

**ORIGINAL**

Decision No. 73532

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, charges, and practices of Joseph Schmid.

Case No. 8665

Joseph Schmid, in propria persona, for the respondent.  
J. B. Hannigan, for the Commission staff.

O P I N I O N

By its order dated August 8, 1967, the Commission instituted an investigation into the operations, rates and practices of Joseph Schmid, an individual, hereinafter called respondent.

A public hearing was held before Examiner Fraser on September 26, 1967, in Los Angeles, and the matter was submitted.

Respondent presently holds a radial highway common carrier and a city carrier permit. He has one 18-foot refrigerated-box truck and drives it himself out of his home. He has no permanent employees and no terminal. His gross operating revenue for the four quarters ending in June of 1967 was \$41,685. Copies of the appropriate tariffs and distance tables were served on the respondent.

A representative of the Commission's Field Section visited the respondent and checked all of respondent's records for the period from April 22, 1966 to March 16, 1967. The representative examined the records of respondent's principal shipper for the same period. The latter records included shipping documents on 80 loads hauled free by respondent. The representative found no documents or records on the free loads in the respondent's office. The shipper documents

covering the 80 free loads were copied with the shipper's permission and placed in evidence as Exhibit 1. The shipper's plant manager testified and authenticated all the documents in Exhibit 1.

The staff rate expert testified that undercharges in the amount of \$1,619.54 resulted from the failure to assess or collect any rate on the 80 shipments included in Exhibit 2, which was placed in evidence. The respondent admitted that the free loads were hauled as alleged by the staff and that the shipper would have paid for the transportation if billed.

Respondent testified in mitigation that the shipper involved allowed the respondent to park his truck in the shipper's lot without charge and to use the latter's facilities to make minor repairs and perform necessary maintenance on the truck. The staff recommended that a \$500.00 punitive fine be imposed, in addition to the amount of the undercharges.

It is evident that respondent transported property without charge for approximately one year. Respondent also failed to keep a record of the free loads. This constitutes a deliberate unlawful activity coupled with a continuing intent to deceive and justifies the imposition of a severe penalty. In mitigation, however, we must consider the fact that respondent is a very small operator without the funds to pay a large fine and that the free loads were probably hauled in a desperate attempt to retain sufficient business to survive. A \$250.00 punitive fine will be imposed and respondent is hereby warned that a severe penalty will be imposed if he is found to have transported free loads in any further Commission investigation in which he may become involved.

The Commission finds that:

1. Respondent operates pursuant to radial highway common carrier and city carrier permits.
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 Exhibit 2, resulting in undercharges in the amount of \$1,619.54.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 3664, 3667, 3668 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 \$1,619.54, and in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$250.00.

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 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. Respondent shall pay a fine of \$1,869.54 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 San Francisco, California, this 27<sup>th</sup> day of DECEMBER, 1967.

[Signature]  
President

[Signature]

[Signature]

[Signature]  
Commissioners

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