

Decision No. 75358

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of PRINCETON
EQUIPMENT CO., INC., a corporation. }

Case No. 8807
(Filed May 21, 1968)

John C. Clark of Wilson Jones, Morton & Lynch, for
respondent.
Elinore C. Morgan, Counsel, William Figg-Hoblyn,
Counsel, and E. E. Cahoon, for the Commission
staff.

O P I N I O N

By its order dated May 21, 1968, the Commission instituted an investigation into the operations, rates and practices of Princeton Equipment Co., Inc.

Public hearings were held before Examiner O'Leary at San Francisco on September 11, 1968 (at which time the matter was called and adjourned without receipt of evidence) and January 8, 1969. The matter was submitted on the latter date subject to the filing of late-filed Exhibit 7. The exhibit has been filed and the matter is now ready for decision. ✓

It was stipulated that respondent was served with Minimum Rate Tariff No. 7 and all supplements thereto; that respondent operates pursuant to Radial Highway Common Carrier Permit No. 41-2107; that respondent also held City Carrier Permit No. 41-2108 and that respondent received an undercharge letter dated May 3, 1967, wherein respondent was directed to collect undercharges aggregating \$325.97 from the same shipper involved in this proceeding, which undercharges resulted from alleged violations of Minimum Rate Tariff No. 7.

Respondent's office and terminal are located at San Carlos. It operates 24 tractors and 50 trailers; 12 of the tractors and 8 of the trailers are owned, the remainder are leased. It employs 12 drivers, one office girl and two maintenance men. The persons who drive the leased tractors are engaged as subhaulers. Respondent's quarterly reports filed with the Commission disclose a gross revenue of \$2,041,266, for the four quarters ending September 30, 1968.

On January 2, 1968 two transportation representatives of the Commission's Field Section appeared at respondent's office and conversed with its president and its secretary-treasurer. During the conversation the representatives were informed by the president and the secretary-treasurer that all billings for services and payments to subhaulers were based upon an hourly rate. During the evening of January 3, 1968 one of the transportation representatives received a telephone call from respondent's secretary-treasurer who informed him that the "Redwood Shores" job was billed on a basis of \$12 per load rather than an hourly rate as he previously stated. On January 4, 1968 the president of respondent informed both transportation representatives that the charges were based upon a rate of \$12 per load. The president further stated to the representatives that the office girl had been instructed to adjust the hours shown on the freight bills so that the charges would equal \$12 times the number of loads transported. The formula used to accomplish this was to multiply the number of loads by \$12 and divide the resultant product by the applicable hourly rate of \$15.58.

During the visit to respondent's office the representatives made photostat copies of 184 freight bills which cover 1,846 loads transported during October and November 1967 on the "Redwood

Shores" job. The photostats were received in evidence as Exhibits 1 and 2. The representatives also made photostat copies of the Division of Highways' daily record of platform scale weights which were received in evidence as Exhibits 3 and 4. The documents contained in Exhibits 3 and 4 show the time each truck passed over the scales at the point of loading. Since the hours shown on the freight bills contained in Exhibits 1 and 2 were fictitious the representatives reconstructed the hours worked utilizing the times shown in Exhibits 3 and 4. The reconstructed times were arrived at by computing the elapsed time from the time each truck first passed over the scale to the time each truck last passed over the scale; to that was added 50 minutes, which figure was the estimate of the time it took to complete a round trip. This increment was added because Item 300 of Minimum Rate Tariff No. 7 provides that time shall be computed from the time reporting for work to start of last trip plus double the running time of the last trip plus unloading time of last load. The president of respondent advised the transportation representatives that the average running time one way was 25 minutes. One of the representatives followed some of the trucks and found that the least time it took a truck to make the haul one way was 28 minutes. In addition the representatives allowed a deduction of 30 minutes for lunch unless it appeared that no lunch period was taken. The reconstructed times accompany each of the freight bills in Exhibits 1 and 2.

