

ORIGINAL

Decision No. 72074

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the rates, operations, and practices of DELMAR G. NEWDIGATE.

Case No. 8501
(Filed August 16, 1966)

D. G. Newdigate, in propria persona.
David R. Larrouy and Richard Carlin,
for the Commission staff.

O P I N I O N

By its order dated August 16, 1966, the Commission instituted an investigation into the operations, rates and practices of Delmar G. Newdigate.

A public hearing was held in Los Angeles on November 10, 1966, before Examiner DeWolf to determine whether or not respondent has violated Sections 3704 and 3737 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 and Item 480 of Minimum Rate Tariff No. 17, and 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.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 36-3775 and operates

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dump trucks and employs subhaulers. Respondent has no terminal and maintains an office with employees to do rating and office work at 424 South Pampas, Rialto, California. Copies of the appropriate tariffs were served upon respondent.

On March 15, 16, 17 and 22, 1966, a representative of the Commission's field section visited respondent's place of business and checked his records for the period from October 16, 1965 through January 31, 1966, and examined documents of 339 shipments. Copies of the underlying documents relating to 21 shipments were made and introduced in evidence as Exhibit 1.

The Commission 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 and Item 480 of Minimum Rate Tariff No. 17.

Exhibits Nos. 2 and 3 show the items omitted from the shipping documents which are required by Item 93.1 of Minimum Rate Tariff No. 7 and Item 480 of Minimum Rate Tariff No. 17. Exhibit 4 is a copy of Item 93.1 of Minimum Rate Tariff No. 7, and Exhibit 5 is a copy of Item 480 of Minimum Rate Tariff No. 17, and said exhibits describe the information which is required to be shown on the freight bills of the carrier.

The staff witness testified that all of the respondent's freight bills examined by him during the three-month period did not conform with the tariff items.

He testified that the items listed in Exhibits 2 and 3 were omitted from the 21 freight bills in Exhibit 1 and that it was these omissions which prevented any rating of the shipments.

He also testified that these shipments were handled by the underlying carrier and that the respondent billed the shipper for the freight due.

Staff counsel stated that there was no allegation of any undercharges or of any falsification of records or information or attempts at rate conversions 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 is required to be furnished by the provisions of Item 93.1 and Item 480 of the tariffs in question.

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 Tariffs Nos. 7 and 17, Items 93.1 and 480, contending that respondent is responsible for correct billing.

Respondent declined to testify and stated that he had no evidence to offer and admitted that the evidence of the staff in the record is true. Respondent further said that he intends to comply with any order of the Commission, that the omissions made in the billing by the drivers were not willful, and that respondent has no intent to violate any provision of the tariff.

After consideration, the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 36-3775.
2. Respondent was served with the appropriate tariffs.
3. Respondent has failed to properly document shipments from October 16, 1965 to January 31, 1966, in the instances set forth in Exhibit 1, in violation of Minimum Rate Tariff No. 7, Item 93.1, and Minimum Rate Tariff No. 17, Item 480.

4. Respondent is fully responsible for the correct billing by the underlying carrier, including paragraph "c" of Item 93.1 requiring preparation of an additional copy of Shipping Order and Freight Bill.

The Commission concludes that:

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

2. Respondent's operating authority should be suspended, pursuant to Section 3774 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. 36-3775 issued to Delmar G. Newdigate is 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 28th day of FEBRUARY, 1967.

President
William M. Bennett

William J. ...

Paul P. Morrison
Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.