

ORIGINALDecision No. 71902

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the rates, opera-
tions, and practices of
LEO J. MAYER.

Case No. 8449
(Filed June 21, 1966)

J. Laurence K. Garvin, for
Leo J. Mayer, respondent.
John C. Gilman and Frank J. O'Leary,
for the Commission staff.

O P I N I O N

By its order dated June 21, 1966, the Commission instituted an investigation into the rates, operations, and practices of Leo J. Mayer. A public hearing was held before Examiner Robert Barnett on July 22, 1966, at Los Angeles, at which time the matter was submitted.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 19-51248 and City Carrier Permit No. 19-51249. It was stipulated that respondent had been served with Minimum Rate Tariff No. 7 and the supplements thereto. The order instituting investigation alleges that respondent may have violated Sections 3737, 3704, 4044, and 4077 of the Public Utilities Code by failing to complete, execute, and retain shipping documents in the form and manner prescribed by Items 93 and 93.1 of Minimum Rate Tariff No. 7, and Item 480 of Minimum Rate Tariff No. 17. At the hearing the staff withdrew all allegations concerning a violation of Item 480.

Respondent owns one truck, which he drives himself; he operates from his home. He has no employees, but his wife helps him keep his records. His gross revenue from operations for the last three quarters of 1965 and the first quarter of 1966 was \$112,258. This sum includes revenue earned as an overlying carrier. Respondent transports commodities listed in Item No. 320 of Minimum Rate Tariff No. 7 and also acts as an overlying carrier.

Staff Evidence

The staff presented one witness, an Assistant Transportation Representative, who testified that he called upon respondent at his home where he keeps his records. Respondent was not at home but respondent's wife permitted the witness to inspect respondent's freight bills. All 250 freight bills from the period November 1, 1965 through January 31, 1966, were inspected and a random selection of 20 freight bills were copied and introduced into evidence as Exhibit No. 1. In the witness's opinion all 250 freight bills violated the documentary require-

ments specified in Item 93.1^{1/} of Minimum Rate Tariff No. 7 in that certain required information was omitted from the freight bills. It would serve no useful purpose to set forth all of the omissions as they are numerous and counsel for respondent stipulated that the omissions occurred. Selected omissions include: type of loading at origin; time and location driver reported for work; starting-ending-elapsed time; name of consignee; signature of consignee; and commodity transported. All of the omitted information is necessary to determine whether the rate assessed for the transportation is correct. The staff recommended that a fine of \$200 be imposed.

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- (c) An Hourly Service Freight Bill shall be prepared by the carrier each day for each unit of equipment supplied under the provisions of Section No. 4. This freight bill shall show the following information:
- (1) Date.
 - (2) Equipment number and capacity in cubic yards.
 - (3) Name of carrier.
 - (4) Name of underlying carrier (if any).
 - (5) Name of consignor.
 - (6) Address of consignor.
 - (7) Name of debtor if other than consignor.
 - (8) Address of debtor if other than consignor.
 - (9) Name of consignee.
 - (10) Address of consignee.
 - (11) Type of loading at origin.
 - (12) Commodity transported.
 - (13) Time and location driver reported for work.
 - (14) Starting, ending and elapsed time of the running time of the last trip.
 - (15) Starting, ending and elapsed time of the unloading time of the last trip.
 - (16) Overall time: From time reporting for work to start of last trip plus double the running time of last trip (elapsed time under paragraph 14) plus unloading time of last load (elapsed time under paragraph 15).
 - (17) Any deductions for meals or failure of carrier equipment.
 - (18) Net chargeable time (16 minus 17).
 - (19) Applicable hourly rate.
 - (20) Charges due.
 - (21) Signature of consignor (or agent).
 - (22) Signature of driver.
 - (23) Signature of consignee (or agent).

Respondent's Evidence

Respondent testified that only eight of the 20 freight bills set forth in Exhibit No. 1 were prepared by him. Those are parts 1, 2, 3, 4, 7, 8, 9, and 13; the remaining freight bills were prepared by underlying carriers. He testified that it is often impossible to obtain the signature of the consignee of the commodity, as required by Item 93.1 because there is no consignee available to sign. The commodity transported is dirt and it is often dumped in a place, such as a vacant lot, where there is no consignee.

