

Decision No. 55022

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,)
 rates, and practices of GALEN Q.) Case No. 5870
 STONG, doing business as WHITEY)
 STONG TRUCKING.)

W. D. Allison, for respondent.
James L. Bostwick, for Hasty Transportation
 Service, interested party.
Martin J. Porter, for Commission staff.

O P I N I O N

On January 8, 1957, the Commission issued its order instituting an investigation into the operations, rates and practices of Galen Q. Stong, doing business as Whitey Stong Trucking. The purpose of the investigation was to determine whether respondent violated various sections of the Public Utilities Code by charging less than the applicable minimum rates for the transportation of property and whether respondent failed to keep certain accounts, records, and memoranda pertaining to the movement of certain traffic. The respondent holds permits issued by this Commission authorizing him to operate as a radial highway common carrier and as a city carrier.

A public hearing was held on February 26, 1957, at Santa Maria before Examiner William L. Cole at which time the matter was submitted.

The following sections of the Public Utilities Code are the sections pertinent to the matters involved in this investigation:

"3664. It is unlawful for any highway permit carrier to charge or collect any lesser rate than the minimum rate or greater rate than the maximum rate established by the Commission under this article."

"3665. The Commission shall make such rules as are necessary to the application and enforcement of the rates established or approved pursuant to this chapter."

"3703. The Commission may prescribe the forms of any accounts, records, and memoranda, including those pertaining to the movement of traffic and the receipt or expenditure of money, to be kept by highway permit carriers, and the length of time the accounts, records, and memoranda shall be preserved."

"3774. The Commission may cancel, revoke, or suspend the operating permit or permits of any highway carrier upon any of the following grounds:

.....

(b) The violation of any of the provisions of this chapter, or of any operating permit issued thereunder.

(c) The violation of any order, decision, rule, regulation, direction, demand, or requirement by the Commission pursuant to this chapter.

....."

At the time of the hearing in addition to the testimony of various witnesses, certain documents were introduced into evidence. Included among these documents were shipping documents, freight bills, and certified weighmaster's certificates with respect to six shipments of lumber handled by respondent. A representative of the field section of the Commission staff who conducted

the investigation of the respondent's records, testified at the time of the hearing that he examined the respondent's books for the period from July 1, 1956, to September 15, 1956; that he examined approximately 1500 freight bills issued during this period and that the six shipments in question were representative shipments pertaining to respondent's lumber operation. The facts indicated by the documents introduced into evidence together with those facts determined by the testimony show that violations of the Commission's Minimum Rate Tariff No. 2 occurred with respect to each of these six shipments. The types of violations shown are similar with respect to each of the six shipments.

With respect to these shipments the evidence indicates, and the Commission hereby finds, the facts set forth in the following table:

*Identi- fication Letter	Invoice No.	Invoice Date	**Point of Origin	**Point of Desti- nation	#Weight of Ship- ment	##Charges Assessed by Respondent
A	Not Shown	7/31/56	Eee River Lbr. Co.	Pac.Coast Lbr. Co.	42,180	\$ 262.34
B	Not Shown	8/ 1/56	Eee River Lbr. Co.	Pac.Coast Lbr. Co.	44,700	301.10
C	15418	8/13/56	Englewood Lbr. Co.	Tamarac Estates	46,320	280.85
D	Not Shown	7/31/56	Englewood Lbr. Co.	Tamarac Estates	46,160	274.69
E	15358	8/ 3/56	Englewood Lbr. Co.	Tamarac Estates	46,940	275.73
F	15357	7/31/56	Englewood Lbr. Co.	Downey	46,240	279.87

* For convenience the shipments indicated by the various invoices have been given an identification letter.

** Precise Points of Origin and Destination are as follows:^{1/}

See River Lumber Co. - 11 miles from team track at Southfork.
Englewood Lumber Co. - 5 $\frac{1}{2}$ miles from team track at Southfork.
Pacific Coast Lumber Co. - $\frac{1}{2}$ mile from team track at Santa
Barbara.

Tamarac Estates - 2 miles from Ventura County R.R. at Oxnard.
Downey - 3 $\frac{1}{2}$ miles from spur track at Downey.

Weight of shipments is in pounds.

These charges are exclusive of the transportation tax.

^{1/} The precise points of origin and destination for each of the six shipments were determined by means of notations set forth on the shipping documents. With respect to the shipment identified by the letter B, the notation on the shipping document indicated that the precise point of origin was a given number of miles from the team track at Southfork, however, the precise number of miles could not be ascertained from the notation.

With respect to the shipment identified with the letter D, the notation on the shipping document indicated "on Ventura County R.R." This notation differed from the notations on the shipping documents of the other two shipments whose points of destination were Tamarac Estates.

In addition to the foregoing facts, the evidence indicates, and the Commission hereby finds, that the rate used by the respondent in assessing the transportation charge on the shipment identified by the letter F, was \$16.50 per thousand board feet of lumber and that the rate used by the respondent in assessing the transportation charges with respect to the other five shipments was \$16.00 per thousand board feet of lumber.

The correct minimum charge for the transportation of each of the six shipments in question is determined from Items 210-D and 690-H of the Commission's Minimum Rate Tariff No. 2 and Supplement No. 30 to that tariff.

With respect to the six shipments in question, the lowest minimum charge for transportation results from the combination of rail rates with the rates set forth in Tariff No. 2. The authority for combining rates in such a manner is obtained from Item 210-D of Tariff No. 2, which provides in part:

"When lower aggregate charges result, rates provided in this tariff may be used in combination with common carrier rates, except rates of coastwise common carriers by vessel, for the same transportation as follows:

"(c) When both point of origin and point of destination are located beyond railhead or an established depot, add to the common carrier rate applying between any railheads or established depots the rate provided in this tariff for the distance from point of origin to the team track or depot from which the common carrier rate used applies, plus the rate provided in this tariff for the distance from the team track or depot to which the common carrier rate used applies to point of destination. (See Notes 1, 2 and 3).

