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ORIGINAL

Decision No. 72214

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
rates and practices of JOE DeFAZIO,) Case No. 8514
doing business as Joe DeFazio)
Trucking.)

Handler, Baker & Greene, by Daniel W.
Baker, for respondent.
David R. Larrouy, Janice Kerr and
J. B. Hannigan, for the Commission staff.

O P I N I O N

By its order dated August 30, 1966, the Commission instituted an investigation into the operations, rates and practices of Joe DeFazio, doing business as Joe DeFazio Trucking.

A public hearing was held before Examiner Gravelle, on October 18, 1966, at Sacramento.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 34-3616, hauling general commodities on a statewide basis. Respondent maintains a terminal at his home in Sacramento and an office elsewhere in Sacramento. He operated four trucks, two sets of double trailers and three pull trailers and employed three drivers, a part-time bookkeeper, a part-time rate consultant and four salesmen-dispatchers. His gross revenue for the year ending with the second quarter of 1966 amounted to \$422,250. Copies of Minimum Rate Tariffs Nos. 2, 7, 8 and 10 and Distance Tables Nos. 4 and 5 were served on respondent as well as Exception Rating Tariff No. 1.

On July 6 through 9, July 26 and August 2, 1965, a representative of the Commission's Field Section visited respondent's place of business and checked his records for the period October 1, 1964 through March 31, 1965; 546 shipments were examined. Copies of some of the documents checked were received in evidence as Exhibits Nos. 2, 3, 5 and 6.

Based upon these underlying records and supplemental information supplied by the staff investigator, a rate statement prepared by a rate expert in the Rate Analysis Unit of the Commission's Transportation Division was also received in evidence as Exhibit No. 1. Exhibit No. 1 reflects alleged undercharges in the amount of \$1,883.05 and has 63 parts.

This matter may be broken down into two segments. One has to do with undercharges and one has to do with an alleged device by which a shipper was furnished with free services thereby securing transportation at less than minimum rates.

With regard to the undercharges indicated by Exhibit No. 1, it was testified by respondent, as well as his part-time rate consultant, that all the rating with which we are here concerned was checked by the rate consultant. He is an ex-employee of this Commission and allegedly was hired by respondent because of his supposed rate expertise. During his testimony he admitted the correctness of the rates in Exhibit No. 1; he testified that Parts 3 through 14 thereof had been rebilled and collected by respondent by April 1965, these parts amount to \$110.73. Fourteen parts were incorrectly rated because he thought the origin point was on rail. Eighteen other parts were incorrectly rated because he thought the destination point was on rail since a Southern Pacific Company publication so listed it. Four other parts had been rebilled by

respondent who was awaiting payment from the shipper. Another four parts were allegedly master billed shipments but incorrect dates were put on the bills, hence the witness acceded to the staff computation.

The device aspect of this proceeding concerns respondents employment of four persons who in fact acted primarily as salesmen for his prime shipper Cal-Sac Lumber Sales, Inc. These men were paid nothing by Cal-Sac. The business supplied by this shipper amounts to approximately 70 percent of respondent's total.

Counsel for the Commission staff and for respondent jointly submitted late-filed Exhibit No. 7 which is a proposed finding of fact and conclusion of law. It is hereafter set forth.

"FINDING OF FACT

"1. Respondent employed Glenn L. Butler, Lawrence E. Whitaker, Maurice Tisdall, and Charles Lacy and paid their salaries. A portion of their responsibilities was to act as salesmen for Cal-Sac Lumber Sales, Inc., the shipper. Glenn L. Butler, Lawrence E. Whitaker, Maurice Tisdall, and Charles Lacy received no compensation from shippers for such services.

"The evidence also shows that Cal-Sac Lumber Sales Inc. utilized the services of respondent exclusively for the transportation of its lumber.

"CONCLUSION OF LAW

"1. The provision of valuable services by a carrier (as described in Finding of Fact No. 1) to a shipper constitutes a rebate which allowed the shipper to obtain transportation at an amount less than the established minimum rates and thus the services furnished constituted a remittance and allowance prohibited by Section 3667 of the Public Utilities Code."

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 34-3616.

2. Respondent was served with appropriate tariffs and distance tables.

3. Respondent charged less than the lawfully prescribed minimum rate in the instances set forth in Parts 1 and 2 and 15 through 63 of Exhibit No. 1, resulting in undercharges in the amount of \$1,772.32.

4. Respondent employed Glenn L. Butler, Lawrence E. Whitaker, Maurice Tisdall, and Charles Lacy and paid their salaries. A portion of their responsibilities was to act as salesmen for Cal-Sac Lumber Sales, Inc., the shipper. Glenn L. Butler, Lawrence E. Whitaker, Maurice Tisdall, and Charles Lacy received no compensation from shippers for such services.

5. The arrangement whereby respondent paid the foregoing salaries was a device which resulted in the shipper obtaining transportation for less than minimum rates.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 3664, 3667, 3668 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 the undercharges of \$1,772.32, and in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$500.

The Commission expects that respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges. The staff of the Commission will make a subsequent field investigation thereof. If there is reason to believe that respondent, or his attorney, has not been diligent, or has not taken all reasonable measures to collect all

undercharges, or has 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. Respondent shall pay a fine of \$2,272.32 to this Commission on or before the twentieth day after the effective date of this order.

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

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

4. Respondent shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the minimum rates and charges prescribed by this Commission.

5. Respondent shall cease and desist from using the device outlined herein or any other device to allow shippers to obtain transportation at rates less than minimum.

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 MARCH, 1967.

[Signature]
President
[Signature]
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Commissioners