

ORIGINAL

Decision No. 75965

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
rates and practices of AUGUST H.)
CARPI, dba Gus Carpi, relating to)
the transportation of property by)
motor vehicle over the highways)
of the State of California.)

Case No. 7571
Filed November 4, 1968

Darius F. Johnson, for applicant.
Graham A. Ritchie, for C. C. Stafford
Milling & Warehouse Co., Inc.,
interested party.
Leonard L. Snaider, Counsel, and
George Kataoka, for the Commission
staff.

O P I N I O N

Decision No. 66067, dated September 24, 1963, in Case No. 7571, found and concluded that respondent August H. Carpi violated Sections 3664, 3667 and 3668 of the Public Utilities Code, assessed a fine of \$3,000 and ordered respondent to collect undercharges.

A petition for a writ of review of said decision was filed with the Supreme Court of this State and was denied on March 11, 1964. By Decision No. 67507, dated July 14, 1964, the Commission denied the petition of respondent to modify Decision No. 66067. The fine of \$3,000 was paid in full and respondent examined his books and filed suit to collect undercharges in compliance with the decision.

By Decision No. 75023, dated December 3, 1968, the Commission reopened this proceeding for the limited purpose of considering whether to amend ordering paragraphs 5 and 6, and to examine the propriety of any settlement reached between respondent and the C. C. Stafford Milling Warehouse Co., Inc.

A public hearing was held before Examiner DeWolf in Los Angeles on June 11, 1969, and the matter was submitted on the same date.

The parties stipulated to receipt of Exhibits 1, 2 and 3 in evidence, and these show the proposed settlement between the parties. Exhibit 1 is a satisfaction of judgment in Superior Court Case No. 854162; Exhibit 2 is a copy of request for entry of dismissal of Superior Court Case No. 835998; and Exhibit 3 is a copy of proposed settlement agreement between respondent and C. C. Stafford Milling & Warehouse Co., Inc.

The record and correspondence in Case No. 7571 show that respondent, in addition to payment of the fine of \$3,000, has made sincere and substantial effort to comply with the other provisions of Decision No. 66067. Respondent testified that the allegations of his petition are true and that he desired to settle the matter in accordance with the terms of the proposed settlement agreement in Exhibits 1, 2 and 3. The evidence shows that the litigation, which respondent began pursuant to Decision No. 66067 for collection of the undercharges, has been unsuccessful through no fault of respondent; that as a result thereof the respondent has suffered severe economic losses; that respondent does not have funds to prosecute the actions; that the outcome is uncertain and further pursuit of the litigation by him is inadvisable and unlikely to result in a favorable decision. The settlement agreement provides that Stafford will satisfy the judgment against respondent in Superior Court Case No. 854162, Exhibit 1; that Superior Court Case No. 835998 will be dismissed by respondent and Stafford, the cross complainant; that Stafford will assume all responsibility for the claims against respondent for attorneys' fees and will pay to respondent the sum of \$500. All parties stipulated and agreed to the settlement.

The Commission staff joined in the stipulation and approved the agreement for settlement of the litigation and for

discontinuance of further action to collect undercharges ordered by Decision No. 66067.

After consideration the Commission finds that:

1. August H. Carpi has paid the fine of \$3,000 imposed by Decision No. 66067.

2. Respondent Carpi has taken substantial and reasonable action to comply with the other provisions of Decision No. 66067, although such litigation has not been successful.

3. The settlement of the parties proposed herein is reasonable.

4. No useful purpose would be served by further prosecution of the action to collect the undercharges.

Based upon the foregoing findings of fact, the Commission concludes that it does not object to the proposed settlement of the action.

O R D E R

IT IS ORDERED that the reopened proceeding is discontinued.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 29th day of JULY, 1969.

William J. ...
President

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Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.