

**ORIGINAL**

Decision No. 73531

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
own motion into the operations, )  
rates, and practices of FRED J. )  
WIEDMAN. )

Case No. 8714  
(Filed October 24, 1967)

Marshall A. Smith, Jr., for respondent.  
Janice E. Kerr, Counsel, and E. H. Hjelt,  
for the Commission staff.

O P I N I O N

By its order dated October 24, 1967, the Commission instituted an investigation into the operations, rates and practices of Fred J. Wiedman.

A public hearing was held before Examiner Mooney on November 16, 1967, at Fresno.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 10-8119. Respondent's office is located at his home in Fresno. He does not have a terminal. He operates two flat-bed trucks and trailers and employs one driver. An independent accountant does his bookkeeping. Respondent has no other employees. His gross operating revenue for the year ending June 30, 1967, was \$29,583. Copies of Minimum Rate Tariff No. 2 and Distance Table No. 5, together with all supplements and additions to each, were served upon respondent.

A representative of the Commission's Field Section testified that respondent had been directed by an undercharge letter, dated April 6, 1966, to review his records of transportation performed during the period May 1, 1965 and April 6, 1966, to collect all undercharges disclosed by said review and to furnish

the Commission with certain reports in connection therewith (Exhibit 4). He stated that on various days between May 22, 1967 and August 9, 1967, he conducted an investigation to determine whether respondent had billed and collected all undercharges that had occurred during the aforementioned review period. The witness asserted that his investigation disclosed that respondent had not collected apparent undercharges on 68 shipments. He stated that he made true and correct photostatic copies of the underlying documents from respondent's files relating to said shipments and that the copies are all included in Exhibit 1. He testified that he had personally observed the point of origin, which is the same for all shipments, and the various points of destination involved to determine whether they were served by rail facilities; that for those points not served by rail facilities, he measured the distance to the nearest public team track; and that said information is included in Exhibit 2.

A rate expert from the Commission staff testified that he took the set of documents in Exhibit 1 and the supplemental information in Exhibit 2 and formulated Exhibit 3, which shows for each of the 68 shipments the rate and charge assessed by respondent, the minimum rate and charge calculated by the witness and the amount of alleged undercharge.<sup>1/</sup> He asserted that the undercharges resulted from failure to assess sufficient line-haul and off-rail charges and one instance in which two shipments were combined as a split delivery shipment without the necessary documentation. The total amount of undercharges for the 68 shipments shown in Exhibit 3 is \$2,104.65.

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<sup>1/</sup> Exhibit 3 includes 70 parts. Parts 49 and 52 were stricken at the request of the Commission staff.

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The supervisor of the Commission's field office in Fresno testified that he communicated with respondent by telephone on April 17, 1966, and explained to him the provisions and directives set out in the April 6, 1966 undercharge letter. He explained that he had made follow-up contacts on various dates with respondent and a traffic consultant engaged by respondent to handle this matter for him. He stated that the traffic consultant had severed his relations with respondent on December 16, 1966. The witness asserted that subsequent thereto he had further correspondence with respondent and that his last contact with respondent was on April 2, 1967, at which time he emphasized to respondent the necessity of complying with the undercharge letter to avoid possible formal action by the Commission.

Respondent testified on his own behalf as follows: He has been in the trucking business since 1936; part of his time is spent driving one of his units of equipment; he obtained the rates he assessed for the transportation covered by Exhibit 3 from a traffic consultant three or four years ago and was not aware that the rates had changed prior to the performance of said transportation; he prepared his own billing at the time the transportation in issue moved; as to those instances in which he failed to assess off-rail charges, he had not been informed by his driver that the points involved were not served by rail facilities; the shipper for whom the transportation herein was performed prepared a bill of lading and master document, when necessary, for all shipments; he signed all of the documents prepared by the shipper but was not furnished with a copy thereof; after receipt of the undercharge letter, he issued balance due bills to the shipper and has subsequently thereto requested payment as evidenced by his letter dated April 22, 1967, in Exhibit 4; the shipper has ignored all of his demands for payment;

he did not realize that he was required to take legal action if necessary to obtain payment; it was his understanding that the Commission would see to it that the shipper paid the undercharges; for all transportation subsequent to the undercharge letter, he has assessed the correct minimum rates; he ceased hauling for the involved shipper in August or September 1966; he now confines his operations to subhauling for other carriers; it was never his intent to violate any rate, rule, regulation or directive of the Commission; he did not understand fully the requirements of the undercharge letter; he has now engaged a traffic consultant to make all collections required by the undercharge letter and has authorized the consultant to engage legal counsel if necessary to accomplish this.

