

ORIGINAL

Decision No. 73153

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates and practices of TRACEY L.  
AUST, an individual doing business  
as AUST TRUCKING.

Case No. 8599

Marshall A. Smith, Jr., for respondent.  
Donald M. Grant, Counsel, and J. B.  
Hannigan, for the Commission staff.

O P I N I O N

By its order dated March 7, 1967, the Commission instituted an investigation into the operations, rates and practices of Tracey L. Aust, an individual, doing business as Aust Trucking and hereinafter referred to as respondent.

A public hearing was held before Examiner Fraser on May 9, 1967, in Fresno, and the matter was submitted.

Respondent presently holds a radial highway common carrier permit. Respondent operated from a single terminal in Fresno and employed four drivers and a dispatcher. His operating equipment consisted of four trucks, seven semitrailers and seven full trailers and his gross operating revenue for the four quarters ending in June of 1966 was \$304,875. Copies of the appropriate tariffs and distance tables were served on the 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 from August 1, 1965 to January 31, 1966, inclusive. During said period the respondent transported between four and five hundred shipments. Documents covering 57 shipments

were copied and introduced in evidence as Exhibits 1, 2, 3, 4, 5, 6, 7 and 8. The staff presented evidence that respondent failed to apply correct rail commodity rates, failed to apply off-rail charges and stop-in-transit charges when applying rail commodity rates and failed to obtain written instructions from shippers prior to picking up split pickup or split delivery shipments.

The staff rate expert testified that undercharges in the amount of \$4,947.71 resulted as reflected by Exhibits 1A, 2A, 3A, 4A, 5A, 6A, 7A and 8A. Three staff witnesses testified that they visited various points of origin and destination on respondent's shipments and found several points "off rail" that had been rated as "on rail" by the respondent.

Respondent testified in mitigation that prior to August of 1965 he hauled grain; he started hauling lumber and employed a rate clerk who claimed to know all about lumber rates; he placed his trust in his rate man and did not realize there were violations until he received a copy of the order instituting investigation; he depended on his drivers and on information from the railroads to determine whether a point was on or off rail and such information was not always reliable, although it was the only way he could determine whether an individual shipper or consignee was on a rail spur, other than to visit each point of pickup and delivery, which would have been time-consuming and expensive; he has ceased operating and will not be transporting any more lumber; he prefers to transport grain but grain dealers now lease or own their own trucks.

A petition to intervene was filed on April 28, 1967 by Mohns Commercial Company of San Francisco, which alleged that the petitioner has been erroneously listed (Exhibit 8A) as the party

for whom respondent hauled one shipment (Freight Bill No. 15446, dated August 2, 1965), whereas the consignee and person responsible for the shipment was a Bob Davis of Corcoran, who purchased the items transported from the petitioner. Respondent testified that the undercharge of \$51.86 on Freight Bill No. 15446 is due from Bob Davis and that the facts in the petition are correct.

Staff counsel suggested a punitive fine of \$1,000 in addition to the amount of the undercharges. Respondent's representative made a closing statement to the effect that respondent has gone out of business and has sold all of his equipment; that respondent hired a rate expert in an effort to observe the tariff regulations; that the violations were beyond the power of respondent to control since he relied on his rate expert; and that he has no money to pay a fine since he has gone out of business. Respondent's representative further stated that the undercharges are proving difficult to collect. Aust was a respondent in a prior proceeding before this Commission, Case No. 8037, wherein Decision No. 69237 was filed on June 15, 1965. Said decision ordered the respondent to pay a fine of \$2,673.83 for minimum rate violations and to collect undercharges.

The Commission finds that:

1. Respondent operates pursuant to a radial highway common carrier permit.
2. Respondent was served with the appropriate tariffs and distance tables.
3. Respondent charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibits 1A, 2A, 3A, 4A, 5A, 6A, 7A and 8A, resulting in undercharges in the amount of \$4,947.71.

4. Bob Davis of Corcoran is the party for whom the transportation in Exhibit 8A was performed.

5. No punitive fine should be imposed as respondent has ceased doing business and his equipment has been sold.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 3664, 3776 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 \$4,947.71.

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.

ORDER

IT IS ORDERED that:

1. Respondent shall pay a fine of \$4,947.71 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 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 Los Angeles, California, this 3rd day of OCTOBER, 1967.

[Signature]  
President

[Signature]  
[Signature]  
Commissioners

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