In his capacity as an overlying carrier respondent contacts his underlying carriers by telephone and informs them where a particular job is located and the time they are to report. The underlying carrier prepares a four-copy freight bill for the load he will carry. Respondent does not see the freight bill prepared by the underlying carrier until two copies of the bill are received at respondent's office. At that time, if the freight bill has been improperly filled out, it is too late for respondent to correct it.

Respondent did not deny that the omissions occurred but, in mitigation, he testified that he has taken steps to insure that his freight bills, and those of his underlying carriers, are properly prepared. He has prepared a letter to be sent to all his underlying carriers informing them of the freight bill requirements. Respondent introduced into evidence two forms of freight bills^{2/} which comply, in his opinion, with the requirements of Item 93.1, and which he will supply to his underlying carriers and use himself. Respondent's counsel requested that any fine

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One prepared by the California Dump Truck Owners Association and the other prepared by J. B. Jackson, 4060 W. Broadway, Hawthorne, California.

imposed be suspended.

Discussion

The stringent requirements of Item 93.1 were inserted in Minimum Rate Tariff No. 7 in an attempt to correct certain loose practices prevalent in the dump truck industry. These practices are set out at length in Decision No. 69567 in Case No. 5437 (Order Setting Hearing dated April 21, 1964) dated August 17, 1965, and will not be repeated here. Briefly, the Item 93.1 requirements make it easier to establish correct time factors in the movement of commodities under hourly rates when it is suspected that "synthetic time factors"^{3/} have been applied. A synthetic time factor comes about when the notation of hours worked as shown on a freight bill has no relationship to the actual hours worked. At the hearings that lead to Decision No. 69567 the California Dump Truck Owners Association urged strict enforcement of freight bill documentation requirements to correct abuses.

It should be emphasized that in the case at bar there is not the slightest intimation that respondent's omissions on his freight bills were done in an attempt to evade the minimum rates. However, this is not always the case; omissions of pertinent information on freight bills could lead to illegal rates as surely as false information would. Vigilance by the Commission on less serious violations might deter attempts at more serious violations.

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"Synthetic time factors" is a euphemism for falsification of freight bills; that is - lying.

The primary issue in this case is whether, in the event errors in documentation do exist, respondent is relieved of responsibility for such errors because subhaulers performed the transportation and prepared the documents. This issue has been determined adversely to respondent in Investigation of Accelerated Dump Trucks, Inc. (Decision No. 71658 in Case No. 8412 dated December 6, 1966.) In Accelerated we said "the principal or overlying carrier who is engaged by the shipper to perform the transportation is responsible for errors in documentation irrespective of whether the documentation is prepared by said carrier or by the underlying carrier (subhauler)." (At sheet 5.)

A secondary issue concerns the failure of respondent to obtain the signature of the consignee on the freight bill. When the commodity transported is not to be delivered to a consignee, but merely to be dumped in a convenient place, or when the consignee is not available to sign the freight bill, the carrier should not be penalized for failure to obtain the consignee's signature. In the case at bar the staff presented no evidence relating to the availability of consignees to sign freight bills in those cases when their signatures were omitted. Respondent testified that when freight bills were not signed by consignees there were no consignees available to sign.

Findings of Fact

1. Respondent operates pursuant to city carrier and radial highway common carrier permits.
2. Respondent was served with Minimum Rate Tariff No. 7 and supplements.

3. Respondent omitted inserting part of the information required by Item 93.1 of Minimum Rate Tariff No. 7 on freight bills prepared by himself. Underlying carriers employed by respondent omitted inserting part of the information required by Item 93.1 of Minimum Rate Tariff No. 7 on freight bills prepared by themselves. The information omitted includes, but is not limited to: type of loading at origin; time and location driver reported for work; starting-ending-elapsed time; and commodity transported.

4. Respondent is responsible for errors or omissions in the preparation of freight bills committed by underlying carriers in his employ.

5. In those instances where respondent or his underlying carrier failed to obtain the signature of the consignee on the freight bill there was no consignee available to sign.

6. Respondent did not violate Item No. 93 of Minimum Rate Tariff No. 7.

Conclusion of Law

Based on the foregoing findings of fact the Commission concludes that respondent violated Sections 3737, 3704, 4044, and 4077 of the Public Utilities Code.

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. 19-51248 and City Carrier Permit No. 19-51249 issued to Leo J. Mayer, 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 24th day of JANUARY, 1967

[Signature]
President

[Signature]

[Signature]

[Signature]

Commissioners

Commissioner WILLIAM SYMONS, JR. did not participate in the disposition of this proceeding.