

ORIGINAL

Decision No. 44096

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Investigation into)
the operations, rates and practices)
of AMERICAN STEVEDORE CO.)

Case No. 5112

Frank Loughran and Willard S. Johnson, for Respondents.
J. T. Phelps for Transportation Department Public Utilities
Commission.

O P I N I O N

This proceeding was instituted upon the Commission's own motion, by the service of an order of investigation upon respondent, in order to determine whether (1) respondent has violated Sections 10, 12 (a) and 13-5/8 of the Highway Carriers' Act; (2) respondent's operating authority or any part thereof should be cancelled, revoked or suspended; (3) respondent should be ordered to collect any or all undercharges for shipments transported by it; (4) respondents should be ordered to cease and desist from assessing and collecting less than the minimum rates and from issuing shipping documents in form other than prescribed by the Commission. The order recites that respondent, holder of Radial Highway Common Carrier Permit No. 38-1714, Highway Contract Carrier Permit No. 38-1715 and City Carrier Permit No. 38-1716, appears to have failed, during the period October, November, December, 1948, and January, 1949, to set forth on freight bills and shipping documents information and to assess and collect the minimum charges required by Highway Carriers' Tariff No. 2.

Public hearings were held in San Francisco on October 24, 1949, October 25, 1949, and January 16, 1950, before Examiner R. K. Hunter and the matter submitted for decision.

Respondent has been engaged in transporting lumber for some time past, operates 50 pieces of equipment and employs forty-five persons. It was stipulated that Highway Carriers' Tariff No. 2 and supplements thereto were received by respondent.

A document introduced into evidence as Exhibit 2 analyzed 27 of the 438 intercity shipments of lumber and lumber products handled by respondent during October 1, 1948, to January 31, 1949, inclusive. This exhibit set forth 27 alleged violations of the prescribed minimum rates; 9 of which were eliminated by subsequent amendment. Further, evidence presented by respondent demonstrated that of the 18 alleged violations then remaining, three were not established. Exhibit 2 also showed 5 types of required data were omitted from the freight bills involved. Failure (a) to show weight of the shipment, the kind of lumber and whether green or seasoned, (b) to properly describe the commodity (c) to show whether additional charge was assessed for each component of a split delivery shipment (d) to show exact point of origin and (e) to show rate assessed, occurred 22, 8, 1, 1, and 1 times respectively.

The vice president and general manager of respondent rated the shipments with billing routine handled by office personnel. He testified he was never informed that respondent was not complying with the Commission's rules and was unaware of any deficiencies in his rating practices until service of the investigating order on August 29, 1949. He stated that one of the rates charged on certain shipments on which undercharges occurred was based on information received from the Commission's staff. The witness further stated that MacDonald Lumber Company, the consignee in 6 of the shipping documents shown on Exhibit 2, is held in common ownership with respondent, that he regarded these transactions as transferring

money from one pocket to another and therefore he did not exercise the same degree of care in rating such shipments. He further testified the respondent always has attempted to comply with the tariff rules and regulations of the Commission.

The record in this proceeding shows that respondent has assessed and collected lower transportation charges than prescribed by the Commission as minima for the services performed and that there were deficiencies in the data supplied on the freight bills involved.

We find that in assessing and collecting less than the prescribed minimum charges and in failing to keep shipping documents showing all required information as prescribed by the Commission in Highway Carriers' Tariff No. 2, respondent violated Sections 10, 12(a) and 13-5/8 of the Highway Carriers' Act.

Respondent will be directed to collect or take appropriate action to collect within 10 days after the effective date of the order, the lawful charges on the shipments described in the appendix attached hereto. A copy of this decision will be served upon each of the shippers and consignees listed in such appendix. In this connection, attention is called to the provisions of the Highway Carriers' Act with respect to penalties for violations thereof and for aiding and abetting carriers in such violations.

Evidence as to respondent's operations pursuant to its highway contract carrier's permit was not offered herein and therefore we make no finding with reference thereto.

