

Decision No. 71995

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, charges and practices of
E. D. PERSINGER and G. D. PERSINGER,
dba D. & G. TRUCKING COMPANY.

Case No. 8385
(Filed March 29, 1966)

Gerald D. Persinger, in propria persona, respondent.

Robert C. Marks and E. E. Cahoon, for the
Commission staff.

O P I N I O N

By its order dated March 29, 1966, the Commission instituted an investigation into the operations, rates and practices of Evelyn D. Persinger and Gerald D. Persinger, a partnership, doing business as D. & G. Trucking Company.

A public hearing was held before Examiner Mooney at Los Angeles on August 2, 1966.

It was stipulated that respondents hold radial highway common carrier, highway contract carrier and city carrier permits; that respondents were served with Minimum Rate Tariffs Nos. 2 and 5 and Distance Tables Nos. 4 and 5, together with all corrections and additions to each; and that the rates applied to all transportation involved in the investigation herein were at the level of the applicable minimum rates in Minimum Rate Tariffs Nos. 2 or 5 for intercity transportation.

The two issues in this proceeding are (1) whether respondents remitted to Research Packaging Company, Los Angeles, or Ken Coor, the company's traffic manager, ten percent of the

gross revenue earned by respondents for transportation performed for said company during the period October, November and December 1964 in violation of Section 3667 of the Public Utilities Code, and (2) whether respondents transported pallets without charge or without issuing shipping documents in connection therewith for the aforementioned company from June 1964 to April 1, 1965, in violation of Sections 3664 and 3737 of the Code, Item 250 of Minimum Rate Tariff No. 2 and Item 160 of Minimum Rate Tariff No. 5 (Collection of Charges Rule) and Item 255 of Tariff No. 2 and Item 95 of Tariff No. 5 (Shipping Document Rule).

A representative of the Commission staff testified that he visited respondents' place of business on May 11, July 6 and August 2, 1965 and reviewed their records for the period October through December 1964. He stated that he made true and correct photostatic copies of the following documents from respondents' files: "Sales Record" sheets which list transportation performed for Research Packaging Company during the review period; "Pay Record Ledger" sheets which list payments and payroll deductions (Social Security, Withholding Tax and Welfare Deductions) for Mr. Coor for the same period; and canceled checks showing payments to Mr. Coor. All of the photostatic copies are included in Exhibit 1. The witness pointed out that the gross amount earned by respondents from transportation performed for Research Packaging Company for the three-month period is shown on the "Sales Record" sheets together with an entry under the heading "10%" which amounts to ten percent of the gross; that the "Pay Record Ledger" sheets for Mr. Coor include the same amount shown under the heading "10%" on the "Sales Record" sheets and show that Mr. Coor was paid this amount less payroll deductions; and that the canceled checks

verify that the net amounts shown on the payroll sheets were in fact paid to Mr. Coor.

The representative testified as follows regarding the payments to Mr. Coor by respondents: Mr. Coor was employed by Research Packaging Company on September 8, 1964 to oversee traffic for the company and was made traffic manager on October 1, 1964; prior to that time he was employed by a highway common carrier; Mr. Coor obtained the Research account for respondents in June 1964; according to the general manager of Research, Mr. Coor controlled the traffic and had the responsibility of routing freight for the company; during the period investigated, Research accounted for approximately 50 percent of respondents' business; respondents considered Mr. Coor a salesman and paid him a commission on the business he obtained for them; under this arrangement, respondents paid Mr. Coor ten percent of the gross amount earned on the Research account, less payroll deductions, for the months of October, November and December 1964, as evidenced by Exhibit 1; Mr. Coor never solicited any additional accounts and performed no other duties for respondents; a meeting was held by respondents, the general manager of Research and Mr. Coor after the staff investigation herein and the commission arrangement was discontinued; respondents did not lose the Research account when the arrangement with Mr. Coor was discontinued.

