

**ORIGINAL**

Decision No. 75635

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations, rates,  
and practices of LARRY L. QUIGLEY,  
doing business as QUIGLEY TRUCKING  
and FOREST PRODUCTS MARKETING, INC.

Case No. 8842  
(Filed September 11, 1968)

John C. Schroder, for respondent and Forest  
Products Marketing, Inc.  
William D. Figg-Hoblyn, Counsel, and J. B.  
Hannigan, for the Commission staff.

O P I N I O N

By its order dated September 11, 1968, the Commission instituted an investigation into the operations, rates and practices of Larry L. Quigley for the purpose of determining whether he has violated Sections 3737, 3664, 3667, and 3668 of the Public Utilities Code by charging, demanding or receiving a lesser compensation for transportation and services than that established by the Commission in Minimum Rate Tariff No. 2.

A duly noticed public hearing was held before Examiner Foley on December 4, 1968 in Oroville, and the matter was submitted.

It was stipulated that Quigley operates as a radial highway common carrier under Permit No. 45-1628. It was also stipulated that at all times pertinent to the staff's investigation Quigley had been served with the appropriate Commission tariffs.

Staff Exhibit No. 1 (Parts 1-8) consists of summaries of the shipping data contained in the records of Quigley for the period October - December, 1967. Quigley conceded that these undercharges are correct. They total \$207.08.

Quigley's rate consultant testified in mitigation of the above undercharges. He stated that the errors resulted because incorrect information was provided by the subhaulers involved. The incorrect information related to distances or to whether a particular shipment was on- or off-rail. Quigley has collected the amount of these undercharges from the shipper involved herein, Forest Products Marketing, Inc. (Forest).

The second issue in this proceeding concerns the staff's contentions that Quigley made rebates, resulting in additional undercharges, to Forest by means of providing free telephone and sales services. Staff asserts that the monetary value of these free services totals \$2204.72.

Staff's Evidence

A member of the Commission staff investigated Quigley's operations and records for the period October - December, 1967. This investigation revealed that the shipper for almost all of Quigley's operations (90-95 percent) was Forest, a lumber brokerage firm with its office in Oroville.

It was shown that Quigley employed a former salesman of Forest, Mr. Whittaker, as general manager for Quigley's Oroville office. Mr. Whittaker's office space was in Forest's office. His duties consisted mostly of truck dispatching; and almost all his time involved use of the telephone. It was admitted that about 40 percent of his time and 25 percent of the telephone expense were actually spent working for Forest. This work consisted mostly of arranging lumber sales by telephone.

Quigley also had a P. O. Box in Oroville (P. O. Box 66). The telephone was listed in Mr. Whittaker's name with the same P. O. Box address as Forest's (P. O. Box 286). While Quigley's main office and checking account were in Redding, he also had a checking account in Oroville. Mr. Whittaker signed the checks drawn on this latter account for payment of the telephone bill and for his own salary, which was \$1000 per month. He did not receive any compensation from Forest. Since May, 1968 he has returned to the employment of Forest.

Respondent's and Forest's Evidence

Quigley and Forest assert that Quigley received compensation for Whittaker's services in the form of free office space as well as secretarial services and the use of office equipment. They place a monetary value on these benefits of at least \$500 per month.

Mr. Quigley testified that his operations in Redding slowed down in July, 1967. Upon being referred to Forest as a possible shipper, they agreed that Quigley would employ Mr. Whittaker as his dispatcher so that Mr. Quigley could break in a new truck. Another purpose was to permit maximum effort by Mr. Whittaker to have the trucks operate fully loaded in both directions, and to acquire other hauling work.

After the staff investigation Mr. Whittaker returned to the employment of Forest and Mr. Quigley operated the carrier's business from the same office, but with his own desk, telephone and equipment (TR. 59). He still receives free rent and secretarial services.

Respondent Quigley claims that he received office space and services in return for the time utilized by Mr. Whittaker in behalf of Forest. Mr. Quigley stated that if he had to rent his own office in Oroville the rent would be from \$100-\$125 per month, and that a full-time secretary would cost \$300-\$350 a month. He placed a value

of \$25 per month on the utility and office equipment services he receives at Forest's office. Therefore Quigley claims that the value the staff places on the sales services rendered by Mr. Whittaker to Forest must be reduced by the value of the office space and services he received from the shipper in return.

Mr. Passmore, who operates Forest, also testified. He stated that his business has benefited by having the carrier's dispatching operation performed in the same building. This benefit consists of time and effort saved in not having to coordinate truck carrier operations, such as pick-up and delivery times. He estimated that from 30 to 50 percent of his time was saved by this arrangement.

He also stated that at the present time his secretary answers the Quigley phone and that she would take messages when Mr. Quigley is out (TR. 78). He supported Mr. Quigley's statements that they did not pay each other for the services rendered and that they did not intend to establish a device to avoid the Commission's minimum rate regulations.

#### Discussion

Staff requests that the Commission take official notice that Mr. Whittaker was involved in a similar role for De Fazio and Cal-Sac Lumber Sales, Inc. in Case No. 8514 (Decision No. 72214, dated March 28, 1967). This decision concluded that such a dual role whereby the carrier's employee performed free sales services for the shipper constituted an arrangement under which the shipper obtained transportation at less than the applicable minimum rates. While official notice is taken of this decision, it must be recognized that the conclusion was based upon a stipulated finding of fact that the carrier's employees provided free services to the shipper.

There is no dispute that Quigley's employee performed sales services for Forest for a considerable portion of his normal work day. The record is also clear that Quigley received free rent and office services from the shipper. Therefore the Commission is faced with a business relationship between the carrier and shipper for purposes other than the normal one, i.e., the arrangement of transportation.

When carriers and shippers engage in business relationships other than transportation under which payments flow from the carrier to the shipper, the Commission must regard such transactions as suspect and subject to careful investigation. (See Clawson Trucking Co., 62 Cal. P.U.C. 105, 107; Plywood Trucking Co., 62 Cal. P.U.C. 153, 155). The rendition of free services by the carrier for the benefit of the shipper obviously is the equivalent of the payment of money to him, and such activity is included within the language of Section 3667 of the Public Utilities Code.

It is also true, however, that if the business relationship is bona fide and the payment for the service received is reasonable, no violation of the statute has resulted. The carrier and shipper have the obligation to establish the reasonableness of the transaction. (See Central Valley Transport Co., Decision No. 71739, Case No. 8155 (December 1966), mimeographed pages 9 and 10, where the Commission upheld trailer rental payments from the carrier to the shipper as reasonable.)

Since the record is clear that both the carrier and shipper provided services to each other, the primary issue is whether the monetary value of the sales services provided by Quigley is greater than the value of the services he received. If the shipper received more valuable services than he provided in return, the business

arrangement constitutes a device to remit indirectly a portion of the transportation rates within the meaning of Sections 3667 and 3668 of the Public Utilities Code.

The staff places a value of \$1400 on the sales services provided by Mr. Whittaker. This figure is 40 percent of \$3500, which represents Mr. Whittaker's salary for the three months under investigation and his annual bonus. Since the bonus can reasonably be said to apply for the entire five months Mr. Whittaker was employed during 1967, the staff's valuation is reduced to \$1320 (40 percent of \$3300).

In addition to the value of the sales services, staff has included one-fourth of the total telephone bills for the period under investigation, or \$804.72 ( $\$3218.88 \div 4$ ). This results in a total of \$2124.72 as the appropriate value of all the services provided by the carrier.

Quigley maintains that rent, utilities and office equipment would have cost \$120-\$125 and \$25, respectively. We will allow \$150 per month as the reasonable value.

With regard to secretarial services, the record does not clearly reveal any reasonable amount which can be applied. The record shows only that since Mr. Quigley now handles the dispatch operation by himself he requires full time secretarial services because he may leave the office at any time. However, for the period under investigation (October - December, 1967) a full-time dispatcher, Mr. Whittaker, was available. No evidence was introduced regarding how much secretarial help was provided to him during the period under investigation. Unlike Mr. Quigley he did not have to leave the office for substantial periods. As a result no allowance for secretarial service is justified.

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Since the evidence shows that Quigley was providing services having a greater value than the value of the office space and services provided by Forest, the arrangement was nothing more than a device by which respondent remitted to Forest a portion of his transportation charges. When the carrier and shipper fail to sustain the obligation of showing the reasonableness of the transaction and, as here, evidence has been presented that the relationships are in fact unreasonable, we must regard the transaction as a device to remit or rebate a portion of the transportation charges. To do otherwise would be to sanction a fraud.

Therefore, the difference between the services provided by Quigley and those provided by Forest constitutes a rebate of a portion of the transportation charges. Reducing the amount of the rebate by \$450 (\$150 per month as the reasonable value of office rent and utility services) results in a total rebate of \$1674.72 (\$2124.72 -450.00). Subject to the above revision we conclude that the staff position is correct. Adding the stipulated undercharge amount of \$207.08 to the amount resulting from the unlawful device results in a total revised undercharge figure of \$1881.80.

The staff recommends that Quigley be required to pay a fine in an amount equal to the undercharges and a punitive fine of \$500. Since this is the first violation of the Commission's minimum rate regulations by this carrier, a punitive fine will not be levied, but the carrier will be required to pay a fine in an amount equal to the undercharges as provided for in Section 3800 of the Public Utilities Code.

After consideration the Commission makes the following findings of fact:

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1. Respondent Larry Quigley, doing business as Quigley Trucking Company, operates under permits and certificates granted by this Commission as previously stated.

2. Respondent was served with the appropriate tariffs and distance tables.

3. The undercharges set forth by the staff in Parts 1-8 of Exhibit No. 1 are correct, resulting in undercharges in the amount of \$207.08.

4. Respondent Quigley provided free sales and telephone services through his employè, Mr. Lawrence Whittaker, to the shipper, Forest Products Marketing, Inc., in exchange for office space, utilities, and the use of office equipment when necessary. The value of the services provided by respondent Quigley for the period October-December, 1967 exceeded the value of the services provided to him by Forest Products Marketing, Inc. The reasonable value of the difference in these services is \$1674.72, resulting in undercharges in this amount.

5. The arrangement whereby respondent Quigley provided services in excess of those received from the shipper was a device which resulted in the shipper obtaining transportation for less than minimum rates.

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

1. Larry Quigley, doing business as Quigley Trucking Company, has violated Sections 3737, 3664, 3667 and 3668 of the Public Utilities Code.

2. Respondent Quigley should be fined pursuant to Section 3800 of the Public Utilities Code, in the amount of \$1,881.80.



The Commission expects that respondent Quigley 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 his 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 Quigley shall pay a fine of \$1,881.80 to this Commission on or before the fortieth day after the effective date of this order.
2. Respondent Quigley 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 law and the regulations of this Commission.
3. Respondent Quigley shall cease and desist from using the device outlined herein or any other device to allow shippers to obtain transportation at rates less than minimum.
4. Respondent Quigley 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.

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5. Respondent Quigley 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 4 of this order, or any part of such undercharges, remain uncollected one hundred twenty days after the effective date of this order, respondent Quigley 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 the respondents herein. The effective date of this order as to each respondent shall be twenty days after the completion of service upon such respondent.

Dated at San Francisco, California, this 2nd day of MAY, 1969.

William J. ...  
President  
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...  
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.