

Decision No. 34666

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation )  
 on the Commission's own motion, into )  
 the operations, rates, charges, con- ) Case No. 4577  
 tracts and practices, of AMERICAN )  
 PRODUCTS, INC., a corporation. )

J. C. Evenson, for respondent

Harold W. Dill, for Truck & Warehouse Association  
of San Diego and Imperial Count-  
ies, interested party.

BY THE COMMISSION:

O P I N I O N

This proceeding is an investigation on the Commission's own motion involving transportation services performed by respondent between San Diego, on the one hand, and La Mesa and Carlsbad, California, on the other hand.<sup>1</sup> The scope of the investigation is to determine whether or not transportation services were performed in violation of any of the provisions of the rates, rules and regulations contained in the Commission's Decision No. 31606, and of the Highway Carriers' Act (Stats. 1935, Chap. 223, as amended).

Public hearing was held at San Diego on June 5, 1941, before Examiner Cameron, evidence was received, the matter was submitted, and the same is now ready for decision.

The Highway Carriers' Act and the Commission's said decision<sup>2</sup> provide in effect that all radial highway common carriers and contract carriers shall assess and collect rates upon a unit of measurement as provided in said decision and

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1 Transportation services rendered by respondent on September 13, October 25, and November 10, 1939, and January 31, 1940.

2 Decision No. 31606, Case No. 4246, paragraph 7 of order, and Appendix "D" thereof (Highway Carrier's Tariff No. 2).

that estimated weights may be used only when scales or other means of ascertaining actual weights are not available.

The material facts developed during the hearing are admitted and may be briefly stated as follows: American Products, Inc. is and for several years has been engaged in a building material business in San Diego, California. In conjunction with said business respondent operates several for-hire trucks, chiefly in the delivery of lumber to its customers, who pay the transportation charges. Respondent uses a uniform plan in assessing transportation charges and in preparing freight bills. The four shipments investigated, involved the transportation of lumber. The method of preparing shipping documents and assessing charges was the same for each shipment. The practice adopted may be illustrated by the following example:

Respondent issued a freight bill and shipping order to Walters & Tweed Bros. Planing Mill, La Mesa, California, dated October 25, 1939.<sup>3</sup> The freight bill and shipping order is a printed form. When issued there was typed in the blank spaces provided therefor certain information showing the nature of the transportation service and the charges. In addition to other statements, there is printed on said bill the words "description of commodity," "footage," "rate," and "charges." Under these terms, respectively, were typed the words "handling and hauling of redwood lbr," "5674," "2 01," and "11 40." A witness testifying on behalf of respondent stated that \$11.40 was the total charge collected for this shipment; that the transportation charge was figured at \$1.49 per 1,000 board feet, and at 52¢ per 1,000 board feet for handling charges. The work for which the handling charge was made covered the labor costs of removing the lumber from a railroad car. The \$1.49 per 1,000 board feet

was determined by estimating the weight of 1,000 board feet of lumber at 3300 pounds. There was no evidence as to the actual weight of any of the shipments, in fact, the evidence clearly established that none of said shipments was weighed.

Public scales are located on or near Market Street at 2nd, 7th, and 15th Avenues, in San Diego. The scales at 15th Avenue and Market Street were available to the public each week day, Monday through Saturday, from seven o'clock A. M. to five-thirty o'clock P.M. The 7th Avenue and Market Street scales were open to the public twenty-four hours daily, seven days a week. The 2nd Avenue and Market Street scales were open to the public seven days a week from seven o'clock A.M. to eight o'clock P.M. The latter scales, because of their size, required more time for weighing shipments. All of said scales are within a radius of from one-half mile to three-fourths of a mile from respondent's place of business. The 7th Avenue and Market Street scales were closed from October 15 to November 25, 1939. It is apparent that scales were available to respondent at all times. It was maintained on behalf of respondent that the scales were not used because of traffic conditions in the vicinity of said scales and the delay of approximately fifteen minutes required for weighing shipments; that respondent had seven trucks transporting lumber, and to weigh each shipment would necessitate a considerable loss of time and increase the transportation costs. Evidence as to traffic congestion on the days said shipments were transported by respondent is entirely lacking.

The evidence shows that respondent was served with notices of all hearings conducted by the Commission in reference to the establishment of minimum rates, rules and regulations relative to the transportation of lumber and other commodities and was also served with certified copies of the Commission's decisions

and orders. The witness testifying upon behalf of respondent was President of the corporation and was personally familiar with the provisions of the Commission's rate orders. It is apparent that respondent adopted a practice of using estimated weights when scales were actually available, in violation of the Highway Carriers' Act and the Commission's said decision.

An order of the Commission directing the suspension of an operating right and directing an illegal practice to cease and desist is in its effect not unlike an injunction by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a party is adjudged guilty of contempt, a fine may be imposed in the amount of \$500.00, or he may be imprisoned for five (5) days or both.

C.C.P. Sec. 1218;  
Motor Freight Terminal Co. v. Eray, 37 C.R.C. 224;  
Re Ball & Hayes, 37 C.R.C. 407;  
Wermuth v. Stamper, 36 C.R.C. 458;  
Pioneer Express Company v. Yeller, 33 C.R.C. 571.

It should also be noted that under Section 14 of the Highway Carriers' Act (Stats. 1935, Chap. 223, as amended), one who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding \$500.00 or by imprisonment in the county jail not exceeding three (3) months, or by both such fine and imprisonment.

Upon full consideration of all the facts, it is hereby found that respondent issued to the shipper for the transportation of lumber on September 13, 1939, October 25, 1939, November 10, 1939, and January 31, 1940, a shipping document which did not contain the information as required in and by the thirteenth ordering paragraph of Decision No. 31606, or which was not substantially in the form prescribed by Appendix "C" of said decision.

It is further found that respondent assessed rates and charges on a unit of measurement other than that required by said Decision No. 31606, on the dates enumerated in the foregoing paragraph hereof.

It is further found that respondent charged, assessed and collected rates for the transportation services hereinabove set out on weights other than the actual weight of each shipment, in violation of said Decision No. 31606 and said Highway Carriers' Act.

#### O R D E R

Public hearing having been held herein, evidence having been received, the matter having been submitted and the Commission now being fully advised in the premises,

IT IS ORDERED that respondent, American Products Inc., a corporation, shall immediately cease and desist from receiving shipments for transportation as a highway carrier, as the term "highway carrier" is defined in Section 1(f) of the Highway Carriers' Act (Stats. 1935, Chap. 223, as amended) of any property described in Decision No. 31606, between any of the points therein specified, in violation of said decision, and particularly Appendix "C" and the thirteenth ordering paragraph thereof and said Highway Carriers' Act.

IT IS FURTHER ORDERED that in all other respects the Order Instituting Investigation herein is dismissed.

IT IS FURTHER ORDERED that the Secretary of the Railroad Commission shall cause a certified copy of this decision to be served upon said respondent.

IT IS FURTHER ORDERED that for all other purposes the effective date of this order shall be twenty (20) days from and

after the service hereof upon said respondent.

Dated at San Francisco, California, this 14<sup>th</sup> day of  
October, 1941.

W. B. Clark  
David King  
Justice J. Gallahan  
Francis J. Havenue  
Richard L. ...

COMMISSIONERS