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ORIGINAL

Decision No. 72737

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion into the operations, rates and)
practices of ELWIN R. MANN, an)
individual, doing business as LUCKY)
STRIKE TRANSPORTATION and as ELWIN R.)
MANN TRANSPORTATION.)

Case No. 8614
(Filed April 6, 1967)

Handler, Baker & Greene, by Marvin Handler, for
Elwin R. Mann dba Elwin R. Mann Transportation
and Lucky Strike Transportation, respondent.
Norman R. Moon, for respondent.
Donald M. Grant, Counsel, for the Commission staff.

O P I N I O N

By its order dated March 28, 1967 the Commission instituted an investigation into the operations, rates and practices of Elwin R. Mann, an individual, doing business as Lucky Strike Transportation and as Elwin R. Mann Transportation, hereinafter referred to as respondent.

A public hearing was held before Examiner Porter on May 23, 1967, in San Francisco, and the matter was submitted.

Respondent presently conducts operations pursuant to radial highway common carrier, highway contract carrier and city carrier permits. Respondent has terminals at Watsonville and Los Angeles. As of February 1966, respondent owned and operated one truck, eleven tractors and thirteen semitrailers. On the average respondent employs five office employees and two mechanics and twenty-one drivers. The operating revenue for the four quarters of 1966 amounted to \$934,496. A copy of the appropriate tariff was served upon respondent.

A representative of the Commission's Field Section visited respondent's place of business and checked all of respondent's

records for the period July 1, 1965 to January 1, 1966. Documents covering seventy-nine shipments were copied and introduced in evidence as Exhibits 1-2-3-4-5. The staff presented evidence that respondent consolidated shipments and transported them on more than one piece of equipment in violation of Item 175 of Minimum Rate Tariff No. 8 (Produce Service Shipment) and rated shipments as split pick-up shipments when respondent did not have prior to or at the time of pickup written instructions from shippers to provide such services.

The staff rate expert testified that undercharges in the amount of \$2,344.12 resulted as reflected by Exhibits 1A-2A-3A-4A-5A.

The respondent introduced evidence in mitigation that there had been a review of his records on two prior occasions and although his rating practices were similar to those under investigation there had been no action taken by the Commission; also, as a result of this investigation, he has lost business from the shippers herein involved.

The Commission finds that:

1. Respondent operates pursuant to radial highway common carrier, highway contract carrier and city carrier permits.
2. Respondent was served with Minimum Rate Tariff No. 8, together with all supplements and additions thereto.
3. Respondent did not comply with the requirements of Minimum Rate Tariff No. 8 in regard to documentation requirements before applying split pick-up rates.
4. Respondent consolidated shipments and transported them in more than one unit of equipment, treated them as "Produce Service Shipment" in violation of Item 175 of Minimum Rate Tariff No. 8.
5. The respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibits 1A-2A-3A-4A-5A, resulting in undercharges in the amount of \$2,344.12.

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 \$2,344.12 (the amount of the undercharges shown in Exhibits 1A-2A-3A-4A-5A).

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, 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 \$2,344.12 to this Commission on or before the fortieth 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 (Exhibits Nos. 1A-2A-3A-4A-5A) 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 and 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.

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 11th
day of JULY, 1967.

St. E. Martin
President
Sheldon L. Brown
August
William L. Spence
Fred P. Monsey
Commissioners