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**ORIGINAL**

Decision No. 72095

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the rates,  
operations and practices of  
WALKER BROWN.

Case No. 8413  
(Filed May 17, 1966)

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

O P I N I O N

By its order dated May 17, 1966, the Commission instituted an investigation into the rates, operations and practices of Walker Brown, an individual.

Public hearing was held before Examiner Mooney at Los Angeles on September 21, 1966. Respondent did not appear at the hearing and was not represented. However, by written stipulation dated September 20, 1966, respondent waived any objection to the hearing proceeding in his absence and without representation on his behalf. The stipulation was signed by both Thomas Pavone, representing Walker Brown, respondent, and by counsel for the Commission staff. It was received in evidence as Exhibit 3.

The following stipulations were also included in Exhibit 3: The photostatic copies of shipping documents in Exhibit 1 are true and correct copies of documents from respondent's records; all transportation performed by respondent was subject to either Minimum Rate Tariffs Nos. 7 or 17; the first four documents in Exhibit 1 covered transportation subject to Tariff No. 17, and the remaining

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14 documents in the exhibit covered transportation subject to Tariff No. 7; all transportation covered by Exhibit 1 was actually performed by subhaulers who prepared the documents; and, the staff does not allege any falsification of documents or rate violations in this proceeding.

Respondent conducts his operations pursuant to radial highway common carrier and city carrier permits. Respondent has a terminal at Baldwin Park. He owns and operates one dump truck and 18 bottom dump trailers. In addition, he leases two tractors and eight trailers. He employs a bookkeeper and a part-time mechanic. Respondent's gross operating revenue for the year 1965 was \$510,974. Respondent was served with Minimum Rate Tariffs Nos. 7 and 17 and Directory 1, together with all supplements and additions to each. He has a subhaul bond on file with the Commission.

On February 9, 10 and 11, 1966, a representative of the Commission's field section visited respondent's place of business and checked his records for the period November 1, 1965 through December 31, 1965. The representative testified that approximately 583 shipping documents were issued during the review period and that none of the documents include all of the information required to be shown thereon by the applicable documentation rules. He stated that because of the missing information it is not possible to determine from the documentation whether respondent had assessed not less than the applicable minimum rate and charge for any of the transportation in issue. The witness testified that he prepared the photostatic copies of the 18 shipping documents referred to in the aforementioned stipulation; that they are all included in

Exhibit 1 as Parts 1 through 18 thereof; that said documents cover transportation subject to the Highway Carriers' Act; and, that the documents were all issued during the period covered by his review. At the request of staff counsel Part 16 of Exhibit 1 was stricken from the record. He explained that Exhibit 2 lists the information which, in his opinion, is missing from the documents in Exhibit 1.

None of the documents in Parts 1 through 4 of Exhibit 1 include the information required to be shown on the shipping document by the following subparagraphs of paragraph (a) of Item 480 of Minimum Rate Tariff No. 17: (2) name of consignee; and (3) complete address of the point of origin and also the production area. In addition, certain of the documents in Parts 1 through 4 do not include other information required by paragraph (a).

None of the documents in Parts 5 through 15 and Parts 17 and 18 of Exhibit 1 include the information required to be shown on the hourly service freight bill by the following subparagraphs of paragraph (c) of Item 93.1 of Minimum Rate Tariff No. 7: (2) capacity of equipment in cubic yards; (11) type of loading; (13) time and location driver reported for work; (14) running time of last trip; (15) unloading time of last trip; (16) overall time; and (21) signature of consignor. Other information required by paragraph (c) is also missing from certain of the documents in Parts 5 through 15 and Parts 17 and 18.

It is noted that many of the documents in Exhibit 1 include part of the information required by a particular subparagraph of the applicable documentation rule. This is not sufficient and does not

satisfy the tariff rule. Furthermore, although time information is shown on the documents in Parts 5 through 15 and Parts 17 and 18, it is not shown in the manner required by paragraph (c) of Item 93.1 of Minimum Rate Tariff No. 7.

With respect to the question of whether respondent is responsible for errors or omissions in the shipping document (Parts 1 through 4) and the hourly service freight bill (Parts 5 through 15 and Parts 17 and 18) when the transportation was actually performed by subhaulers and the subhaulers prepared the documents, 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 prepares the documents.

It was brought to the Commission's attention that it now has several proposals before it in the continuing minimum rate proceeding in Case No. 5437 to revise the documentation requirements in issue. This fact is not relevant or material to this case. We are here concerned with the question of whether respondent complied with the documentation rules that were in effect at the time the transportation covered by the documents in Exhibit 1 was performed.

The Commission finds that:

1. Respondent operates pursuant to radial highway common carrier and city carrier permits.
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 Tariffs Nos. 7 and 17,

irrespective of whether the documentation is prepared by respondent or the subhauler who actually performed the transportation.

4. Respondent has not properly completed and executed shipping documents as required by paragraph (a) of Item 480 of Minimum Rate Tariff No. 17 in the instances set forth in Parts 1 through 4 of Exhibit 1.

5. 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 Parts 5 through 15 and Parts 17 and 18 of Exhibit 1.

6. Respondent, by written stipulation dated September 20, 1966, waived any objection to the hearing proceeding in his absence and without representation on his behalf (Exhibit 3).

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 Sections 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. 19-45418 issued to Walker Brown, an individual, 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 28<sup>th</sup> day of FEBRUARY, 1967.

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.

William A. Bernard  
President

William Agnew Jr.  
Paul P. Morgenson  
Commissioners