staff.

O P I N I O N

By its order dated May 17, 1966, the Commission instituted an investigation into the operations, rates and practices of Leonard F. Schempp, an individual.

A public hearing was held before Examiner Mooney on July 6, 1966, at Los Angeles.

Respondent conducts his operations pursuant to radial highway common carrier, highway contract carrier and city carrier permits. His office is located in Arcadia, California. He has no terminal, equipment or employees. All of his for-hire transportation is performed by subhauliers. Respondent and his wife do all of the office work. His gross operating revenue for the year 1965 was \$438,962.74. Respondent was served with Minimum Rate Tariffs Nos. 7 and 17 and Directory No. 1, together with all supplements and additions thereto.

On February 8, 9 and 10, 1966, a representative of the Commission's field section visited respondent's place of business and checked his records for the period November 1, 1965 to January 31, 1966. The representative testified that approximately 7,000

shipping documents covering transportation in dump truck equipment were issued during the review period and that none of the documents include all the information required to be shown thereon by the documentation rules in Minimum Rate Tariff No. 7. He stated that he made true and correct photostatic copies of a representative number of the documents and that the copies are all included in Exhibit 1 as Parts 1 through 7 thereof. The witness explained that Part 1 relates to transportation of asphaltic concrete performed for respondent's largest account and includes copies of invoices for freight charges for the months of November and December 1965 and certain supporting weight tickets; that both the invoices and the weight tickets were prepared by the shipper; and that no other documentation was prepared by either the subhauler or respondent for this transportation. He pointed out that Part 2 relates to the transportation of asphaltic concrete for another shipper; that the invoice for freight charges for the month of November 1965 in said part was prepared by respondent; that the supporting weight tags were prepared by the shipper; that the copy of the weight tag furnished to respondent was returned to the shipper with the invoice; and that no other documents were prepared by either respondent or the subhauler. With respect to Parts 3 through 7, the witness testified that they relate to transportation performed under the hourly rates in Minimum Rate Tariff No. 7 for various shippers; that in each of the five parts there is a billing statement prepared by respondent and supporting freight bills prepared by the subhaulers who actually performed the transportation; and that the transportation covered by Parts 3 and 4 was intracity transportation.

The representative pointed out that none of the documents in Exhibit 1 include all of the information required to be shown on the shipping order and freight bill by paragraph (b) of Item 93 of Minimum Rate Tariff No. 7 or all of the information required to be shown on the hourly service freight bill by paragraph (c) of Item 93.1 of the tariff. He testified that because of the missing information, it was not possible to determine from any of the documents the applicable minimum rate and charge for any of the transportation in issue.

Respondent testified that all asphalt plants in Southern California issue the same type of weight ticket shown in Part 1 of Exhibit 1; that his principal customer has computerized its accounting procedures and has adapted its weight tickets to this method; and that he does not know what he can do to make the shipper change its procedures. He stated that he is making every effort to comply with the documentation requirements of Minimum Rate Tariff No. 7. The witness testified that he has from time to time issued written notices to all dump truck owner operators he engages instructing them that all documentation must be prepared in accordance with the applicable tariff requirements. A copy of the most recent notice to the subhaulers, dated May 25, 1966, is included in the record as Exhibit 2. Respondent stated that in spite of his efforts to have the bills prepared correctly, the drivers continue to be careless.

Discussion

The Commission has set out in detail in paragraph (b) of Item 93 and in paragraph (c) of Item 93.1 the information that must be shown on the shipping order and freight bill and the hourly

service freight bill, respectively. The documents in Exhibit 1 do not comply with these requirements. Deviations from said requirements will not be tolerated.

With respect to the question of whether respondent is responsible for errors or omissions in the shipping order and freight bill or the hourly service freight bill when the transportation was actually performed by a subhauler and the subhauler prepared the documentation, we have consistently held that the overlying carrier engaged by the shipper is not relieved of responsibility for such errors or omissions irrespective of who prepared the documentation. In the instant proceeding, respondent is responsible for any errors or omissions in the documentation irrespective of whether he, a subhauler, a shipper or anyone else prepares it.

As to the penalty to be assessed, we concur with the recommendation by the Commission staff that respondent be directed to cease and desist from further violations of the documentation requirements. The failure to comply with any directive, order or rule of the Commission is a serious matter and will not be overlooked. Respondent's operating authority also will be made subject to a one-year suspension if further violation of the documentation requirements occurs during the following one-year period.

Findings and Conclusions

The Commission finds that:

1. Respondent operates pursuant to radial highway common carrier, highway contract carrier and city carrier permits.
2. Respondent was served with Minimum Rate Tariffs Nos. 7 and 17 and Directory No. 1, together with all supplements and additions thereto.

3. Respondent is responsible for compliance with the documentation requirements of Minimum Rate Tariff No. 7 irrespective of whether the documentation is prepared by respondent, the sub-hauler who actually performed the transportation, the shipper or anyone else.

4. Respondent has not properly completed and executed shipping order and freight bills as required by paragraph (b) of Item 93 of Minimum Rate Tariff No. 7 and hourly service freight bills as required by paragraph (c) of Item 93.1 of said tariff in the instances set forth in Exhibit 1.

The Commission concludes that:

1. Respondent violated Sections 3704, 3737, 4044 and 4077 of the Public Utilities Code.

2. Respondent's operating authority should be suspended, pursuant to Sections 3774 and 4112 of the Code, for a period of one year with the execution thereof deferred during said one-year period. If, at the end of the one-year period, the Commission is satisfied that respondent is in substantial compliance with the documentation requirements in issue, the suspension will be vacated without further order of the Commission.

The staff of the Commission will make a subsequent field investigation to determine whether respondent is complying with the documentation requirements in issue. If there is reason to believe that respondent is continuing to violate said provisions, the Commission will reopen this proceeding for the purpose of formally inquiring into the circumstances and for the purpose of determining whether the one-year suspension or any further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Radial Highway Common Carrier Permit No. 19-15410, Highway Contract Permit No. 19-4425 and City Carrier Permit No. 19-38481 issued to Leonard F. Schempp are hereby suspended for a period of one year; provided, however, that the execution thereof is hereby deferred pending further order of this Commission. If no further order of this Commission is issued affecting said suspension within one year from the date of issuance of this decision, the suspension shall be automatically vacated.

2. Respondent shall cease and desist from violating the documentation provisions of the Commission's minimum rate tariffs.

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 20th day of DECEMBER, 1966.

Robert E. Spitzbill
President

Fredrick B. Holbrook
Augustin

Commissioners

Commissioner George G. Grover, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.