

ORIGINAL

Decision No. 77020

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 JOE COSTA)
 TRUCKING, a California corporation;)
 CAPITOL PLYWOOD, a California corpo-)
 ration; EDWARD J. TOMICH, doing)
 business as TOMICH LUMBER CO.;)
 GRANVILLE A. WAY, doing business as)
 G. A. WAY LUMBER CO.; TED OLIVER'S,)
 INC., a California corporation, doing)
 business as TED OLIVER & SONS; DOUD)
 LUMBER CO., a California corporation;)
 ARCHIE F. JOHNSON, doing business as)
 J & S STAKES; DOUGLAS H. CALDWELL,)
 doing business as CALDWELL LUMBER)
 CO.; JOHN PRINE, JR., doing business)
 as SAWMILL SALES; OVERHEAD DOOR CO.)
 OF ARCATA, a California corporation;)
 and MISSION FENCE SUPPLY CO., INC., a)
 California corporation.

Case No. 8956

Bertram John Gilbert, for Joe Costa Trucking,
 respondent.

William J. McNertney, Counsel and E. H. Hjelt,
 for the Commission staff.

O P I N I O N

By its order dated August 26, 1969, the Commission instituted an investigation into the rates and practices of Joe Costa Trucking, a California corporation and the shippers listed above.

Public hearing was held before Examiner Fraser on November 4, 1969 at Eureka. The matter was submitted on November 17, 1969 on receipt of a late filed exhibit.

The staff evidence referred to transportation performed by respondent from May 1 to July 31, 1968, inclusive. Staff witnesses testified and documentary evidence was placed in the record. Respondent provided additional information on two freight bills which were

included by the staff in a late filed exhibit, with an amended rate on each and lower undercharges.

Respondent contested only two of the alleged violations presented by the staff. On one count respondent advised that the instructions from the shipper were presented prior to pickup as required by the tariff and then were misplaced prior to the staff investigation. Respondent was required to and was able to provide a copy of the instructions as a late filed exhibit. A staff investigation subsequent to the hearing confirmed the claim of respondent that Joe Costa Trucking delivered to an "on rail" destination on another freight bill, rather than the usual "off rail" delivery point used by the consignee. These freight bills were rated again in a late filed exhibit with all doubts resolved in favor of respondent.

Respondent has a terminal at Korblex with a dispatcher, two office personnel, three mechanics and fifteen drivers. It operates ten tractors, ten semi-flat bed trailers, twelve full flat bed trailers and six semi-vans. Gross operating revenue for the four quarters from the third quarter of 1968 through the third quarter of 1969 is \$944,203.00.

Staff counsel advised that Joe Costa Trucking has been a respondent in three prior Commission investigations. Case No. 5866 resulted in Decision No. 56046, dated January 7, 1958, which suspended respondent's operating rights for five days. Decision No. 60499, dated August 2, 1960, in Case No. 6431, suspended respondent's operating authorities for eleven days; respondent was fined \$3,500 by Decision No. 69085, dated May 18, 1965, in Case No. 7978. He noted that all of the investigations involved the same type of violations. He recommended a punitive fine of \$3,500 in addition to a fine equal to the sum of the undercharges collected by respondent.

Findings of Fact

1. Respondent operates pursuant to radial highway common carrier, highway contract carrier and cement contract carrier permits.
2. Respondent was served with the appropriate tariff and supplements thereto.
3. Respondent has neglected to assess the off-rail charge on certain shipments in violation of Item No. 210 of Minimum Rate Tariff No. 2.
4. Respondent has performed split pickup and multiple lot shipments, along with split pickup and split delivery on the same shipment, without having obtained written instructions from the shipper prior to or at the time of the initial pickup and performed split pickup and split delivery on the same shipment in violation of Items 85, 160 and 161 of Minimum Rate Tariff No. 2.
5. Respondent has assessed a flat rate on a per load basis in violation of Item 257 of Minimum Rate Tariff No. 2.
6. Respondent did not have available all the required shipping documents listing the necessary instructions and rating information in violation of Items 85, 160, 161 and 255 of Minimum Rate Tariff No. 2.
7. Respondent has extended credit to shippers for periods in excess of seven days in violation of Item 250-A of Minimum Rate Tariff No. 2.
8. Respondent charged less than the lawfully prescribed minimum rate in the instances as set forth in the exhibits herein in the amount of \$3,776.14.

Respondent has been formally before the Commission on three previous occasions for rate violations and sanctions were imposed each time. Considering the violation history and the circumstances of this case, a punitive fine of \$2,000 appears appropriate, in addition to a fine in the amount of the undercharges found herein.

Based upon the foregoing findings of fact, the Commission concludes that respondent Joe Costa Trucking has 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 \$3,766.14 and in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$2,000.

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 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 Joe Costa Trucking shall pay a fine of \$5,776.14 to this Commission on or before the fortieth day after the effective date of this order.
2. Respondent Joe Costa Trucking 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 Joe Costa Trucking 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 Joe Costa Trucking 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 Joe Costa Trucking 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 Joe Costa Trucking. The effective date of this order, as to this respondent, shall be twenty days after completion of personal service. The Secretary is further directed to cause service by mail of this order to be made upon all other respondents. The effective date of this order, as to these respondents, shall be twenty days after completion of service by mail.

Dated at San Francisco, California, this 31st
day of MARCH, 1970.

William J. Spence, Jr.
President
George J. ...
J. P. ...
...
Vernon L. ...
Commissioners