While respondent's infractions of the Commission's rules and regulations warrant a short suspension of its radial permit,

we have concluded, on the basis of the entire record, that outright suspension should not be invoked at this time. Instead, respondent should be given an opportunity to demonstrate that it will comply with applicable statutes and with outstanding orders of the Commission. Accordingly, the order to follow, although imposing a ten-day suspension of the radial permit will also provide that such suspension be stayed until December 31, 1950 unless the Commission, prior to that date, reopens the proceeding and, after notice to respondent and an opportunity to be heard, for good cause deems imposition of the suspension appropriate. Otherwise, the proceeding will terminate on December 31, 1950.

O R D E R

Public hearings having been had in the above-entitled proceeding, evidence having been received and duly considered, the Commission now being fully advised and basing its order upon the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED:

(1) That Radial Highway Common Carrier Permit No. 38-1714, held by American Stevedore Co., respondent herein, be and it is hereby suspended for a period of 10 consecutive days; provided, however, that such suspension shall not become effective unless and until, on or before December 31, 1950, the Commission shall have reopened this proceeding upon receipt of further evidence, and thereafter, upon notice to respondent and an opportunity to be heard, shall otherwise order.

(2) That American Stevedore Co. be and it is hereby ordered within 10 days after the effective date of this order (1)

A P P E N D I X

Shipments Transported by Respondent, Amount of Charges
Collected and Amount of Charges Based on Prescribed Minimum Rates

Freight Bill					
<u>No.</u>	<u>Date</u>	<u>Consignor</u>	<u>Consignee</u>	<u>Collected</u>	<u>Applicable Minimum Charges</u>
3810	1948 Oct 1	Thayer Mill San Jose	MacDonald Lumber Co. San Jose	84.30	88.52
3817	Oct 4	Wendling Nathan Andersonia Lumber Co. Piercy	Marley Co. Stockton	129.37	134.18
3830	Oct 5	(Same as 3817)	(Same as 3817)	140.49	142.80
3839	Oct 7	El Dorado Mill and Lumber Georgetown	MacDonald Lumber Co. San Jose	111.65	115.50
3874	Oct 18	(Same as 3817)	Foley and Boetcher San Mateo	132.55	143.47
3923	Oct 22	American Sawmill Co. Cloverdale	MacDonald Lumber Co. San Jose	90.00	98.40
4052	Nov 10	Andersonia Mill Piercy	Marley Co. Stockton	94.88	120.77
4097	Nov 30	Trinity River Lumber Co. Hoopa	Lacey & White Sacramento	439.84	568.49
4123	Dec 10	Sound Lumber Co. Arcata	MacDonald Lumber Co. San Jose	135.77	140.40
4124	Dec 13	(Same as 4123)	Frazer & Johnson San Francisco	147.16	166.67
4149	Dec 18	MacDonald Lumber Co. San Jose	Tony Lucas Hollister	30.33	43.86

<u>No.</u>	<u>Date</u>	<u>Consignor</u>	<u>Consignee</u>	<u>Collected</u>	<u>Applicable Minimum Charges</u>
4172	Dec 28	Coastal Timber American Sawmill Cloverdale	MacDonald Lumber Co. San Jose	67.50	78.00
4218	<u>1949</u> Jan 12	Coast Pacific Lumber Co. Eureka	Frank Borman San Francisco	121.21	124.95
4249	Jan 26	(Same as 4218)	MacDonald Lumber Co. San Jose	134.42	140.40
4280	Jan 31	Coastal Plywood and Lumber Co. Cloverdale	MacDonald Lumber Co. San Jose	66.25	78.00

to assess and collect or take appropriate action to collect, on the shipments specified in the appendix annexed hereto, the difference between (a) the amounts collected and (b) those which would result from applying the contemporaneous rates or charges provided for in the Commission's Highway Carriers' Tariff No. 2, as amended, and (c) to notify the Commission in writing upon the consummation of said collections.

The Secretary is directed to cause a certified copy of this decision to be served, either personally or by registered mail, upon the respondent and upon each of the shippers and consignees listed in the appendix attached to this order.

The effective date of this order shall be 20 days after the date of such service.

Dated at San Francisco, California, this 25th day of April, 1950.

R. E. Zimmerman
Justice J. Calver
Wm. H. Powell
Harold A. Kule
Kenneth Pettit
Commissioners