

Decision No. 79797**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation )  
 on the Commission's Own Motion into )  
 the Operations, Rates, Charges and )  
 Practices of HAROLD W. SIMMONS, dba )  
 SIMMONS TRUCKING, and GEORGIA-PACIFIC )  
 CORPORATION, a corporation. )

Case No. 9256  
 (Filed August 10, 1971)

Robert C. Dunn, Attorney at Law, for  
 Simmons Trucking, and  
R. C. Dedekan, Attorney at Law, for  
 Georgia-Pacific Corporation,  
 respondents.  
G. Raymond Dougherty, Attorney at Law,  
 and Edward Hjelt, for the Commission  
 staff.

O P I N I O N

This is an investigation on the Commission's own motion into the rates, operations and practices of Harold W. Simmons, doing business as Simmons Trucking (Simmons), for the purpose of determining whether said respondent violated Sections 3664 and 3737 of the Public Utilities Code by charging and collecting less than applicable minimum rates in connection with for-hire transportation performed for Georgia-Pacific Corporation (G-P).

Public hearing was held before Examiner Mooney in Eureka on November 10, 1971, and the matter was submitted subject to the receipt of a late filed exhibit from G-P who informed the Commission on December 8, 1971 that it had decided not to file a late exhibit.

Stipulations

All parties stipulated to the following, and we find them to be facts:

1. Simmons operates pursuant to radial highway common carrier and highway contract carrier permits.

2. Two representatives of the Commission staff visited the office of Simmons at various times during the period October 1970 through February 1971 and reviewed his records covering the transportation of lumber products and prepared asphalt roofing for G-P during the period March through October 1970.

3. During the period covered by the staff investigation, Simmons had a terminal in Arcata; employed four drivers, one mechanic and two office personnel; operated two flat bed trucks, two tractors and seven flat bed trailers; and had all applicable minimum rate tariffs and distance tables, together with all supplements and additions thereto.

4. The gross operating revenue of Simmons for the year 1970 was \$360,020 and for the first half of 1971 was \$216,836.

5. With the exceptions of Parts 40 and 41 of the staff Exhibit 4, which includes 41 parts, Simmons charged less than the prescribed minimum rates and charges for the transportation summarized therein. The total of the undercharges shown in Parts 1 through 39 is \$3,922.28. They resulted from assessing a flat rate per load, without regard for the applicable minimum rate and charge; improperly consolidating separate shipments as split pickup or delivery shipments; failure to assess off-rail charges; and assessing incorrect rates.

#### Discussion

Late filed Exhibit 5 filed by the staff on November 23, 1971 revised its rating of Part 40 of Exhibit 4. Said part covers the transportation of a shipment of plywood from Samoa to Napa and Berkeley. According to the revised rating, Simmons had assessed the correct alternative rail rate for said transportation but had failed to apply applicable out-of-line and stop-in-transit charges. The resulting undercharge for revised Part 40 shown in said Exhibit 5 is \$44.52.

With respect to Part 41 of Exhibit 4, the attorney for Simmons alleged that due to a clerical error, an incorrect date was

shown on the master document for the transportation covered by said part; that the documentation for said shipment was in fact issued in accordance with the applicable tariff rules; and that the rate and charge assessed by Simmons for said transportation was correct. We will give Simmons the benefit of the doubt and accept said explanation.

Simmons testified that he had not heretofore been a respondent in a formal investigation by the Commission. With respect to the flat charge assessed for the transportation covered by Parts 1 through 36 of Exhibit 4, he stated that he was initially of the opinion that he was performing said transportation as a subhauler but later found out that this was not the case and that he was the prime carrier for said transportation. He explained that for the transportation covered by Parts 37 and 38 of said exhibit, it was his understanding that the commodity shipped was rolled tar paper, whereas, it was actually prepared asphalt roofing, and based on this misunderstanding, he applied the lower rate applicable to tar paper. He testified that he was not aware that Citizens Lumber Co., Selma, the destination of the shipment covered by Part 39 of Exhibit 4, was not served by rail facilities and had, therefore, failed to assess the applicable off-rail charge at destination for said shipment.

The staff has heretofore issued several undercharge letters to Simmons and has on several occasions placed him on notice for tariff and rate violations.

Staff counsel recommended that Simmons be directed to collect the undercharges shown in Exhibit 4 as revised by Exhibit 5; that a fine in the amount of said undercharges plus a punitive fine of \$1,500 be imposed on said respondent; and that Simmons be directed to cease and desist from further violations of the Commission's tariffs.

The attorney for Simmons argued that there was no intent or design by Simmons to undercharge and that the facts and circumstances herein do not warrant the imposition of a punitive fine.

With the exception of the amount of the punitive fine suggested by the staff, we concur with the staff recommendations. As to the amount of the punitive fine, we are of the opinion, based on a review of the record, that a punitive fine in the amount of \$750 should be imposed on Simmons.

The Commission finds that:

1. Simmons operates pursuant to radial highway common carrier and highway contract carrier permits.

2. Said respondent was served with all applicable minimum rate tariffs and distance tables, together with all supplements and additions to each.

3. The rates and charges computed by the staff in Parts 1 through 39 of Exhibit 4 and Revised Part 40 of Late Filed Exhibit 5 are correct.

4. The record herein does not establish with certainty whether there is an undercharge in connection with the transportation covered by Part 41 of Exhibit 4.

5. Simmons charged less than the lawfully prescribed minimum rates in the instances set forth in Parts 1 through 39 of Exhibit 4 and Revised Part 40 of Late Filed Exhibit 5 in the total amount of \$3,966.80.

The Commission concludes that:

1. Simmons violated Sections 3664 and 3737 of the Public Utilities Code.

2. Said respondent should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$3,966.80, and in addition thereto, said respondent should pay a fine pursuant to Section 3774 of said Code in the amount of \$750.

3. Said respondent should be directed to cease and desist from charging less than applicable minimum rates and charges.

The Commission expects that Simmons 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 said respondent and the results thereof. If there is reason to believe that either said 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. Harold W. Simmons, doing business as Simmons Trucking, shall pay a fine of \$4,716.80 to this Commission on or before the fortieth day after the effective date of this order.

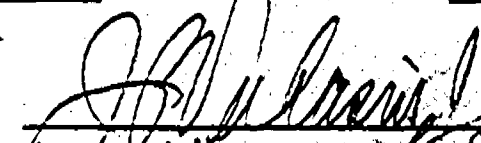
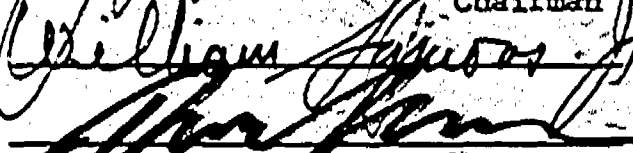
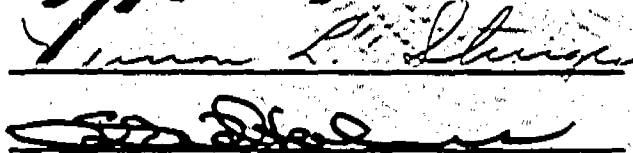
2. Said respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein, and shall notify the Commission in writing upon the consummation of such collections.

3. Said respondent 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, said respondent 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. Said 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 Harold W. Simmons. 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 Georgia-Pacific Corporation. The effective date of this order, as to the latter respondent, shall be twenty days after completion of service by mail.

Dated at San Francisco, California, this 14th  
day of MARCH, 1972.

  
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Chairman  
  
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John R. Stinson  
  
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Commissioners