

**ORIGINAL**

Decision No. 74363

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 )  
SHIRLEY ROBERTSON, dba SHIRLEY )  
ROBERTSON TRUCKING and CAL-SAC )  
LUMBER SALES, INC. )

Case No. 8759

Marshall Smith, Jr., for respondent  
Shirley Robertson.  
John C. Gilman, Counsel, and Edward  
H. Hjelt, for the Commission staff.

O P I N I O N

By its order dated January 30, 1968, the Commission instituted an investigation into the operations, rates and practices of Shirley Robertson, doing business as Shirley Robertson Trucking, and Cal-Sac Lumber Sales, Inc.

A public hearing was held before Examiner Fraser on March 6, 1968, at Fresno, and the matter was submitted.

Respondent Robertson was operating as a radial highway common carrier at the time the transportation referred to herein was performed. He had a terminal in Chowchilla, California. He operated 18 tractors, 3 trucks, 16 semitrailers and 21 full trailers and employed about 30 people. He is not operating now and has no equipment. His gross revenue for the year 1967 was \$555,231. Copies of the appropriate tariffs and distance tables were served on the respondent.

A Commission representative visited respondent Robertson in August of 1967 and checked his records for the period from April 1, 1967 through July 15, 1967, inclusive. During said period respondent Robertson transported 250 shipments of lumber. The underlying

documents relating to 72 shipments were taken from respondent Robertson's files and photocopied. Said photocopies were submitted to the Rate Analysis Unit of the Commission's Transportation Division. Based upon the data taken from the photocopies rate studies were prepared and introduced in evidence as Exhibits 2 and 3. These exhibits reflect purported undercharges in the amount of \$3,941.09.

A staff rate expert testified that Exhibit 2 covers two lumber shipments respondent Robertson hauled for Forest Products Marketing, Inc. He stated he found undercharges of \$147.16 in Exhibit 2. He further testified that Exhibit 3 is concerned with 70 shipments of lumber respondent Robertson hauled for Cal-Sac Lumber Sales, Inc., one of the respondents herein. He testified the undercharges on the Cal-Sac shipments total \$3,793.93. The witness further testified that almost all of the undercharges result from an apparent failure to assess the off-rail surcharge for points of origin - or destination - which are not located on a railhead. Information as to whether a specific origin or destination was located on a railhead was developed by testimony from a staff witness who had visited the premises served (Exhibit 1).

Respondent Robertson testified as follows: The undercharges occurred due to circumstances beyond his control. His rateman-bookkeeper quit his job in March or April of 1967 without notice. The bookkeeper was later convicted and imprisoned for embezzling \$185,000 from respondent's trucking company over a period of twelve years. As soon as he realized the rate man was not returning, he advertised for another rate man, and tried to send his son where the latter could obtain some quick instruction. Neither effort was effective. Experienced rate men will not usually work in a small town for a small trucker, and no one was interested in his offer of

employment. His son was not able to obtain the necessary training and experience in the time available, but had to rate all shipments anyway since he was the best qualified. Mistakes and undercharges were inevitable and did occur. They were unintentional and inadvertent. The situation was complicated by most of respondent Robertson's business being the hauling of commodities not subject to the minimum rates and the buying and selling of hay. His last hauling was performed in January or February of 1968. He is now out of the trucking business because a bank and other creditors repossessed some equipment and required him to return other items to the sellers. He is not sure what he will do in the future; it depends on how his financial problems are resolved. These problems result from the embezzlement he suffered. His son holds operating authorities and also has some of his trucks. None of his operating permits are in suspension as yet, and he still has his Board of Equalization Permit. A representative (manager) of Cal-Sac Lumber Sales, Inc. was present at the hearing but did not file an appearance or take any part in the proceedings.

Staff counsel recommended a fine of all undercharges plus a punitive fine of \$2,000. Counsel emphasized that respondent Robertson had been in the trucking business over twenty years and should have been familiar with the comparative simplicity of rating lumber. He noted that almost all lumber has to be transported from sawmill to wholesaler and a shipper who pays less for transportation has an economic advantage when the lumber is sold. Respondent Robertson's representative emphasized that the respondent is without funds and under obligation to many creditors.

Respondent Robertson has had many years of experience and should have known who to contact to obtain the necessary rating.

information. To condone these undercharges because there may be hardship will encourage others to disregard minimum rate regulation. A punitive fine of \$500 is justified.

The Commission finds that:

1. Respondent Robertson operates pursuant to a radial highway common carrier permit.
2. Respondent Robertson was served with the appropriate tariffs and distance tables.
3. Respondent Robertson charged less than the lawfully prescribed minimum rate in the instances set forth in Exhibits 2 and 3, resulting in undercharges in the amount of \$3,941.09.

Based upon the foregoing findings of fact, the Commission concludes that respondent Robertson violated Sections 3664, 3667, 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 \$3,941.09, and in addition thereto respondent Robertson should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$500.00.

The Commission expects that respondent Robertson 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 Robertson and the results thereof. If there is reason to believe that either respondent Robertson 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 the purpose of determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Respondent Robertson shall pay a fine of \$4,441.09 to this Commission on or before the fortieth day after the effective date of this order.

2. Respondent Robertson 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 Robertson 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 Robertson 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 Robertson 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 respondents. The effective date of this order shall be twenty days after the completion of such service upon respondent Robertson.

Dated at San Francisco, California, this 9<sup>th</sup> day of JULY, 1968.

William J. Brown  
President

John E. Mitchell

William B. Bennett

Augusta

Paul P. Monahan  
Commissioners