

ORIGINAL

Decision No. 72859

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the rates, operations, and practices of ROBERT O. KIKER, JIMMIE DAY and HARRY MITCHELL, co-partners, doing business as DMK TRUCKING CO.

Case No. 8618
(Filed April 4, 1967)

Robert O. Kiker, for DMK Trucking Co., respondent.
Elmer Sjostrom, Counsel, and
J. B. Hannigan, for the Commission staff.

O P I N I O N

By its order dated April 4, 1967, the Commission instituted an investigation into the operations, rates and practices of Robert O. Kiker, Jimmie Day and Harry Mitchell, co-partners, doing business as DMK Trucking Co.

A public hearing was held in Los Angeles on June 8, 1967, before Examiner DeWolf, to determine whether or not respondents violated Section 3667 of the Public Utilities Code of California by charging, demanding, collecting or receiving lesser compensation for the transportation of property than the applicable charges prescribed by Minimum Rate Tariff No. 2 and supplements thereto and by failing to adhere to the provisions of said tariff. The matter was submitted on the same date.

The parties stipulated that at all times concerned in this proceeding respondents held Radial Highway Common Carrier Permit No. 19-57976, dated October 5, 1964, and that respondents had received the undercharge letter, dated March 12, 1965, a copy of which is Exhibit No. 10.

Respondents presently conduct operations pursuant to Radial Highway Common Carrier Permit No. 19-57976 and City Carrier Permit No. 19-58412, own and operate three trucks and three trailers, and employ three drivers. Respondents have no terminal, operate from 8000 Deering, Canoga Park, California, and perform their own rating and office work. Respondents' total gross revenue for the year 1966 was \$99,350.00. Copies of the appropriate tariffs and the distance table were served upon respondents.

On August 30, 1966, a representative of the Commission's Field Section visited respondents' place of business where he checked the respondents' records for the period from February 1, 1966 through August 30, 1966, and examined numerous shipping documents. Copies of the underlying documents relating to 29 shipments were made and submitted to the License and Compliance Branch of the Commission's Transportation Division (Exhibit No. 1). Based upon the data taken from said shipping documents five rate statements were prepared and introduced in evidence (Exhibits Nos. 2, 3, 4, 5, and 6). These exhibits reflect alleged undercharges of \$1,361.60 concerning shipments transported during the period of review.

Exhibits Nos. 2, 3, and 4 and the testimony of a representative of the Commission's Field Section and a Commission staff rate expert establish that respondents transported returned empty carriers for malt beverage and empty containers and pallets without assessing any charge for these shipments and that the correct charges for the shipments should have been \$985.36 for 16 shipments listed in Exhibit No. 2; \$148.93 for 3 shipments listed in Exhibit No. 3; and \$92.00 for one shipment listed in Exhibit No. 4. In a letter marked Exhibit No. 7 respondents admitted violations described in Exhibits Nos. 2, 3 and 4. Exhibits Nos. 5 and 6 and the testimony of the Commission staff witnesses show that respondents used an

hourly rate without a previous written agreement as required, resulting in undercharges described in Exhibit No. 5 of \$97.24, and used rail rates in Exhibit No. 6 where consignor was not served by rail facilities, resulting in undercharges of \$38.07.

Respondent, Kiker, made a statement in behalf of respondents and admitted that the evidence of the staff witnesses and exhibits is correct, and that the undercharges set forth were made. Respondent, Kiker, stated that the undercharge errors established were not made with willful intent to violate the tariff, but were due to lack of knowledge of the correct rates, and that he has since informed himself as to the correct rates and procedures so that such errors will not occur in the future. Respondent, Kiker, further stated that the partnership will be dissolved and that Robert O. Kiker will continue in the business as an individual.

The name of Harry Mitchell, one of the respondents, was corrected to read Larry Mitchell.

After consideration the Commission finds that:

1. Respondents operate pursuant to Radial Highway Common Carrier Permit No. 19-57976, and City Carrier Permit No. 19-58412.
2. Respondents were served with the appropriate tariffs and distance table prior to the time the violations found herein occurred.
3. Respondents charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibits Nos. 2, 3, 4, 5, and 6, resulting in undercharges in the amount of \$1,361.60.

Based upon the foregoing findings of fact the Commission concludes that respondents violated Section 3667 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$1,361.60, and in addition thereto respondents should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$500.

The Commission expects that respondents 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 respondents and the results thereof. If there is reason to believe that respondents have not been diligent, or have not taken all reasonable measures to collect all undercharges, or have 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. Robert O. Kiker, Jimmie Day and Larry Mitchell, co-partners, doing business as DMK Trucking Co. shall pay a fine of \$1,861.60 to this Commission on or before the fortieth day after the effective date of this order.
2. Respondents 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. Respondents 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, respondents shall file with the Commission, on the first Monday of each month after the end of said sixty days, a report of the

