

ORIGINAL

Decision No. 71903

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of EARL F. SCHNEIDER and JACK H. CORNWELL, dba C & S TRUCKING, a partnership.

Case No. 8459
(Filed June 28, 1966)

Karl K. Roos, for Jack H. Cornwell,
dba C & S Trucking, respondent.
Earl F. Schneider, in propria persona,
respondent.
B. A. Peeters and J. B. Hannigan,
for the Commission staff.

O P I N I O N

By order dated June 28, 1966, the Commission instituted an investigation into the rates, operations, and practices of Earl F. Schneider and Jack H. Cornwell, dba C & S Trucking, a partnership. Public hearing was held before Examiner Robert Barnett on September 20 and 21, 1966, at Los Angeles. The matter was submitted on the latter date subject to the receipt of late-filed exhibits, which have been received.

The staff moved to dismiss Earl F. Schneider as a party to the Order Instituting Investigation on the ground that Schneider terminated his partnership with Cornwell in July 1964, prior to the time that any of the alleged violations occurred. Said motion is granted.

Respondent Jack H. Cornwell, dba C & S Trucking (hereinafter referred to as respondent), presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 19-56048

issued December 4, 1962. The Order Instituting Investigation alleges that respondent may have violated Public Utilities Code Sections 3664, 3667, 3668, and 3737 by having charged and collected less than the applicable minimum rates for the transportation of property, by having employed subhaulers without having a bond on file, and by failing to properly prepare shipping documents. It was stipulated that respondent had copies of Minimum Rate Tariff No. 2 (MRT 2) and the supplements thereto in his possession prior to the time the alleged violations that are the basis of this action occurred. However, respondent claims that MRT 2 and supplements were not served on him in accordance with Public Utilities Code Section 3737.^{1/}

Respondent operates one tractor, three flatbed trucks, and three flatbed trailers from his terminal at La Puente, California. He employs four drivers. His gross operating revenue for the first two quarters of 1966 and the third quarter of 1965 was \$88,000. (No figure was submitted for the fourth quarter of 1965.) Respondent transports general commodities under MRT 2.

^{1/}

"Upon the issuance by the commission of any decision or order made applicable to a particular class or group of carriers, or to particular commodities transported or areas served, the commission shall serve a copy of the decision or order without charge upon each carrier affected. Upon the issuance of a permit to operate as a highway carrier, the commission shall serve without charge upon the carrier a copy of each tariff, decision, or order previously issued that is then applicable to the class or classes of transportation service the carrier intends to perform. Each carrier shall observe any tariff, decision, or order applicable to it after service thereof." (Emphasis added.)

Staff Evidence

The staff presented three witnesses, two transportation representatives and one associate transportation rate expert. These witnesses testified that respondent employed sub-haulers without having a bond on file as required by General Order No. 102-B; that respondent did not set forth full and complete information on his freight bills and shipping documents; and that on 36 occasions respondent assessed rates and charges for the transportation of property that were less than the minimum rates prescribed in MRT 2. The shippers for whom the transportation was performed and the amounts of undercharges involved are:

Hobbs Wall Lumber Co., Inc.	\$ 3,693.37
J. F. Weber Forest Products	<u>792.32</u>
Total Undercharges	\$ 4,485.69

The reasons for the undercharges include assessing rail rates for off-rail points, consolidating shipments without proper documentation, assessing rates and charges less than the minimum prescribed by MRT2, and assessing rates and charges by use of false billing and false weights. The staff recommended that a fine in the amount of the undercharges plus a fine under Section 3774 of \$1,000 be imposed.

Respondent's Evidence

Respondent did not dispute the amount of the undercharges and, except for the charges of false billing and false weights, respondent did not dispute the correctness of the staff's reasons why the undercharges occurred. Respondent testified that the alleged false freight bills were caused by driver errors in filling them out; the alleged false weights were caused by using average weights rather than the actual weights or estimated weights provided

in MRT 2, Item 680. Respondent seeks to avoid being found in violation of the Public Utilities Code because (1) he was not properly served with the tariff; (2) J. F. Weber Forest Products is in bankruptcy; and (3) Hobbs Wall Lumber Co., Inc., has paid its undercharges.

Discussion

The staff based their allegations of false billing on evidence that showed altered dates on some freight bills ^{2/} or the same pickup date on different freight bills, ^{3/} which, as a consequence, showed a driver's being in two places at the same time. It is not infrequent that an incorrect date on a form will be corrected by writing over the incorrect figures, but when the result is used to prove that freight moved within a period of time that would permit a special low rate to be charged, and when the altered freight bill is compared with other freight bills and shows that one driver was in two places at the same time, such evidence is persuasive that rather than mere driver error, a deliberate alteration was made in an attempt to evade the minimum rates.

