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**ORIGINAL**

Decision No. 72076

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Case No. 8510  
(Filed August 23, 1966)

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

O P I N I O N

On August 23, 1966, the Commission instituted an investigation into the rates, operations and practices of William G. Burns. Public hearing was held before Examiner Mooney at Los Angeles on October 26, 1966.

Respondent conducts operations as a dump truck carrier pursuant to radial highway common carrier and city carrier permits. Respondent has a terminal in San Fernando. He employs ten drivers, one mechanic, one dispatcher and has one office employee. He owns ten dump trucks, one low-bed truck, one pickup truck and one trailer. Respondent's gross operating revenue for the year ending March 31, 1966 was \$630,479.67. He was served with Minimum Rate Tariffs Nos. 7 and 17 and Directory 1, together with all supplements and additions to each.

On various days during April, May and June 1966, a representative of the Commission's field section visited respondent's place of business and checked his records for the period February 1 to April 30, 1966. The representative testified that approximately 3,000 freight bills were issued during the review period; that many covered transportation on private property or of respondent's own

equipment which is not subject to regulation; that of those bills subject to regulation, 1,348 did not comply with applicable documentation rules; and that because of missing information on the 1,348 freight bills, it was not possible to determine from said documents whether respondent assessed not less than minimum rates and charges for the shipments they cover. He stated that an invoice for freight charges was also sent to the shipper; that the invoice also failed to comply with applicable documentation requirements; and that the freight bills and invoices together do not include all of the required information. The witness testified that respondent's son had informed him that the drivers did not understand how the time information was to be filled out on hourly service freight bills.

The representative testified that he made photostatic copies of the hourly service freight bills issued during the review period; that said documents covered for-hire transportation subject to regulation and that they are all included in Exhibit 1 as Parts 1 through 20 thereof. Respondent's counsel stipulated that the copies were true and correct copies of documents in respondent's files. The representative testified that the transportation covered by Parts 13 and 20 was performed by respondent's own equipment; that the transportation covered by the remaining 18 parts was performed by subhaulers; and that when subhaulers are used, they prepare the documentation. He stated that with the exception of the transportation covered by Part 2 which was subject to the Highway Carriers' Act, all other transportation covered by Exhibit 1 was subject to the City Carriers' Act. The witness explained that Exhibit 2 sets forth the information required by the documentation rule in paragraph (c) of Item 93.1 of Minimum Rate Tariff No. 7 which, in his opinion, is missing from the documents in Exhibit 1.

None of the hourly service freight bills included in Parts 1 through 20 of Exhibit 1 include the information required to be shown thereon by the following subparagraphs of Item 93.1 of Minimum Rate Tariff No. 7: (9) name of consignee; (11) type of loading; (13) time and location driver reported to work; (14) running time of last trip; (15) unloading time of last trip; (18) net chargeable time; (21) signature of consignor. In addition, certain of the documents do not include other information required by paragraph (c). Although certain time information is shown on the documents, it is not shown in the manner required by paragraph (c).

With respect to the question of whether respondent is responsible for errors or omissions in the hourly service freight bill when the transportation was actually performed by a subhauler and the subhauler prepared the document, we have consistently held that the overlying carrier engaged by the shipper is not relieved of responsibility for such errors or omissions irrespective of who prepared the document.

We are here concerned with the question of whether or not respondent complied with the documentation rules that were in effect at the time the transportation covered by the documents in Exhibit 1 moved. The fact that the Commission may now have proposals before it in any other proceedings to amend the documentation rules is not determinative in this case.

A motion by respondent to dismiss the investigation was opposed by the staff.

The Commission finds that:

1. Respondent operates pursuant to radial highway common carrier and city carrier permits.

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2. Respondent was served with Minimum Rate Tariffs Nos. 7 and 17 and Directory 1, together with all supplements and additions to each.

3. Respondent is responsible for compliance with the documentation requirements of Minimum Rate Tariff No. 7, irrespective of whether the documentation is prepared by respondent or by the subhauler who performed the transportation.

4. Respondent has not properly completed and executed hourly service freight bills as required by paragraph (c) of Item 93.1 of Minimum Rate Tariff No. 7 in the instances set forth in Exhibit 1.

The Commission concludes that:

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

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.

3. Respondent's motion to dismiss should be denied.

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. 19-41442 and City Carrier Permit No. 19-41443 issued to William G. Burns are hereby suspended for a period of one year; provided, however, that the execution thereof is hereby deferred pending further Commission order. If no further order 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.

3. The motion to dismiss is denied.

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.

William W. Bennett  
President

William Aguirre, Jr.  
Jack 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