

ORIGINAL

Decision No. 73092

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the rates,
operations and practices of
VERNON L. SMITH, an individual.

Case No. 8615
(Filed March 28, 1967)

Adams and Lowder, by Adrian W.
Adams, for respondent.
Irven C. Ray, for National Ready
Mixed Concrete Co., and
George B. Shannon, for South-
western Portland Cement Co.,
interested parties.
Elmer Sjostrom, Counsel, and
J. B. Hannigan, 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 Vernon L. Smith, an individual.

A public hearing was held in Los Angeles on July 6, 1967, before Examiner DeWolf, to determine:

1. Whether respondent has violated the prohibition set out in Item 165 incorporated into Minimum Rate Tariff No. 10 by Decision No. 69557 by paying trailer rentals to National Ready Mixed Concrete Company exceeding 9 percent of the applicable charges for transportation performed in said trailer equipment.

2. Whether respondent should be ordered to collect from National Ready Mixed Concrete Company all excessive trailer rentals paid to it.

3. Whether respondent has violated Section 494 of the Public Utilities Code by charging, demanding, or collecting a lesser compensation for the transportation of property than the applicable rates and charges specified in Western Motor Tariff Bureau's Tariff No. 17, duly published and filed with the Commission.

4. Whether respondent should be ordered to collect from shippers or other persons or corporations liable for freight charges all undercharges which may be found to have been made in connection with the transportation performed by respondent.

5. Whether respondent should be ordered to cease and desist from any unlawful practices.

At all times concerned in this proceeding respondent held, and presently conducts operations pursuant to, Contract Carrier Permit No. 19-53949, dated January 17, 1961, amended July 12, 1966, and a certificate of public convenience and necessity to operate as a cement carrier pursuant to Commission Resolution 13821. Decision No. 69557, dated August 17, 1965, amends Minimum Rate Tariff No. 10 (Appendix A of Decision No. 44633 as amended) by attached Item 165, which provides for regulation of leasing practices and limits the charge for lease of trailer equipment to 9 percent of the charges applicable under minimum rates prescribed in the tariff.

Respondent owns one tractor and leases the trailers; he has no terminal and operates from his home at 16118 Lost Canyon Road, Saugus, California; he performs his own rating and office work, and employs no drivers.

Respondent's total gross revenue for the third quarter of 1966 was \$27,086.76. Copies of the appropriate tariffs and the distance table were served upon respondent.

On November 7, 1966, a representative of the Commission's Field Section visited respondent's place of business where he checked the respondent's records for the period from February 25, 1966, through November 4, 1966, and examined numerous shipping documents. Copies of the underlying documents relating to 36 shipments were made and submitted to the License and Compliance Branch of the Commission's Transportation Division (Exhibits Nos. 1 and 2). Based upon the data taken from said shipping documents two rate statements were prepared and introduced in evidence (Exhibits Nos. 4 and 5). Exhibit No. 5 reflects undercharges of \$20.24 concerning three shipments transported during the period of review of bulk cement and five sacks of cement from Victorville to Saugus, the rates charged being less than the applicable rates and charges specified in Western Motor Tariff Bureau's Tariff No. 17. Exhibit No. 4 contains 36 parts concerning shipments of bulk and sack cement, all but one to Saugus from Oro Grande, Mojave, and Victorville. Each part contains a description of the shipment, rate and charge assessed, tariff rate and charge,

trailer rental, maximum reasonable trailer rental, and the carrier overpayment, all during the period of review. A calculation of the total overpayment by respondent above the 9 percent allowed by Item 165 is the sum of \$3,850.71.

Exhibits Nos. 1, 2, 3, 4 and 5, and the testimony of a Commission rate expert and a representative of the Commission's Field Section establish that respondent transported cement and collected a lesser compensation for the transportation of said property than the applicable rates and charges specified in respondent's tariff in the amount of \$20.24 and that respondent violated the prohibition set out in Item 165 in Minimum Rate Tariff No. 10 by Decision No. 69557 by paying trailer rentals to National Ready Mixed Concrete Company exceeding 9 percent of the applicable charges for the transportation performed in said trailer equipment in the amount of \$3,850.71 during the period of this investigation.

One of these witnesses testified that copies of the checks, vouchers, and receipts contained in Exhibits Nos. 1 and 2, show the payment of said sums.

Exhibit No. 3 in evidence is a statement of respondent, Smith, describing the payments made by him to National Ready Mix for the trailer rental and a portion of said statement is as follows:

"Prior to October 9, 1965, I had been paying Mr. N. S. Rini, president of National Ready Mix, 35 percent of the total revenue from the transportation of cement for rental of the trailers owned by National.

"Subsequent to October 9, 1965, I paid Mr. N. S. Rini 9 percent of the total revenue up to January 1, 1966.

"At this time Mr. Rini had me pay the balance of the 35 percent retroactive to October 9, 1965. I continued paying 35 percent of the gross up to March 1, 1966, when the percentage paid to Mr. Rini was reduced to 30 percent. Since March 1, 1966, I have continued to pay Mr. Rini 30 percent of the gross revenue, from transportation of cement for rental of trailers owned by National Ready Mix."

No evidence was offered by the respondent or any party to refute the evidence introduced by the Commission staff. It is apparent that improper rebates were paid by Vernon L. Smith to N. S. Rini, thus enabling the shipper, National Ready Mixed Concrete Co., to obtain transportation of its cement at less than the applicable minimum rates.

The Commission staff recommended that Smith be fined in the amount of the undercharges and the amount of the overpayment of trailer rentals in the total sum of \$3,870.95, being the amounts set forth in Exhibits Nos. 4 and 5. No punitive fine was recommended.

After consideration of the evidence the Commission finds that:

1. Vernon L. Smith operates pursuant to Highway Contract Carrier Permit No. 19-53949 and a certificate of public convenience and necessity to operate as a cement carrier pursuant to Commission Resolution No. 13821.
2. Vernon L. Smith was served with the appropriate tariffs and distance table prior to the time the violations found herein occurred.

3. The staff rating of the transportation covered by Exhibits Nos. 1, 2 and 5 is correct and the amount of the undercharges, \$20.24, is correct.

4. The staff calculations of the carrier overpayments for trailer rental in Exhibit No. 4 are correct.

5. Vernon L. Smith paid for trailer rentals a sum exceeding 9 percent of the applicable charges for transportation performed in said trailer equipment in the amount of \$3,850.71.

Based upon the foregoing findings of fact, the Commission concludes that:

1. Vernon L. Smith violated Section 494 of the Public Utilities Code and Item 165 of Minimum Rate Tariff No. 10, in the particulars specified in Findings 3, 4 and 5 above set forth.

2. Vernon L. Smith should pay a fine in the amount of \$3,870.95.

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 either 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. Vernon L. Smith, an individual, shall pay a fine of \$3,870.95 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 and recover the overpayments 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 recover the overpayments and in the event undercharges and overpayments 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 and overpayments remaining to be collected and specifying the action taken to collect such undercharges, and the result of such action, until such undercharges and overpayments have been collected in full or until further order of the Commission.
4. Vernon L. Smith 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 or in any amount less than respondent's filed tariff rates.

5. Vernon L. Smith shall cease and desist from paying trailer rentals in excess of 9 percent of the transportation charges as found to be reasonable as a maximum amount in Decision No. 69557, Case No. 5440, dated August 17, 1965.

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 19th
day of SEPTEMBER, 1967.

[Signature]
President

[Signature]

[Signature]

[Signature]
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.