"Note 1. - If the route from point of origin to the team track or the established depot, or from the team track or established depot to point of destination, is within the corporate limits of a single incorporated city, the rates provided in this tariff for transportation for distances of 3 miles or less, or rates established for transportation by carriers as defined in the City Carriers' Act, whichever are the lower, shall apply from point of origin to team track or established depot or

"from team track or established depot to point of destination as the case may be; except that if the route from team track or established depot is within the limits of the Los Angeles Drayage Area (see Item No. 30 series for reference), rates no lower than those established for transportation therein shall apply in connection with shipments of alcoholic liquors originating in San Francisco Territory."

Item 690-H sets forth the rates to be used for shipments of lumber and forest products. These rates are given in cents per hundred pounds. The rates vary depending upon the distance involved and the weight of the shipment. Supplement 30 to the tariff provides for a 7 per cent surcharge on the rates set forth in Item No. 690-H. The rail rates are established in Pacific South Coast Freight Tariff Bureau Tariff No. 48-U, California Public Utilities Commission No. 189, of J. P. Haynes, Agent and Tariff of Increased Rates and Charges No. X-175-C of J. P. Haynes, Agent.

Based upon the facts set forth above, the findings of the Commission as to the correct minimum charge for the transportation and the amount of the resulting undercharge with respect to five of the six shipments in question are set forth in the following table:

<u>Identification Letter</u>	<u>Invoice No.</u>	<u>Correct Minimum Charge</u>	<u>Amount of Undercharge</u>
A	Not shown	\$ 301.65	\$ 39.31
B	Not shown	319.68 ^{2/}	18.58
C	15418	331.25	50.40
E	15358	335.68	59.95
F	15357	330.68	50.81

^{2/} As indicated previously the notation on the shipping document relating to the shipment identified by the letter B does not indicate the precise distance that the point of origin was to the team track at Southfork. The minimum charge shown above was calculated on the basis that the precise point of origin was from 0-20 miles from the team track. This charge results in the lowest possible minimum charge from the point of origin to the railhead.

With respect to the shipment which has been identified by the letter D, it was previously stated that the notation on the shipping document indicated that the precise point of destination at Oxnard was "on Ventura County R.R." It cannot be determined from this whether or not the precise point of destination was on a railhead, therefore, the correct minimum charge for the transportation cannot be ascertained. If the precise point of destination was in fact on a railhead at Oxnard the correct minimum charge would be \$294.31. If the precise point of origin was within 20 miles from a railhead at Oxnard, the correct minimum charge would be \$330.12. As indicated previously, respondent assessed a charge of \$274.69.

The evidence introduced also indicated that respondent has about 40 pieces of equipment and employs about 55 persons and that respondent's accountant had a copy of Minimum Rate Tariff No. 2.

Based upon all the foregoing facts, the Commission hereby finds and concludes:

1. That respondent violated Section 3664 of the Public Utilities Code with respect to the six shipments in question by charging a lesser rate than the minimum rate established by the Commission. These violations resulted in total undercharges of at least \$238.67.

2. That with respect to the six shipments in question respondent violated Item 70-D and Item 257 of Minimum Rate Tariff No. 2 in that respondent used a rate, the unit of measurement of which was footboard measure whereas Tariff No. 2 provides only for rates, the unit of measurement of which is pounds. Item 70-D provides in part:

"Charges shall be assessed on the gross weight of the shipment."

Item 257 provides:

"Rates or accessorial charges shall not be quoted or assessed by carriers based upon a unit of measurement different from that in which the minimum rates and charges in this tariff are stated."

All of the facts and circumstances of record have been considered. Respondent's operative rights will be suspended for five consecutive days and he will be directed to collect the undercharges hereinabove found. Respondent will also be directed to examine his records from the period January 1, 1956, to the present time in order to determine if any additional undercharges have occurred and if so, to collect such undercharges.

O R D E R

A public hearing having been held in the above-entitled matter and the Commission being fully informed therein, now therefore,

IT IS ORDERED:

(1) That Radial Highway Common Carrier Permit No. 54-3246 and City Carrier Permit No. 42-1856 issued to Galen Q. Stong, doing business as Whitey Stong Trucking, be and it hereby is suspended for five consecutive days starting at 12:01 a.m. on the first Monday following the effective date hereof.

(2) That Galen Q. Stong shall post at his terminal and station facilities used for receiving property from the public for transportation, not less than five days prior to the beginning of the suspension period, a notice to the public stating that his radial highway common carrier permit has been suspended by the Commission for a period of five days.

(3) That Galen Q. Stong shall examine his records for the period from January 1, 1956, to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

(4) That Galen Q. Stong is hereby directed to take such action as may be necessary to collect the amounts of undercharges set forth in the preceding opinion together with any additional undercharges found after the examination required by paragraph 3 of this order and to notify the Commission in writing upon the consummation of such collections.

(5) That in the event charges to be collected as provided in paragraph 4 of this order, or any part thereof, remain uncollected eighty days after the effective date of this order, Galen Q. Stong shall submit to the Commission, on Monday of each week, a report of the undercharges remaining to be collected and specifying the action taken to collect such charges and the result of such action, until such charges have been collected in full or until further order of the Commission.

(6) The Secretary of the Commission is directed to cause personal service of this order upon Galen Q. Stong and this order shall be effective twenty days after the completion of such service.

Dated at San Francisco, California, this 11th day of MAY, 1957.

[Signature]
President

[Signature]

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Commissioners