

JR

Decision No. 78434

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 STANLEY R. BORDEN, an individual; PRECISION MOULDING CO., INC., a California corporation; and IRVIN WILBUR WILLIAMS, an individual, doing business as WILLIAMS REEL CO.

Case No. 9147

Stanley R. Borden, for Stanley R. Borden Trucking, respondent.  
William J. McNertney, Attorney at Law, and  
E. E. Cahoon, for the Commission staff.

O P I N I O N

By its order dated November 10, 1970, the Commission instituted an investigation into the operations, rates, charges and practices of Stanley R. Borden, an individual, and in which the shippers listed above were named respondents.

Public hearing was held in Red Bluff on January 12, 1971, before Examiner Fraser.

The staff evidence referred to transportation performed by respondent Borden from July 1 to December 31, 1969 for the two shippers. The transportation was subject to the provisions of Minimum Rate Tariff 2 and the staff ratings were not contested by respondent Borden.

The business of the respondent carrier is conducted from his home in Cottonwood. His wife maintains the office and performs the billing. He employs one driver and he himself drives. He owns two lumber trucks and two flatbed trailers. His gross revenue for

the four quarters ending on June 30, 1970 was \$39,854. This is the first time that Borden has been a respondent in a Commission investigation and staff counsel suggested that no punitive fine be imposed.

Findings of Fact

1. Respondent operates pursuant to a radial highway common carrier permit.
2. Respondent was served with the appropriate tariff and supplements thereto.
3. Respondent has neglected to assess the off-rail charge on certain shipments in violation of Item No. 210 of Minimum Rate Tariff 2.
4. Respondent has failed to comply with the specified pickup period and documentation (written instructions prior to or at the time of the initial pickup) requirements prescribed in Item No. 85 of MRT 2 in connection with multiple lot shipments thereby resulting in violation of Item No. 60, MRT 2.
5. Respondent has assessed a flat rate on a per load basis in violation of Item No. 257 of Minimum Rate Tariff 2.
6. Respondent has performed transportation for less than the minimum rates and charges required by Items Nos. 505, 506, 507 and 690 of Minimum Rate Tariff 2, and Items Nos. 23330 and 20400 of Pacific Southcoast Freight Bureau Freight Tariff No. 48-V(PSFB 48-V), authorized under the alternative provisions of Item No. 200 of MRT 2, by failing to charge and collect the correct rates, including rates based upon certain specified minimum weights, prescribed therein.

7. Respondent charged less than the lawfully prescribed minimum rate in the instances as set forth in the exhibits herein in the amount of \$3,240.63.

8. The imposition of a punitive fine is not required in this proceeding.

Based upon the foregoing findings of fact, the Commission concludes that respondent Stanley R. Borden has violated Sections 3664, 3667 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$3,240.63.

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 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 shall pay a fine of \$3,240.63 to this Commission on or before the fortieth 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.

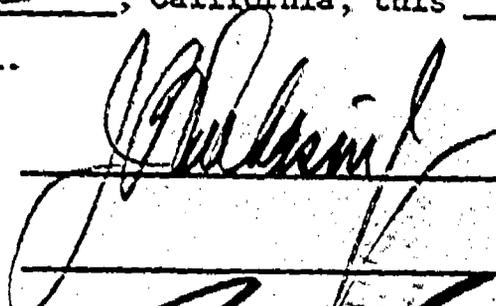
3. Respondent shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges, and in the event undercharges ordered to be collected by paragraph 2 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date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

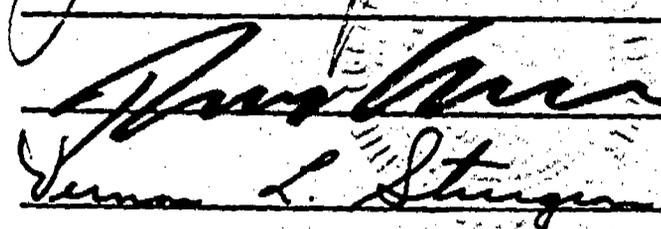
4. Respondent shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the minimum rates and charges prescribed by this Commission.

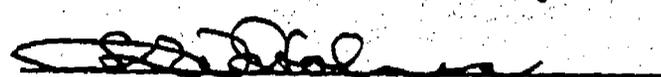
The Secretary of the Commission is directed to cause personal service of this order to be made upon Stanley R. Borden. The effective date of this order, as to this respondent, shall be twenty days after completion of personal service. The Secretary is further directed to cause service by mail of this order to be

made upon all other respondents. The effective date of this order, as to these respondents, shall be twenty days after completion of service by mail.

Dated at San Francisco, California, this 16<sup>th</sup> day of MARCH, 1971.

  
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Chairman

  
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Vernon L. Stinger

  
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Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.