In closing, counsel for the Commission staff recommended that respondent be fined in the amount of the undercharges found herein and that, in addition thereto, a punitive fine of \$500 be imposed on him. In answer thereto, the representative of respondent argued that respondent did not fully understand the directives set out in the undercharge letter; that arrangements have now been made to collect all undercharges as required by said letter without further delay; that the trucking business is respondent's sole livelihood; that the facts and circumstances herein do not warrant the imposition of any fines on respondent; and that steps have been taken to assure that rate errors will not occur in the future.

Based on a review of the record, we will impose a fine in the amount of the undercharges found herein and an additional punitive fine of \$150 on respondent. In arriving at the punitive fine, we have taken into account the fact that respondent did bill the shipper for undercharges that occurred during the review period set out in the undercharge letter and that he did subsequent thereto

request the shipper to make payment. However, this certainly does not exonerate him for his failure to diligently pursue all reasonable measures, including legal action if necessary, to collect the undercharges.

After consideration, the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 10-8119.

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 was directed by an undercharge letter, dated April 6, 1966, to review his records for all transportation performed during the period May 1, 1965 through April 6, 1966, to collect all undercharges noted in the letter and those disclosed by said review and to furnish the Commission with certain reports in connection therewith.

4. Respondent did review his transportation records for the time period set forth in the April 6, 1966 undercharge letter and issued balance due bills for the undercharges noted in said letter and those disclosed by his review. None of the undercharges have been collected.

5. The record includes no documentary evidence to support respondent's contention that the master document required by Item 170 of Minimum Rate Tariff No. 2 for split delivery shipments was prepared by the shipper and signed by him for the two deliveries covered by Parts 12 and 13 of Exhibit 3. In the absence of a copy of the alleged master document, if one does exist, there is no way for the Commission to determine whether it included all of the information required to be shown thereon by said tariff rule or whether it was

timely issued. In the circumstances, we concur with the staff that each of the deliveries covered by Parts 12 and 13 must be rated as a separate shipment.

6. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Parts 1 through 48, 50, 51 and 53 through 70 of Exhibit 3, resulting in undercharges in the total amount of \$2,104.65. The transportation covered by said parts of Exhibit 3 was performed during the period of time covered by the review period set out in the undercharge letter referred to in Finding 3.

7. It is the duty of respondent to observe minimum rates and to diligently comply with directives to collect undercharges. We will not accept the excuses offered by respondent herein for his failure to do so. This obligation is personal to respondent and may not be shifted to anyone else. Any errors or omissions of an employee or agent of respondent in obtaining information necessary to rate a shipment are imputed to respondent and he will be held accountable therefor.

Based upon the foregoing findings of fact the Commission concludes that respondent violated Sections 3664 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 \$2,104.65, and in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$150.

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 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:

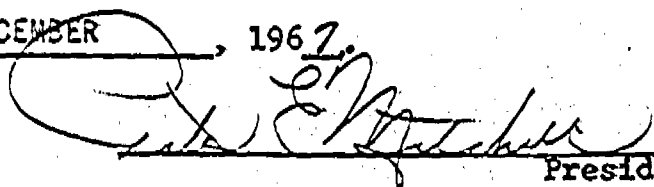
1. Respondent shall pay a fine of \$2,254.65 to this Commission on or before the fortieth day after the effective date of this order.
2. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein, and shall notify the Commission 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


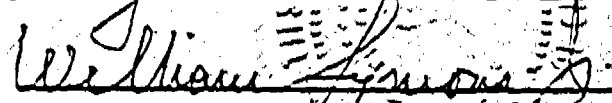
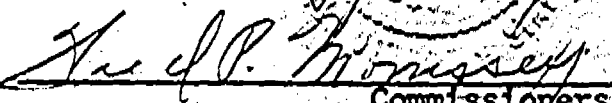
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any service in connection therewith in a lesser amount than the minimum rates and charges prescribed by this Commission.

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  
27th day of DECEMBER, 1967.

  
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President

  
  
  
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Commissioners

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