

Decision No. 76843

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
motion into the operations, rates,
charges, and practices of STURGES M.
AMEN, JR., an individual doing busi-
ness as LAD AMEN TRUCKING; and STANGE
LUMBER CO., INC., an Oregon corpora-
tion.

Case No. 8955

Sturges M. Amen, Jr., in propria persona,
respondent.
William J. McNertney, Counsel, and Eugene E.
Cahoon, for the Commission staff.

O P I N I O N

By its order dated August 26, 1969, the Commission insti-
tuted an investigation into the operations, rates and practices of
Sturges M. Amen, Jr., doing business as Lad Amen Trucking, for the
purpose of determining whether the respondent has violated Sections
3664, 3667, 3668 and 3737 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
Tariffs Nos. 2 and 5. The shipper involved in these transactions,
Stange Lumber Co., Inc., was also named as a respondent.

A duly noticed public hearing was held before Examiner
Foley on October 22, 1969, in Red Bluff. The matter was heard and
submitted.

It was stipulated that respondent operates as a radial
highway common carrier under Radial Highway Common Carrier Permit
No. 45-1535. It was also stipulated that respondent possessed the
appropriate Commission tariffs.

Respondent operates two tractors and two sets of trailers.
He employs one driver, while the rating and office work are done by

his wife and brother. During the year ending June 30, 1969 his gross revenue was \$101,910. Respondent has had three prior undercharge letters from the Commission. In addition, two subhaulers were employed. Respondent Amen hauled mostly lumber products, and a few shipments of grain and farm commodities.

On March 10, 11, 12, 19 and May 25, 1969 a representative of the Commission's Compliance Section visited respondent's home and place of business and checked his records for the period from October 1, 1968 through December 31, 1968. A survey was also made with each subhauler.

Copies of the underlying documents relating to twenty-one (subsequently reduced to nineteen) shipments were made and forwarded to the Enforcement Section of the Commission's Transportation Division (Exhibit No. 1). From this data, a rate study was prepared and introduced in evidence (Exhibit No. 2). It reflects alleged undercharges of \$2,088.59.

Exhibit No. 1 and the testimony of two subhaul carriers and of the staff witnesses disclose several different types of violations, including (1) incorrectly assessed rates, (2) incorrectly recorded dates for split delivery and multiple lot shipments as well as failure to pick up these shipments within the time requirements, (3) failure to secure full written instructions covering all actual points of delivery for split delivery shipments, (4) failure to secure prior to or at the time of shipment the written information required for split delivery shipments, (5) failure to levy off-rail charges, (6) concealing the nature of some shipments, and (7) altering shipping documents and failure to maintain records as required.

The staff witnesses testified as to the correct rating procedures which should have been applied, and have explained these procedures to the respondent carrier. It was also stated that

respondent has had two minor undercharge letters in the past, and that in 1968 undercharges of \$1,932 were collected after an audit was completed. The respondent shipper in this proceeding was involved in this undercharge letter matter which included failures to assess off-rail charges. The staff recommends that respondent be required to collect the undercharges involved herein and to pay a fine in the same amount. The staff further recommends that a punitive fine of \$750 be ordered.

Respondent made a statement in his own behalf. He did not contest the correctness of the staff's position. He explained that some of the errors were honest mistakes. He stated that as a result of poor economic conditions in the construction business it was not possible for shippers to sell lumber and ship it under the authorized rates; and that he has ceased operations with the shipper involved herein and is currently operating as a subhauler for other carriers. Upon consideration of these factors a punitive fine of \$200 will be ordered.

After consideration the Commission makes the following findings of fact:

1. Respondent Sturges M. Amen, Jr., doing business as Lad Amen Trucking, operates under the permit issued by this Commission as previously stated.
2. Respondent Amen was served with the appropriate tariffs and distance tables.
3. Respondent Amen charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit No. 2, resulting in undercharges in the amount of \$2,088.59.
4. Respondent Amen has failed to maintain proper records regarding his operations.

Based upon the foregoing findings of fact the Commission concludes that respondent violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code and will be fined pursuant to Section 3800 of the Public Utilities Code, in the amount of \$2,088.59. In addition, a fine, pursuant to Section 3774 of the Public Utilities Code will be assessed against respondent Amen in the amount of \$200.

The Commission expects that respondent Amen 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. Sturges M. Amen, Jr., the respondent herein, shall pay a fine of \$2,288.59 to this Commission on or before the fortieth day after the effective date of this order.
2. 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 law and the regulations of this Commission.

3. 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.

4. 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 3 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 the respondents. The effective date of this order as to each respondent shall be twenty days after the completion of such service on such respondent.

Dated at San Francisco, California, this 21st day of FEBRUARY, 1970.

William J. Givens, Jr.
President

Thomas L. Stevenson
Commissioners

Commissioner A. W. Gatov, being
necessarily absent, did not participate
-5- in the disposition of this proceeding.

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