Mr. Persinger testified as follows regarding the commissions paid to Mr. Coor: Two years prior to obtaining the Research account, Mr. Coor informed respondents that Research was looking for a carrier to handle its local transportation; respondents attempted to obtain this business but were unsuccessful; in June 1964, Mr. Coor was again contacted by Research and he and

Mr. Persinger met with the general manager of Research; as a result, respondents obtained truckload traffic from Research to the Fresno and San Francisco areas which they continue to handle; respondents do not handle any local traffic for Research; prior to being employed by Research, Mr. Coor had intended to commence his own trucking operation, and respondents agreed to handle this traffic for him in the interim and paid him a salesman's commission on the account; the commission payments were continued after Mr. Coor's employment by Research; the general manager of Research had no knowledge of this arrangement until respondents informed him about it after the staff investigation; the payments were then discontinued; Mr. Coor did not control the routing of freight for Research; the general manager specified the carriers that were to be used; respondents would not have obtained any traffic from Research if it were not for the initial efforts of Mr. Coor; respondents have other accounts in addition to Research.

The record establishes that respondents had transported pallets on outbound shipments from Research without including them in the weight of the shipment and returned them without charge or documentation; that Research had allowed respondents to use the pallets for their convenience; that this practice was discontinued on April 1, 1965; that since that date, shipments from Research have been hand-loaded onto respondents' equipment; and that this has increased their operating costs.

The Commission finds that:

1. Respondents operate pursuant to radial highway common carrier, highway contract carrier and city carrier permits.
2. Respondents were served with appropriate tariffs and distance tables.

3. Mr. Coor was instrumental in obtaining traffic from Research for respondents in June 1964 and was paid a commission in cash for this service.

4. Mr. Coor was employed by Research on September 8, 1964 and was made traffic manager of the firm on October 1, 1964.

5. Commission payments continued to be made by respondents to Mr. Coor after his employment by Research and amounted to ten percent of the gross revenue received by respondents from the Research account, less payroll deductions, during the period covered by the staff investigation (October, November and December 1964). The net cash payments made by respondents to Mr. Coor during this period as set forth in Exhibit 1 were \$1,104.39.

6. As traffic manager of Research, Mr. Coor was in a position to influence the selection of carriers employed by Research.

7. Mr. Coor performed no other duties or functions for respondents and never solicited any other traffic for respondents.

8. The payments to Mr. Coor after his employment by Research were made without the knowledge of Research and were terminated when this matter was brought to the shipper's attention after the staff investigation.

9. Research did not receive any of the payments made to Mr. Coor or any part thereof and did not benefit from them.

10. Payments to respondents for the transportation herein were at the level of the applicable minimum rates.

11. Said commission payments by respondents to Mr. Coor during the period covered by the investigation were rebates and allowances without authority of the Commission.

12. Respondents transported pallets on outbound shipments from Research without including them in the weight of the shipment and returned empty pallets to Research without charge or documentation. This practice was discontinued on April 1, 1965.

Based upon the foregoing findings of fact, the Commission concludes that respondents violated Sections 3664, 3667 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 \$1,104.39 and in addition thereto respondents should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$500.

The Commission expects that respondents will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the rebates. The staff of the Commission will make a subsequent field investigation into the measures taken by respondents and the results thereof. If there is reason to believe that either respondents or their attorney have not been diligent, or have not taken all reasonable measures to collect all rebates, or have 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. Respondents shall pay a fine of \$1,604.39 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondents shall take such action, including legal action, as may be necessary to collect the amounts of rebates set forth herein, and shall notify the Commission in writing upon the consummation of such collections.

3. Respondents shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the rebates and in the event rebates ordered to be collected by paragraph 2 of this order, or any part of such rebates, remain uncollected sixty days after the effective date of this order, respondents shall file with the Commission, on the first Monday of each month after the end of said sixty days, a report of the rebates remaining to be collected, specifying the action taken to collect such rebates and the result of such action, until such rebates have been collected in full or until further order of the Commission.

4. Respondents shall cease and desist from any further practices of directly or indirectly paying any rebates or allowances to any shippers for whom it performs transportation services or to any employee of said shippers.

5. Respondents shall cease and desist from any further transportation of pallets on outbound shipments without including them in the weight of the shipments and returning empty pallets without charge or documentation, except to the extent authorized by the Commission's minimum rate tariffs.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondents. The effective date of this order shall be twenty days after the completion of such service upon either respondent.

Dated at San Francisco, California, this 7th day of FEBRUARY 1967.

Carl E. Hatch
President

William L. Bennett

August

William Seymour, Jr.

Fred P. Monsey
Commissioners