A rate expert from the Commission's Rate Analysis Unit testified that he took the information contained in Exhibits 1 and 2 and compiled Exhibit 5 which is a summary of the data contained in Exhibits 1 and 2, together with his opinion of the minimum rates applicable to each of the loads transported. The exhibit discloses

undercharges totaling \$2,946.92 for the 184 freight bills contained in Exhibits 1 and 2. The loads covered by 42 of the freight bills contained in Exhibits 1 and 2 were transported in respondent's equipment; the loads covered by the remainder of the freight bills were transported by subhaulers. The undercharges attributable to loads transported in respondent's equipment total \$523.82.

The secretary-treasurer of respondent testified that respondent's net earnings for 1967 totaled \$716 and for the first nine months of 1968 were \$30,000. A copy of respondent's State of California Corporation Franchise Tax Return for the year 1967 which was received in evidence as Exhibit 6 confirms the testimony concerning the 1967 earnings. The secretary-treasurer further testified that the charges for the first three days of the "Redwood Shores" job were computed by use of the applicable hourly rate and that it was determined that a rate of \$12 per load would be the equivalent of the hourly rate. He further testified that the per load basis was used because many times subhaulers will not show on their freight bills the time their equipment is broken down in the hope that they will get paid for such time if the overlying carrier does not realize they were broken down. He further testified that his company had received a check from L. C. Smith in the amount of the undercharges (\$2,946.92) and that checks had been drawn to pay the subhaulers their portion of the undercharges. As of the date of hearing the check from L. C. Smith had not been negotiated nor had the checks been tendered to the subhaulers. Exhibit 7 is a recap of the payments to the subhaulers. It discloses that of the \$2,946.92 paid by L. C. Smith, respondent is to retain only \$523.82. The

secretary-treasurer also testified that in the future respondent will abide by the tariff.

The staff recommended that respondent collect the undercharges, remit to the subhaulers the amounts due them and remit the remainder to the Commission as payment of a fine as provided by Section 3800 of the Public Utilities Code and, additionally, that a fine in the amount of \$1,500 be imposed pursuant to Section 3774 of the Public Utilities Code.

At the hearings that led to Decision No. 69567 a member of the staff testified concerning difficulties encountered in enforcing the provisions in Minimum Rate Tariff No. 7. One of the major difficulties described was use of fictitious hours arrived at by conversion. In that decision we stated, "The Commission can impose fines or suspensions for known falsification of shipping documents to obtain transportation at less than the minimum rates, without a determination of the exact amount of undercharges existing on the transaction. The Commission recognizes the seriousness of these types of violations and will institute a policy of punishing violators by the imposition of heavy fines or suspensions." 64 Cal.P.U.C. 689, 703 (1965). The violation in the instant case is no less serious merely because the staff was able to compute the undercharges.

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 41-2107.
2. Respondent was served with Minimum Rate Tariff No. 7.
3. Respondent assessed charges for the transportation covered by Exhibits 1 and 2 at the rate of \$12 per load.

4. Minimum Rate Tariff No. 7 does not contain any provision permitting the assessment of charges on a per load basis.

5. The hours shown on the documents contained in Exhibits 1 and 2 were not the actual hours worked but were arrived at by a conversion formula.

6. The reconstructed time computed by the staff is the minimum time the equipment could have operated to perform the transportation covered by Exhibits 1 and 2.

7. Respondent charged less than the lawfully prescribed minimum rates for the transportation covered by Exhibits 1 and 2, resulting in undercharges in the amount of \$2,946.92.

8. Respondent has received a check from L. C. Smith in payment of the undercharges but the check had not been negotiated as of the date of hearing in this matter.

9. Respondent has prepared checks in the amount of \$2,423.10 to pay the subhaulers but the checks had not been tendered to the subhaulers as of the date of hearing in this matter.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Sections 3664, 3668 and 3737 of the Public Utilities Code, should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$523.82 and in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$1,500.

O R D E R

IT IS ORDERED that:

1. Respondent shall pay a fine of \$2,023.82 to this Commission on or before the twentieth day after the effective date of this order.

2. Within twenty days after the effective date of this order, respondent shall notify the Commission in writing that it has negotiated the check from L. C. Smith in payment of the under-charges and has tendered the payments set forth in Exhibit 7.

3. 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 25th
day of FEBRUARY, 1969.

William J. Lyons - Jr.
President

Augustine

Frank P. Monrosey

W. H. Hain

John Hain
Commissioners