

ORIGINAL

Decision No. 88557 MAR 7 1978

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 Don Chapin, Jr.
 Coast Counties Canning Company.

OII No. 7
 (Filed November 29, 1977)

Don Chapin, Jr., for himself, respondent.
William Jennings, Attorney at Law, and Kenneth
 Henderson, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the operations, rates, charges, and practices of Don Chapin, Jr. (Chapin), for the purpose of determining whether Chapin charged less than applicable minimum rates in connection with transportation performed for Coast Counties Canning Company (Coast).

Public hearing was held January 5, 1978 at San Francisco at which time the matter was submitted.

Respondent Chapin operates pursuant to a radial highway common carrier permit issued May 20, 1975. Chapin has a dump truck carrier permit also issued May 20, 1975 which is not involved in this investigation. At the time the transportation was performed, Chapin operated one tractor and four trailers.

The staff evidence discloses that between October 13, 1976 and November 19, 1976 respondent transported 30 shipments of canned goods from Watsonville to various points in central and southern California at rates less than the minimum rates set forth in Minimum Rate Tariff 2, resulting in undercharges totaling \$1,792.56. The evidence also disclosed and Chapin admitted that charges were based on an improper unit of measurement. Exhibit 2 sponsored by staff

witness Dale W. Wilkins sets forth the rate and charge assessed by respondent, the minimum rate and charge, and the resultant undercharge for each of the 30 shipments.

Chapin presented no evidence. He testified that the assessed rates were based on those of his predecessor and that until apprised by the staff of the correct rates he was of the opinion the assessed rates were correct. Chapin stated that he agreed with the staff determination of the correct rates and resultant undercharges as shown in Exhibit 2, but did not believe Coast should be responsible for payment of the undercharges because all shipments were truckload quantities and could have been shipped on a master bill with split deliveries resulting in less charges.

Finally, Chapin stated that he has made application to the Commission to transfer his radial highway common carrier permit and is no longer operating as a radial highway common carrier.

The staff recommended that Chapin be ordered to collect the undercharges, pay a fine in the amount of the undercharges pursuant to Section 3800 of the Public Utilities Code, and be assessed a fine of "up to \$300" pursuant to Section 3774 of the Public Utilities Code.

As to the undercharges, it is well settled that a carrier has the duty to ascertain the applicable rates to be assessed and to collect the resulting charges for the transportation performed and that lack of knowledge or expertise in assessing rates is not an acceptable excuse. Chapin acknowledged the staff determination of the correct rates. Section 3800 of the Public Utilities Code provides in part that whenever the Commission, after hearing, finds that a highway permit carrier has charged less than the minimum rates and charges for the transportation of property, the Commission shall require such carrier to collect the undercharges involved.

With respect to the staff recommendation of a punitive fine we believe the offense warrants the assessment of a punitive fine in the amount of \$200.

Findings

1. Between October 13, 1976 and November 19, 1976 respondent operated pursuant to a radial highway common carrier permit.
2. Between October 13, 1976 and November 19, 1976 respondent transported 30 shipments of canned goods for Coast at rates less than the minimum rates set forth in Minimum Rate Tariff 2 resulting in undercharges in the amount of \$1,792.56.
3. Chapin no longer operates as a radial highway common carrier.

Conclusions

1. Chapin has violated Sections 3664, 3667, 3668, 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 \$1,792.56 and a fine in the amount of \$200 pursuant to Section 3774 of the Public Utilities Code.

2. Chapin should be ordered to collect the undercharges from Coast.

The Commission expects that Don Chapin, Jr., will proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges including, if necessary, the timely filing of complaints pursuant to Section 3671 of the Public Utilities Code. The staff of the Commission will make a subsequent field investigation into such measures. If there is reason to believe that Don Chapin, Jr., 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 determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Don Chapin, Jr., shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$1,792.56 on or before the fortieth day after the effective date of this order. ✓

2. Don Chapin, Jr., shall pay a fine of \$200 to this Commission pursuant to Public Utilities Code Section 3774 payable on or before the fortieth day after the effective date of this order. Don Chapin, Jr., shall pay interest at the rate of seven percent per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent. ✓

3. Don Chapin, Jr., shall take such action, including legal action instituted within the time prescribed by Section 3671 of the Public Utilities Code, as may be necessary to collect the undercharges set forth in Finding 2 and shall notify the Commission in writing upon collection.

4. Don Chapin, Jr., shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. In the event the undercharges ordered to be collected by paragraph 3 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, respondent shall file with the Commission, on the first Monday of each month after the end of the ✓

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.

5. Don Chapin, Jr., 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 Executive Director of the Commission shall cause personal service of this order to be made upon respondent Don Chapin, Jr., and cause service by mail of this order to be made upon all other respondents. The effective date of this order as to each respondent shall be thirty days after completion of service on the respondent.

Dated at San Francisco, California, this 7th
day of MARCH, 1978.

Robert Baker
President
William G. Brown, Jr.
Victor J. Spurgeon
Joseph D. Harkle
Charles D. Deibel
Commissioners