

ORIGINAL

Decision No. 71905

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the rates, operations, and practices of Robert P. Avery dba BILL MEYERS EQUIPMENT RENTALS.

Case No. 8486
(Filed July 26, 1966)

Phil Jacobson, for respondent.
David R. Larrouy and Richard Carlin, for the Commission staff.

O P I N I O N

By its order dated July 26, 1966, the Commission instituted an investigation into the operations, rates and practices of Robert P. Avery doing business as Bill Meyers Equipment Rentals.

A public hearing was held in Los Angeles on August 16, 1966, before Examiner DeWolf to determine whether or not respondent has violated Sections 3704, 3737, 4044, and 4077 of the Public Utilities Code by failing to properly complete, execute, and retain shipping documents applicable to shipments as required in Item 93.1 of Minimum Rate Tariff No. 7; whether any or all of respondent's operating authority should be canceled, revoked or suspended, or a fine should be imposed; and whether respondent should be ordered to cease and desist from any unlawful activity found. The matter was submitted on the same date.

The parties stipulated that at all times concerned in this proceeding the respondent held Radial Highway Common Carrier

and City Carrier permits, and that respondent had received a notice to produce shipping documents concerning his operations.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 19-56480 and City Permit No. 19-56481 and operates one Ford dump truck. Respondent has no terminal and maintains an office with three employees to do rating and office work. Respondent's total gross revenue for the year ending December 31, 1965, was \$163,247.73. Copies of the appropriate tariffs and the distance table were served upon respondent.

On April 15, 18, and 22 and May 23, 1966, a representative of the Commission's field section visited respondent's place of business and checked his records for the period from January 1, 1966, through March 31, 1966, and examined documents of 350 shipments. Copies of the underlying documents relating to 20 shipments were made and introduced in evidence as Exhibit 1.

The staff representative identified the documents in Exhibit 1 and enumerated the defects and omissions in each of said documents and identified by number the omitted information which is required to be furnished by Item 93.1 of Minimum Rate Tariff No. 7.

Item 93.1 requires that the freight bill show specific items of information numbered from 1 through 23. Testimony of the staff representative specified an average of more than ten of these items omitted from the 20 freight bills examined in this proceeding and he stated that these omissions prevented any rating of the shipments.

Staff counsel stated there was no allegation of any undercharges or of any falsification of records or information by the respondent carrier in the period covered by this investigation, and that the only violations claimed were the omissions of information from the billing invoices necessary for rating, which are required to be furnished by the provisions of Item 93.1 of the tariff.

The staff witness testified that the twenty shipments described by the shipping documents in Exhibit 1 could not be properly rated because of failure to give information on the freight bills. These shipments were handled by the underlying carrier who supplied the documents to respondent, the overlying carrier. Respondent billed the shipper for the freight due.

The parties are agreed that the only issue here concerns the omissions and defects in the shipping documents prepared by the subhauler. The respondent contends that he is the overlying carrier and is not responsible for the documentation as the information is secured by the underlying carrier and is not available to respondent.

Staff counsel cited the regulations and Minimum Rate Tariff No. 7, Item 93.1, contending that respondent is responsible for correct billing.

Counsel for respondent moved to dismiss the proceeding on the ground that transportation in this case was not performed by respondent and therefore he is not the real party in interest and is not responsible for the billing.

Counsel for respondent requested the Commission to take official notice of the effective date of Item 93.1 of Minimum Rate Tariff No. 7, being October 16, 1965, and of Petition for Modification and Revision of Tariff No. 136 in Case No. 5437, filed on August 12, 1966, just four days previous to the date of this hearing. Counsel contended there has been confusion in getting printed forms and in getting the information required for the drivers to comply with Item 93.1; that Petition No. 136 was filed to change this procedure; that the omissions made in the billing by the drivers were not willful, and that respondent had and has no intent to violate any provision of the tariff.

Respondent did not testify. Staff counsel recommended that respondent be fined \$200 and be ordered to desist from further violations.

After consideration, the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 19-56480 and City Carrier Permit No. 19-56481.
2. Respondent was served with the appropriate tariffs and distance table.
3. Respondent has failed to properly document shipments from January 1, 1966, to March 31, 1966, in the instances set forth in Exhibit No. 1, in violation of Minimum Rate Tariff No. 7, Item 93.1.
4. Respondent is responsible for the correct billing as well as the underlying carrier.

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

The Commission concludes that:

1. The motion to dismiss should be denied.
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. The motion to dismiss is denied.
2. Radial Highway Common Carrier Permit No. 19-56480 and City Carrier Permit No. 19-56481 issued to Robert P. Avery, doing business as Bill Meyers Equipment Rentals, 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.