

ORIGINALDecision No. 72622

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, and practices of JAMES R.
HUGHES, dba CALIFORNIA LUMBER
TRANSPORT.

Case No. 8569
(Filed December 13, 1966)

Marvin Handler, for respondent.
John C. Gilman, Counsel, and
E. E. Cahoon, for the
Commission staff.

O P I N I O N

By its order dated December 13, 1966, the Commission instituted an investigation into the operations, rates, and practices of James R. Hughes, doing business as California Lumber Transport, hereinafter referred to as respondent, for the purpose of determining whether respondent violated Sections 3664, 3667, 3668, 3670 and 3737 of the Public Utilities Code by charging, demanding, collecting or receiving less than the minimum rates and charges established by the Commission in its Minimum Rate Tariff No. 2.

Public hearing was held before Examiner O'Leary on April 18, 1967 in San Francisco. The matter was submitted subject to the filing of late filed Exhibits 24 and 25. The exhibits have been filed and the matter is now ready for decision.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 39-6292 issued May 26, 1964 and amended June 23, 1964. He operates 2 tractors and 4 trailers, pursuant to a lease purchase agreement. Occasionally 2 additional units of equipment are leased. He employs 2 full time

drivers and a bookkeeper and secretary part time. Two additional drivers are employed as needed. His gross revenue for the year 1966 was \$121,167. Copies of Minimum Rate Tariff No. 2 and Distance Table No. 5, together with all corrections and additions thereto were served upon respondent.

A representative of the Commission's Field Section visited respondent's place of business in May and June 1966 and examined his records for the period July 1, 1965 through December 31, 1965. During said period respondent transported 337 shipments which included 85 shipments which respondent subhailed for other carriers. He testified that he made true and correct photocopies of various documents covering the transportation of lumber and that the photocopies are included in Exhibits 14 and 15.

The representative also testified that he prepared Exhibit 1 which is a list of the off rail origins and destinations reflected in Exhibits 14 and 15.

A rate expert for the Commission staff testified that he had taken the sets of documents in Exhibits 14 and 15 together with the supplemental information in Exhibit 1 and formulated Exhibits 2 through 13, which show the rate and charge assessed by respondent, the minimum rate and charge computed by the staff and the resultant undercharges. The total amount of alleged undercharges shown in Exhibits 2 through 13 is \$4,124.41. It was stipulated that the staff ratings were correct on all shipments except Part 2 of Exhibit 2, Part 2 of Exhibit 8, Part 1 of Exhibit 9, Part 2 of Exhibit 10, Parts 2 and 3 of Exhibit 11 and Parts 2 and 6 of Exhibit 12. Respondent did not dispute the staff ratings in

connection with Part 2 of Exhibit 8 and Parts 2 and 3 of Exhibit 11. The total undercharges on the stipulated and undisputed Parts of Exhibits 2 through 13 amount to \$3,828.89.

Part 2 of Exhibit 2 pertains to a shipment of lumber consisting of 3 component parts weighing 33,030 pounds, 33,000 pounds and 31,740 pounds. Part 2 of Exhibit 2 as amended by the staff's late filed Exhibit 24 alleges an undercharge of \$37.34. Respondent's late filed Exhibit 25 alleges an overcharge of \$89.03. The staff contends that the 2 component parts weighing 33,000 pounds and 33,030 pounds were picked up on September 14, 1965 and the component part weighing 31,740 pounds was picked up on September 16, 1965. The staff further contends that since all components were not picked up within the two day period prescribed in Item 85 of Minimum Rate Tariff No. 2 the component parts picked up on September 14, 1965 must be rated as one shipment and the component part picked up on September 16, 1965 must be rated as another shipment. The respondent contends that the 3 component parts were picked up within the prescribed two day period. A review of Exhibit 14 which contains the documents pertaining to the shipment in question and the cross-examination of respondent discloses the pick ups were made on September 14 and 16, 1965 as alleged by the staff.

Part 1 of Exhibit 9 and Parts 2 and 6 of Exhibit 12 pertain to shipments originating at California Forest Products, El Dorado. The staff contends that California Forest Products is not served by rail facilities and claims undercharges totaling \$91.95 on the 3 shipments due to respondent's failure to assess off rail charges at the point of origin. Respondent testified that the shipments in question were loaded at a rail spur of California Forest Products located approximately 1/2 mile from California Forest Products, El Dorado.

Part 2 of Exhibit 10 pertains to a shipment of 99,600 pounds from Central Valley to Gardena and Corona. The staff contends that respondent failed to pick up the entire shipment within the two day period prescribed by Item 85 of Minimum Rate Tariff No. 2. Because of this alleged failure the staff rated each component part as a separate shipment. The alleged undercharge is \$167.02. The evidence relied upon by the staff to substantiate its contention were documents obtained from sources other than respondent's records. Respondent's counsel made a motion to strike said evidence, which was granted. The staff rate expert testified that had the entire shipment been picked up within the two day period as prescribed by Item 85 of Minimum Rate Tariff No. 2 an undercharge would still exist because of respondent's failure to assess off rail charges at destination. The record herein does not disclose the amount of said undercharge.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 39-6292.
2. Respondent was served with the appropriate tariff and distance table.
3. The record herein does not show that respondent violated Sections 3668 and 3670 of the Public Utilities Code.
4. The component parts of the shipment covered by Part 2 of Exhibit 2 were picked up on September 14 and 16, 1965.
5. The staff rating shown in Part 2 of Exhibit 2 as amended by Exhibit 24 is correct.
6. The shipments covered by Part 1 of Exhibit 9 and Parts 2 and 6 of Exhibit 12 were picked up at a rail facility.

7. The respondent's rating of the shipments covered by Part 1 of Exhibit 9 and Parts 2 and 6 of Exhibit 12 was not less than the prescribed minimum rate.

8. The precise undercharge on Part 2 of Exhibit 10 can not be determined.

9. Except as provided in Findings 7 and 8, respondent charged less than the lawfully prescribed minimum rate for the transportation covered by Exhibits 2 through 13 resulting in undercharges in the amount of \$3,866.23.

Based upon the foregoing findings of fact the Commission concludes that respondent 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 \$3,866.23.

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 into the measures taken by respondent and the results 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 purposes 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 \$3,866.23 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 the Commission.

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 20th day of JUNE, 1967.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners