

Decision No. 70493**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

Robert C. Clifford, for the respondent
Elinore C. Morgan and E. E. Cahoon, for the
Commission staff.

OPINION AFTER FURTHER HEARING

On November 16, 1965, the Commission issued its order reopening the above proceeding.

Decision No. 66860, dated February 25, 1964, found that Plywood Carriers, Inc., a radial highway common carrier, violated Sections 3664 and 3737 of the Public Utilities Code by charging and collecting rates less than the minimum established in Minimum Rate Tariff No. 2 and supplements thereto. The decision imposed a fine on respondent. In addition, it ordered respondent to collect the undercharges established in the decision, to review its records for the period from August 1, 1962 to February 25, 1964 for the purpose of ascertaining whether any additional undercharges had occurred during said period, to collect the additional undercharges and to file reports with the Commission in connection therewith.

The proceeding was reopened for the purpose of determining whether respondent examined its records and collected all additional undercharges which occurred during the review period set out in the decision and whether, subsequent to said review period, respondent continued to violate Sections 3664 and 3737 of the Public Utilities Code.

The further hearing in the reopened proceeding was held before Examiner Mooney at San Francisco on February 2, 1966, on which date the matter was submitted.

Commission records show that a copy of Decision No. 66860 was personally served on the vice president of respondent on March 2, 1964. The Commission advised respondent by various letters during October, November and December 1964 and by an advisory conference on November 18, 1964 that the decision required respondent to review its records, ascertain and collect all undercharges and file reports in connection therewith and that it might be subject to further penalties if it did not comply with said directives (Exhibit 10). Correspondence from respondent was received by the Commission during December 1964, which stated that all undercharges established by said decision had either been collected or were in the process of being collected (Exhibit 9). No further written reports were received from respondent.

A Commission representative testified that he visited respondent's place of business during April and May 1965 and was informed by respondent's vice president that the record review directed by Decision No. 66860 had been complied with and that all undercharges had been billed and collected, except for two accounts which were in the process of being collected. The representative stated that he reviewed respondent's records for the periods August 1, 1962 to February 25, 1964 (the review period specified in the decision) and October 1, 1964 through March 31, 1965; that respondent transported approximately 1600 shipments during both periods; that he made true and correct photostatic copies of nine freight bills and supporting documents covering shipments of plywood and roofing felt transported during the ordered review period and nine freight bills

and supporting documents covering shipments of steel sheets, plywood, moulding, lumber and laminated decking transported subsequent to the ordered review period; that all of the photostatic copies are included in Exhibit 7 as Parts 1 through 18 thereof. He testified that he determined by personal observation that the following destinations in Exhibit 7 are not served by rail facilities: Encinal Park Corp., 806 Colma Street, Menlo Park (Part 4); Allstate Plywood, 3420 Telegraph Street, Oakland, (Part 5); S. & E. Mfg. Co., 55 Elmer Street, Belmont (Part 9); and Hoyt Heater Co., 1465 No. Batavia Street, Orange (Part 10). The witness stated that both respondent and the shipper informed him that the decking shown on Freight Bill 7151 (Part 18) was wood-laminated decking.

The representative testified that, at the time of his investigation, respondent had one terminal in Oakland, operated five power units and seven trailers and employed one office employee, a part-time accountant and five drivers. He stated that two officers of the corporation also worked in the office. Respondent's gross operating revenue for the year ending with the third quarter of 1965 was \$119,397.

A rate expert from the Commission staff testified that he took the set of documents included in Exhibit 7, together with the supplemental information testified to by the representative, and formulated Exhibit 8 which shows the rate and charge assessed by the respondent, the minimum rate and charge calculated by the staff and the resulting undercharge for each of the 18 shipments. He stated that the undercharges resulted from assessing incorrect rates and failure to assess off-rail charges at destination. The total amount of the undercharges included in Exhibit 8 is \$451.50.

The vice president of respondent testified as follows: He manages the corporation, does all of the rating and, if a driver is not available, drives equipment; he bases his ratings on the commodity

descriptions and information regarding rail facilities at origin and destination shown on the bill of lading or information furnished to him by the shipper, consignee or driver; the bill of lading is prepared by the driver or shipper; because of the time and cost that would be involved, it is not possible to visit all origins and destinations served by respondent and determine by personal observation whether they are served by rail facilities; he reviewed the billing for most of the shipments transported during the ordered review period resulting in the collection of only those undercharges enumerated in Decision No. 66860; he believed all undercharges had been collected.

Counsel for the Commission staff recommended that respondent be fined, under Section 3800 of the Public Utilities Commission, in the amount of the undercharges shown on Exhibit 8 which occurred after September 1963^{1/} and that, under Section 3774 of the Code, an additional fine of \$1,500 be imposed on respondent.

Respondent's counsel argued that the recommended \$1,500 fine is not warranted by the evidence. He pointed out that a total of 1,600 freight bills were examined by the staff during the two review periods covered and that only nine undercharges in each period were disclosed by the investigation. He contended that the undercharges were inadvertent errors and urged that the total fine should not exceed the amount of the undercharges.

Based on a review of the entire record, a fine of \$750 under Section 3774 of the Code will be imposed. While the total amount of the undercharges involved is not substantial, the evidence

^{1/} Section 3800 of the Code was amended in September 1963 to provide that the Commission may impose a fine in the amount of the undercharges found.

clearly established that respondent has not fully complied with the directives in Decision No. 66860 to review its records, collect undercharges and file reports and that respondent has disregarded the Commission's warnings regarding compliance therewith. Any violation of a Commission decision is a serious matter and will not be tolerated.

Respondent is placed on notice that reliance on inaccurate or incorrect information shown on bills of lading or furnished to it by shippers, consignees or drivers does not relieve it from responsibility for any undercharges that might result from such erroneous information.

After consideration the Commission finds that:

1. Respondent was served with a copy of Decision No. 66860 on March 2, 1964.
2. Ordering paragraphs 2, 3, 4 and 5 of Decision No. 66860 directed respondent to review its records for the period from August 1, 1962 to February 25, 1964, to collect all undercharges disclosed by said examination of its records and to file reports with the Commission in connection therewith.
3. Correspondence regarding Decision No. 66860 was received from respondent during December 1964, which stated that all undercharges established by the decision were either collected or being collected, and no further written reports regarding Decision No. 66860 were received from respondent.
4. The Commission advised respondent by various letters during October, November and December 1964 and an advisory conference on November 18, 1964 that it had not received the reports referred to in Finding 2 above and that respondent might be subject to further sanctions if it did not comply with Decision No. 66860.

5. Respondent charged less than the prescribed minimum rates in each of the 18 parts of Exhibit 8, resulting in undercharges in the total amount of \$451.50.

6. The undercharges shown in Parts 1 through 9 of Exhibit 8 (\$175.63) occurred during the review period set out in Decision No. 66860 and referred to in Finding 2 above.

7. The undercharges shown in Parts 8 through 18 of Exhibit 8 (\$293.14) occurred subsequent to September 1963.

Based upon the foregoing findings of fact, the Commission concludes that:

1. Respondent has violated the provisions of ordering paragraphs 2, 3, 4 and 5 of Decision No. 66860.

2. Subsequent to Decision No. 66860, respondent has continued to violate Sections 3664 and 3737 of the Public Utilities Code.

3. Respondent should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$293.14, and in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$750.

The Commission expects that respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges. 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 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 \$1,043.14 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein and shall notify the Commission in writing upon the consummation of such collections.

3. Respondent shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges, and, in the event undercharges ordered to be collected by paragraph 2 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, respondent shall file with the Commission, on the first Monday of each month after the end of the sixty days, 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.

4. Respondent shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the minimum rates and charges prescribed by this 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 29th day of MARCH, 1966.

Fredrick B. Hallock
President

John E. Hutchins

George G. Grover

Augusta

William M. Burnett
Commissioners