

Decision No. 66860**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of PLYWOOD
CARRIERS, INC., a California
corporation.

Case No. 7746
(Filed October 15, 1963)

Robert C. Clifford, for the respondent.
Elinore Charles and George T. Kataoka,
for the Commission staff.

O P I N I O N

By its order dated October 15, 1963, the Commission issued its order instituting an investigation into the operations, rates, charges and practices of Plywood Carriers, Inc., a California corporation, operating as a radial highway common carrier, for the purpose of determining whether in the operation of its transportation business respondent violated Sections 3664 and 3737 of the Public Utilities Code by charging and collecting a lesser sum for such transportation than the applicable charges prescribed in Minimum Rate Tariff No. 2 and supplements thereto, and whether respondent violated Section 3575 of the Public Utilities Code by employing subhaulers without having a bond on file with this Commission.

A public hearing was held before Examiner Mooney on January 7, 1964, at San Francisco, and the matter was submitted.

It was stipulated that the respondent was issued Radial Highway Common Carrier Permit No. 1-9195 and that it was served a copy of Minimum Rate Tariff No. 2 and Distance Table No. 4, with the supplements and additions thereto.

A Commission representative testified that he visited the office of respondent on May 27, 28, 29 and 31, 1963 and reviewed approximately 315 freight bills and supporting documents and records, which covered the periods from August 6, 1962 for transportation performed for one shipper and from November 1, 1962 for all other transportation performed by the respondent to and including May 24, 1963. He testified that he made true and correct photostatic copies of 22 freight bills and supporting documents which covered shipments of steel, plywood and lumber and that they are all included in Exhibit No. 1. The witness further testified that he checked the Commission's records and discovered that the subhaul bond respondent had filed with the Commission was canceled effective April 24, 1963; that a new subhaul bond was not filed with the Commission until September 6, 1963; that he made true and correct photostatic copies of the documents covering 12 shipments transported for respondent by subhaulers during the period that respondent did not have a subhaul bond in effect; and that the aforementioned documents are included in Exhibit No. 4.

A second Commission representative identified and authenticated Exhibit No. 2, which is a photostatic copy of a letter dated November 8, 1962, signed by the Secretary of the Commission, confirming an advisory conference regarding possible undercharges and directing the respondent to review its records from May 1, 1962 to November 7, 1962 and collect all undercharges disclosed by the audit. Exhibit No. 3 which was identified and authenticated by the initial staff witness consisted of a photostatic copy of a letter dated January 4, 1963, from the respondent regarding the advisory conference and correction of charges for transportation performed for the consignee shown in Parts 1 through 4 of Exhibit No. 1.

Two additional Commission representatives testified regarding rail facilities and mileages in connection with certain of the shipments included in Exhibit No. 1.

A rate expert from the Commission's staff testified that he took the set of documents which are included in Exhibit No. 1 and formulated Exhibit No. 5, which gives the rate charged by the respondent and the rate computed by the Commission staff on each of the freight bills in Exhibit No. 1. The rate expert testified that in accordance with the alternative application provisions of Minimum Rate Tariff No. 2, he applied a railhead rate named in Section 2 of Pacific Southcoast Freight Bureau Tariff 294-D to the shipments of steel sheets from Pittsburg to Los Angeles covered by Parts 1 through 4; that Item 410 of Tariff 294-D provides that in connection with Section 2 rates, the off-rail arbitraries shown in Item 345 shall be applied to the portion of the shipment delivered to an off-rail destination; and that in accordance with the provisions of Item 410, he applied the arbitrary in Item 345 to the off-rail portion of each shipment. He further testified that the undercharge on Part 6 resulted from respondent's combining four separate shipments as a single split-delivery shipment without the proper documentation, and that the undercharges on the four shipments of plywood from Chester to San Francisco shown in Parts 7, 16, 18 and 19 resulted from respondent not assessing an off-rail charge at destination. In addition, he explained his rating of the remaining parts of Exhibit No. 5.

The vice president of respondent corporation testified for respondent. He stated that he rated the respondent's shipping documents and determined the transportation charges. He further testified as follows on the twenty-two parts in Exhibits Nos. 1 and 5: the rates used on Parts 1 through 4 were furnished to the respondent

by a representative of the shipper who assured it that the rates were correct and that these are the only shipments that he did not personally rate; that Allstate Plywood, San Francisco, the consignee of the shipments covered by Parts 7, 16, 18 and 19, is, according to his information, served by rail facilities and the shipments to this location were to the best of his knowledge correctly rated; and that with respect to the other parts of Exhibit No. 5, balance due bills were issued to the consignors in December for the amount of the undercharges which resulted from inadvertent errors in mileage computations, documentation and applying alternative common carrier rates.

The vice president further testified that an insurance broker had obtained a subhaul bond for respondent prior to its incorporation and the transfer of its operating rights to the corporation; that the insurance carrier canceled the bond when it became aware that respondent had incorporated because respondent was a small corporation with limited liability; that when respondent received notice of cancellation, it immediately instructed its insurance broker to obtain a new subhaul bond from another insurance carrier; that respondent relied on its insurance broker to take care of this immediately; and that no claim has ever been filed against respondent or any bond held by it by any subhauler for non-payment of charges.

