

Decision No. 77515

ORIGINAL

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 H. K. CARSON, an individual doing business as SUMMIT LINES; and RALPH E. STOETZL, ROLLINE STOETZL, and RALPH L. STOETZL, as individuals and co-partners doing business as VALLEY WHOLESALE BUILDING MATERIALS CO., a partnership.

Case No. 9024

O P I N I O N

By its order dated February 17, 1970, the Commission instituted an investigation into the operations, rates and practices of H. K. Carson, doing business as Summit Lines, for the purpose of determining whether the respondent has violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code by charging, demanding or receiving a lesser compensation for transportation and services than that established by the Commission in Minimum Rate Tariff No. 2. The shipper involved in these transactions, Valley Wholesale Building Materials Co. (Valley Wholesale), was also named as a respondent.

A duly noticed public hearing was held before Examiner Foley on March 17, 1970, in Fresno. The matter was heard and submitted.

Respondent operates as a radial highway common carrier under Radial Highway Common Carrier File No. T-78222. It was shown that respondent was served and received the appropriate Commission tariffs.

Respondent Carson operates eight tractors and eight sets of trailers. He employs six drivers and one mechanic, while the rating and office work are done by himself and his wife. During the year

ending September 30, 1969, his gross revenue was \$248,758. Respondent has had one prior undercharge letter from the Commission pursuant to which he collected \$938.46.

In late 1969 a representative of the Commission's field section initiated a review of respondent Carson's records for the period from January 1, 1969 through April 30, 1969.

Copies of the underlying documents relating to shipments under thirteen master bills of lading were made and forwarded to the Commission's Transportation Division (Exhibit No. 1). The item shipped was solid asphalt. The consignee for all the shipments was respondent Valley Wholesale. A rate study was prepared and introduced in evidence (Exhibit No. 3). It reflects alleged undercharges of \$3,913.98.

The exhibits and testimony of the staff witnesses indicate several different types of violations, including (1) incorrect use of rail rates under MRT-2, (2) use of mixed shipment rates when they were not applicable, (3) failure to provide the weight on the shipping documents, and (4) falsification and alteration of shipping documents regarding the points of destination in cooperation with respondent Valley Wholesale to obtain transportation below the minimum rates. The staff witnesses testified as to the correct rating procedures which should have been applied, and have explained these procedures to the respondents. The staff recommends that respondent Carson be required to collect the undercharges involved herein and to pay a fine in the same amount. The staff further recommends that a punitive fine of \$1,500 be ordered, and that a cease and desist order be issued.

Respondent Carson stated that failure to conform to the tariff provisions resulted from the fact that his operations are conducted primarily by telephone. He denied any intentional falsification

of freight bills. The staff's un rebutted testimony shows, however, that out of the 34 shipments there were 21 different consignee signatures. Upon further investigation it was determined that these signatures were those of Valley Wholesale's customers, and that these shipments had been delivered elsewhere than to Valley Wholesale in Madera. Furthermore, in seven of these shipments the destination point had been crossed out and false information inserted.

Respondent Stoetzl stated that the rail rate utilized for the shipments was correct. The staff's evidence shows that this particular rate is inapplicable to the shipments involved herein because the weight requirement was not met, and the multiple lot shipment rules had not been utilized properly. Finally, it was shown by the staff that another rate relied upon by respondents was cancelled as of February 18, 1969 (Tr. 74).

After consideration the Commission makes the following findings of fact:

1. Respondent H. K. Carson, doing business as Summit Lines, operates under the permit issued by this Commission as previously stated.
2. Respondent Carson was served with the appropriate tariffs and distance tables.
3. Respondent Carson charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit No. 3, resulting in undercharges in the amount of \$3,913.98.
4. Respondent Carson has inserted false information on documents involving seven shipments and has delivered shipments elsewhere than the designated point of destination.
5. Respondent Carson has failed to maintain proper records regarding his operations.

Based upon the foregoing findings of fact the Commission concludes that respondent Carson violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code and should be fined pursuant to Section 3800 of the Public Utilities Code, in the amount of \$3,913.98. In addition, a fine, pursuant to Section 3774 of the Public Utilities Code should be assessed against respondent Carson in the amount of \$900.00.

The Commission expects that respondent Carson 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 its 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. Homer K. Carson, the respondent carrier herein, shall pay a fine of \$4,813.98 to this Commission on or before the twentieth day after the effective date of this order.
2. Respondent Carson 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 law and the regulations of this Commission.

3. Respondent Carson 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.

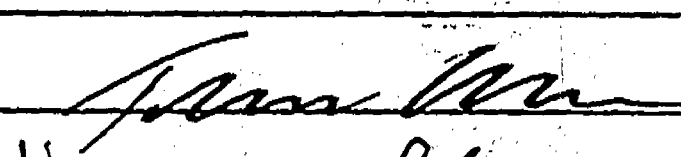
4. Respondent Carson shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges, and in the event undercharges ordered to be collected by paragraph 3 of this order, or any part of such undercharges, remain uncollected one hundred twenty days after the effective date of this order, respondent Carson shall institute legal proceedings to effect collection and shall file with the Commission, on the first Monday of each month thereafter, a report of the undercharges remaining to be collected and 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.

The Secretary of the Commission is directed to cause personal service of this order to be made upon the respondents. The effective date of this order as to each respondent shall be twenty days after the completion of such service on such respondent.

Dated at San Francisco, California, this 21st day of JULY, 1970.



Chairman



Commissioners

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner William Simons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.