

**ORIGINAL**

Decision No. 56991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Galen Q. Stong, doing business }  
as WHITEY STONG TRUCKING. }

Case No. 6036

Phil Jacobson, for the respondent.  
Martin J. Porter, for the Commission staff.

O P I N I O N

On May 21, 1957, the Commission issued its Decision No. 55022 wherein it found Galen Q. Stong guilty of certain rate violations relative to shipments of lumber and suspended his permits for a period of five days. This decision also required the respondent to perform certain acts relative to undercharges. On January 14, 1958, the Commission issued an order directing the respondent to show cause why he has not complied with the directives of Decision No. 55022.

On April 10, 1958, a hearing was held on this order to show cause, at Santa Maria before Examiner William L. Cole, at which time the matter was taken under submission.

Facts

Based upon the record at the hearing and certain facts of which the Commission takes judicial notice, the Commission hereby finds that the following facts exist:

1. The Commission takes judicial notice that Decision No. 55022 in Case No. 5870 became effective on July 9, 1957 and that this decision required Galen Q. Stong to:

- (a) Examine his records for the period from January 1, 1956, to the time Decision No. 55022 was issued for the purpose of ascertaining if any additional undercharges occurred other than those mentioned in that decision.

- (b) Take such action as may be necessary to collect the amounts of undercharges found in that decision together with any additional undercharges found after the examination mentioned above and to notify the Commission in writing of such collections.
- (c) Submit a report to the Commission, on Monday of each week, in the event any part of the undercharges remain uncollected eighty days after the effective date of Decision No. 55022, which reports were to set forth the undercharges remaining to be collected and specifying the action taken to collect such charges and the result of such action. These reports were to continue until the undercharges were collected in full or until further order of the Commission.

2. That subsequent to the effective date of Decision No. 55022 and prior to January 14, 1958, the date the order to show cause was issued, respondent did not examine his records as required by Decision No. 55022; respondent did not take the necessary action to collect all of the undercharges as required by that decision; and respondent did not submit weekly reports to the Commission as required by that decision.

3. That the Commission takes judicial notice of the fact that it has issued no decision which in any way cancels or amends the requirement of Decision No. 55022 that weekly reports be filed by the respondent showing the amount of the undercharges remaining to be collected.

4. That the respondent is no longer in the business of hauling lumber and has sold a portion of his lumber hauling equipment and has converted the remainder into dump trucks for his dump truck operations.

5. That respondent incurred substantial financial losses during the period of his suspension and subsequent discontinuance of his lumber hauling operations.

6. That subsequent to the date that the order to show cause was issued but prior to the date of the hearing on this order, respondent has undertaken an examination of the records of his lumber hauling operations for the period from January 1, 1956 to the time respondent ceased hauling lumber. Since the date that the order to show cause was issued, respondent has prepared and mailed 599 bills together with accompanying letters to various shippers wherein additional charges were assessed for various shipments of lumber transported by him. The total amount of the additional charges assessed by respondent exceeds \$20,000. A certain portion of these additional charges have already been collected by the respondent.

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Conclusion

Based upon the facts hereinabove found, it is the Commission's conclusion that respondent violated the Commission's Decision No. 55022 in that he failed to comply with various orders thereof relative to the examining of his records for additional undercharges, relative to the taking of necessary steps to collect undercharges, and relative to the submitting of weekly written reports to the Commission concerning uncollected undercharges.

Penalty

The Commission cannot and will not tolerate the disregarding of its orders by carriers. For this reason respondent's radial highway common carrier permit will be suspended for a period of sixty days. As indicated, however, the evidence shows that since the order to show cause was issued, respondent has undertaken an examination of his records and is presently in the process of taking the necessary steps to collect all undercharges which are found that have not already been collected. The evidence indicates that respondent's counsel is in the process of preparing to bring

necessary legal action to collect undercharges where such action is necessary and practical. In view of this recent conduct and for the reason hereinbelow set forth, the imposition of this sixty-day period of suspension will be deferred and suspended for a period of one year. During this one-year period, respondent's operations will be carefully examined by the Commission to ascertain whether he is complying with all orders, rules, and regulations of the Commission. If at the end of the one-year period the Commission is satisfied that respondent is complying with all such orders, rules and regulations, the sixty-day period of suspension will be vacated. However, if the Commission finds at any time during the one-year period that respondent is failing to comply with all such orders, rules and regulations, the sixty-day period of suspension will be imposed, together with whatever additional penalty the Commission deems necessary.

The Commission has not made a practice of suspending penalties imposed by it for violations committed by carriers. Its doing so in this case is motivated principally by two factors. The first is, as was previously pointed out, that respondent's recent conduct prior to the hearing indicates an intent on his part to comply with the Commission's order and perform the acts he was previously ordered to perform. The second is that, under the particular facts in this case, it appears that respondent's delay in complying with the order in question will not materially affect the results desired by the Commission when it originally issued the order. This is to be contrasted with violations of other orders, rules and regulations of the Commission, such as rate violations or violations of safety orders where an immediate and adverse effect occurs at the time of the violation, which effect can never be completely repaired by any subsequent order of the Commission. For

this reason, the Commission must deal more severely with the latter type of violation.

Request

At the hearing, respondent requested that the provisions of Decision No. 55022 be amended to require respondent to file the reports showing undercharges still uncollected, once each month rather than every week. Subsequent to the issuance of Decision No. 55022, it has become the Commission's policy to require that the type of reports in question be filed with the Commission on the first Monday of each month. It is the Commission's opinion that this policy should be uniform for all carriers required to file such reports. For this reason, respondent's request will be granted.

O R D E R

A public hearing having been held and the Commission being fully informed therein, now therefore

IT IS ORDERED:

1. That the radial highway common carrier permit issued to Galen Q. Stong be, and it hereby is, suspended for a period of sixty consecutive days. This sixty-day period of suspension, however, shall be deferred and suspended pending further order of the Commission. If no further order of the Commission is issued affecting said suspension within one year from the date of issuance of this decision, the sixty-day period of suspension shall be vacated. ✓

2. That Galen Q. Stong shall continue the examination of his records as required by Decision No. 55022 and shall continue the collection of all undercharges found therefrom.

3. That Galen Q. Stong shall file with the Commission copies of all bills or invoices for additional charges prepared pursuant to such examination, which have not already been filed with the

Commission. These copies shall be filed with the Commission on the first Monday of each month.

4. That paragraph 5 of the order contained in Decision No. 55022 be amended to read as follows:

"(5) That Galen Q. Stong shall submit to the Commission, on the first Monday of each month, a written 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."

5. That in all other respects Decision No. 55022 shall continue in full force and effect.

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 such service.

Dated at San Francisco, California, this 15th day of JULY, 1958.

E. Lynn Fox  
President

Ray L. [unclear]

Ray L. [unclear]

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Commissioners

Matthew J. Dooley.  
Commissioner Theodore H. Jenner, being necessarily absent, did not participate in the disposition of this proceeding.