To assist in clarifying the issue of whether Allstate Plywood, San Francisco, is served by rail facilities, a representative of the staff and a representative of the respondent viewed the premises in question during the noon recess. As a result, it was stipulated that the premises of Allstate Plywood at 1155 Bryant Street are not served by rail facilities; that Allstate has an additional receiving area located around the corner at 560 Ninth Street which is served by rail facilities; and that the two locations are separated by intervening property not owned by Allstate and, therefore, cannot

be considered a single receiving area. The staff pointed out that the Bryant Street address was shown on the freight bills for each of the shipments covered by Parts 7, 16, 18 and 19 of Exhibits Nos. 1 and 5; that although the shipping documents for three of the shipments did not show a street address, the Bryant Street address was shown on the shipping document for the shipment covered by Part 18; and that from the foregoing it is evident that the four shipments were delivered to the Bryant Street receiving area which is not served by rail facilities. Respondent pointed out that the Bryant Street address was shown on all freight bills because Allstate's offices are located at this address; that although the driver had written the Bryant Street address on the shipping order for the transportation covered by Part 18, it apparently was the driver's intent to show Allstate's office address on the document and not the destination of the shipment; that a substantial amount of plywood is stored at the Ninth Street location; and that it was likely that delivery of each shipment was made to Allstate's Ninth Street receiving area although it is not possible to now establish with certainty from respondent's records to which location delivery had in fact been made.

Based on the evidence we hereby find that:

1. Respondent is engaged in the transportation of property over the public highways for compensation as a radial highway common carrier under Radial Highway Common Carrier Permit No. 1-9195.
2. Respondent was served with copies of Minimum Rate Tariff No. 2 and Distance Table No. 4 and the supplements and additions to the tariff and the distance table prior to the transportation performed under the freight bills listed in Exhibit No. 1.
3. The evidence adduced does not establish with certainty whether the shipments involved in the transportation covered by Parts 7, 16, 18 and 19 of Exhibits Nos. 1 and 5 were delivered to Allstate Plywood's location

at 1155 Bryant Street, which is not served by rail facilities, or to the company's location at 560 Ninth Street, which is served by rail facilities, and for this reason, it is not possible to make a determination as to whether undercharges exist on these shipments.

Respondent is hereby placed on notice that Item 255 of Minimum Rate Tariff No. 2 requires that all information necessary to determine the applicable rate for a shipment, including the precise point of destination to which the shipment was physically delivered, be shown on the freight bill and that failure to comply with this requirement in the future will not be tolerated.

4. Except as provided in Finding No. 3, respondent charged less than the lawfully prescribed minimum rates in the instances as set forth in Exhibits Nos. 1 and 5 as follows:

<u>Freight Bill No.</u>	<u>Charge Assessed</u>	<u>Minimum Charge</u>	<u>Undercharge</u>
3113	\$723.94	\$737.08	\$ 13.14
3146	503.59	507.90	4.31
3175	683.45	692.39	8.94
3279	398.66	411.27	12.61
3399	130.13	140.14	10.01
3308	256.21	294.88	38.67
3437	190.94	210.28	19.34
3447	131.04	141.12	10.08
3507	215.12	220.26	5.14
3508	213.88	219.21	5.33
3509	219.35	224.64	5.29
3486	275.16	297.79	22.63
3485	279.13	298.75	19.62
3495	201.14	206.82	5.86
3525	129.77	139.16	9.39
3697	179.77	189.90	10.13
3702	167.05	176.46	9.41
3745	199.48	229.78	30.30
		Total Undercharges	\$240.20

5. Respondent hired and used subhaulers during the period from April 24, 1963, to September 6, 1963, without having a bond on file with the Commission.

Having found facts as hereinabove set forth, the Commission concludes that:

1. Plywood Carriers, Inc., a California corporation, has violated Sections 3664 and 3737 of the Public Utilities Code by charging and collecting lesser sums than the applicable charges prescribed by this Commission in Minimum Rate Tariff No. 2 and supplements thereto.

2. Plywood Carriers, Inc., a California corporation, has violated Section 3575 of the Public Utilities Code by engaging and employing subhaulers without first having an effective bond on file with the Commission.

The order which follows will direct respondent to review its records to ascertain all undercharges that have occurred since August 1, 1962 in addition to those set forth herein. The Commission expects that when undercharges have been ascertained, respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them. The staff of the Commission will make a subsequent field investigation into the measures taken by respondent and the results thereof. If there is reason to believe that the respondent, or its 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 formally inquiring into the circumstances, and for the purpose of determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Respondent shall pay a fine of \$500 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondent shall examine its records for the period from August 1, 1962 to the present time, for the purpose of ascertaining all undercharges that have occurred.

3. Within ninety days after the effective date of this order, respondent shall complete the examination of its records required

by paragraph 2 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.

4. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein, together with those found after the examination required by paragraph 2 of this order, and shall notify the Commission in writing upon the consummation of such collections.

5. In the event undercharges ordered to be collected by paragraph 4 of this order, or any part of such undercharges, remain uncollected one hundred twenty days after the effective date of this order, respondent shall institute legal proceedings to effect collection and shall file with the Commission, on the first Monday of each month thereafter, a report of the undercharges remaining to be collected and 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.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 25th day of FEBRUARY, 1964.

William L. Bennett
President
George A. Trover
Commissioners
Frederic B. Hallock
Commissioners