Similarly, when two freight bills are dated the same day and are signed by the same driver and it is clear that the driver could not have picked up both loads on the same day yet the documents are used to obtain special low rates, such evidence is persuasive that an attempt was made, by false billing, to evade the minimum rates.

^{2/} Compare Exhibit 3 part 20 freight bill No. 490 with Exhibit 1, Attachment 3, freight bill No. 493.

^{3/} In Exhibit 3 compare part 3 freight bill No. 332 with part 4 freight bill No. 333.

Respondent's defense to the charge that he used false weights in determining the rate for lumber was that he considered the use of average weights to be proper. This defense, asserted by a person who has been in the trucking business for many years and who has testified to being experienced in rating freight, does not merit consideration.

Respondent admitted having MRT 2 and all supplements in his possession prior to the time that the alleged violations occurred but he claims that he cannot be found in violation of the Public Utilities Code because he was not served with the documents in conformity with Public Utilities Code Section 3737. A staff witness testified that service of all pertinent documents was made on respondent by mailing the documents to respondent's last address on file with the Commission. Exhibit No. 4 is an affidavit of the Commission staff member who actually made such service. The evidence shows proper service pursuant to Section 3737.

Respondent asserts that he should not be required to collect undercharges because the undercharges due from J. F. Weber Forest Products are uncollectible as it is in bankruptcy, and the undercharges due from Hobbs Wall Lumber Co., Inc., have been paid.

The filing of a petition in bankruptcy by a shipper does not relieve a carrier from its obligation to attempt to collect undercharges. Respondent is required to file a claim in bankruptcy for the total amount of the undercharges found herein against J. F. Weber Forest Products.

Respondent supported his claim that he collected the \$3,693.37 due as undercharges from Hobbs Wall Lumber Co., Inc., by introducing Exhibit No. 8, which is a statement issued by

Hobbs Wall Lumber Co., Inc., to respondent on September 13, 1966 showing a set-off of the \$3,693.37 against an amount of \$4,625.41 due it from respondent. This \$4,625.41 amount is the balance due on a promissory note dated October 7, 1964 (Exhibit No. 7) issued by respondent to Hobbs Wall Lumber Co., Inc., in the amount of \$9,524.32 at 6-1/2 percent interest. Lawful tariff charges must be collected. For the Commission to approve this set-off under these facts, would be to condone a violation of the minimum rates. Because of these circumstances, the Commission will not recognize the attempted set-off of undercharges against a debt of the carrier.

Findings of Fact

1. Respondent operates pursuant to a radial highway common carrier permit.
2. Respondent was served with MRT 2 and supplements prior to the time the violations found herein occurred.
3. Respondent employed subhaulers without having a bond on file as required by General Order No. 102-B.
4. Respondent used false weights when preparing freight bills and thereby assessed rates less than the prescribed minimum rates.
5. Respondent altered freight bills in an attempt to assess rates less than the prescribed minimum rates.
6. Respondent has charged less than the lawfully prescribed minimum rate in the instances set forth in Exhibit No. 5, amounting to \$792.32, and Exhibit No. 6, amounting to \$3,693.37.
7. J. F. Weber Forest Products filed a petition in bankruptcy on August 12, 1966.

8. Respondent has not collected the undercharges due from Hobbs Wall Lumber Co., Inc.

9. Earl F. Schneider is no longer a partner of Jack H. Cornwell and is not doing business as C & S Trucking.

Based on the foregoing findings of fact the Commission concludes that respondent violated Sections 3737, 3664, 3667, and 3668 of the Public Utilities Code.

Respondent should pay a fine of \$500 pursuant to Section 3774 of the Public Utilities Code and an additional fine of \$4,485.69 pursuant to Section 3800 of said Code. Respondent will be ordered to make partial payment of the fine in the amount of \$4,193.37 on or before the twentieth day after the effective date of the order herein and the remaining fine of \$792.32 on or before the expiration of two years after the effective date of the order herein.

If respondent is not able to collect the full amount of his claim of \$792.32 from J. F. Weber Forest Products, respondent may petition the Commission to reduce the fine imposed under Section 3800 by the amount representing the difference between his claim and the amount recovered from J. F. Weber Forest Products in its bankruptcy proceeding.

O R D E R

IT IS ORDERED that:

1. Respondent shall pay a fine of \$4,193.37 on or before the twentieth day after the effective date of this order and an additional fine of \$792.32 on or before the expiration of two years 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 in Finding No. 6, 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, specifying the action 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.

5. Earl F. Schneider is dismissed as a respondent in this investigation.

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.

Arthur E. Hitchcock President
William B. Bennett
Lawrence
Paul P. Monahan

Commissioners

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