

ORIGINALDecision No. 72975

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
 motion into the operations, rates and)
 practices of LLOYD A. CANNON, doing)
 business as LLOYD CANNON TRUCKING. }

Case No. 8610
 (Filed March 21, 1967)

Handler, Baker & Greene, by Daniel
W. Baker, for respondent.
Elinore C. Morgan, Counsel, and E. H.
Hjelt, for the Commission staff.

O P I N I O N

By its order dated March 21, 1967, the Commission instituted an investigation into the rates, operations and practices of Lloyd A. Cannon, doing business as Lloyd Cannon Trucking.

Public hearing was held before Examiner Mooney on July 19, 1967, on which date the matter was submitted.

Respondent conducts operations pursuant to Radial Highway Common Carrier Permit No. 10-7473. Respondent has one terminal which is located at his home in Fresno. His gross operating revenue for the last three quarters of 1966 and the first quarter of 1967 was \$260,028. He was served with Minimum Rate Tariff No. 2 and Distance Table No. 5, together with all supplements and additions to each.

On various days during September 1966, a representative of the Commission's Field Section visited respondent's place of business and checked his records for the period January 1, 1966 through June 30, 1966. The representative testified that at the time of his investigation, respondent operated 10 trucks and tractors and 11 trailers and had 12 employees. He stated that during the review period respondent transported approximately 471 loads as a prime

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carrier and approximately 77 loads as a subhauler and that the transportation of lumber and related commodities accounted for almost 75 percent of respondent's business. The witness testified that his review disclosed rate violations by respondent on 60 lumber shipments. These, he explained, resulted from failure to pick up multiple lot shipments within the required time limit, assessing incorrect rates, nonassessment of off-rail charges and according split pickup on split delivery shipments. The representative testified that he made true and correct photostatic copies of the underlying documents relating to said shipments and that they are all included in Exhibits 1 and 2. Respondent stipulated to all off-rail information regarding various origins and destinations and to the pickup dates of component parts of multiple lot shipments referred to by the witness.

The representative testified that respondent had no subhaul bond on file with the Commission during the period March through June 1966. Exhibit 4 introduced by the witness includes photostatic copies of three canceled checks covering subhaul services performed by Erco Trucking for respondent during said period. He stated that no other subhaulers were used during this period and that respondent's wife had informed him that respondent was not aware that a subhaul bond was not in effect.

A rate expert from the Commission staff testified that he took the sets of documents in Exhibits 1 and 2 together with the supplemental information stipulated to by respondent and formulated Exhibits 5 through 13, which show the rate and charge assessed by respondent, the minimum rate and charge computed by the staff and the amount of undercharge for the transportation covered by each invoice and freight bill in Exhibits 1 and 2. He explained that a separate exhibit was prepared to cover the transportation performed

by respondent for each of the 9 shippers involved in Exhibits 1 and 2. Respondent stipulated that the staff ratings and undercharges in the total amount of \$5,113.11 set forth in Exhibits 5 through 13 are correct.

Respondent testified as follows: He started in the trucking business as a driver in 1946 and has been in no other business since; he personally maintains all of his equipment and supervises the operation; this requires 60 to 70 hours of his time each week and he normally works 7 days a week; the office work is performed by his wife who also takes care of their home and four children; he did not know that his subhaul bond was terminated in March 1966 when he changed insurance companies; as soon as this was brought to his attention he immediately obtained a new bond and filed it with the Commission; he has recently sold 2 units of equipment to allow more time for supervision; he is arranging to have a rate consultant service perform his billing and thereby avoid rate errors in the future; balance due bills have been issued for all of the undercharges in Exhibits 5 through 13 and approximately one-half have already been collected; the rate errors were unintentional, inadvertent mistakes.

The Commission takes official notice of two prior decisions involving rate violations by this respondent. Decision No. 62632 dated October 3, 1961, in Case No. 7099 suspended respondent's operating authority for a ten day period. Decision No. 66335 dated November 19, 1963, in Case No. 7673 imposed a \$5,000 fine on respondent.

After consideration, the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 10-7473.

2. Respondent was served with Minimum Rate Tariff No. 2 and Distance Table No. 5, together with all supplements and additions to each.

3. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibits 5 through 13, resulting in undercharges in the total amount of \$5,113.11.

4. Respondent has issued balance due bills for all undercharges in Exhibits 5 through 13 and has collected approximately one-half of said undercharges.

5. Respondent did not have a subhaul bond in effect during the period March through June 1966 and during said period did engage Erco Trucking as a subhauler in the instances set forth in Exhibit 4.

Based upon the foregoing findings of fact the Commission concludes that respondent violated Sections 3664, 3737 and 3575 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$5,113.11, and in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$2,000.00.

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 purpose of 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 \$7,113.11 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, 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

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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 29th day of AUGUST, 1967.

W. E. Mitchell
President
William W. Bennett
August
William J. Quinn
Fred P. McGinnessy
Commissioners