

Decision No. 82405**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
DELMAR FERNANDEZ, a California
corporation, and AMERICAN FOREST
PRODUCTS CORPORATION,
a Delaware corporation.

Case No. 9571
(Filed June 19, 1973)

Helen J. Dalby, for Delmar Fernandez, and
Vaughan, Paul & Lyons, by John G. Lyons,
Attorney at Law, for American Forest Products
Corporation, respondents.
Elinore C. Morgan, Attorney at Law, and E. H. Hjelt,
for the Commission staff.

O P I N I O N

This matter was heard and submitted August 8, 1973 before
Examiner Thompson at Sacramento.

This proceeding is an investigation on the Commission's
own motion for the purpose of determining whether Delmar Fernandez
(Fernandez) charged and collected from American Forest Products
Corporation (Forest Products) a lesser compensation for the trans-
portation of property as a highway permit carrier than the minimum
rate established by the Commission.

The Commission staff alleges 21 counts of violation. Each
count is described as a "part" in the exhibits in this proceeding
so that for convenience we will refer to the counts as parts.

Parts 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13 and 15

The only issue in dispute is whether a commodity marketed
by Forest Products under the trade name of Bond-Deck and shipped
by it as "Surfaced Lumber Products" is lumber as that term is used

in Item 685 of Minimum Rate Tariff 2 and therefore governed by the commodity rates for List C articles in Items 690 and 691. The Commission staff stipulated that if there is an affirmative finding with respect to that issue then there are no undercharges and the counts should be dismissed.

The simplest way to describe Bond-Deck is to describe its manufacture. Although the process is a single mechanical operation it is easier to visualize it as a step-by-step process. Two inches by six inches culled lumber is sawed to random lengths so as to remove the defective portions. The remaining boards are sorted according to grain and appearance. Those having common characteristics are then joined end-to-end with a glued finger joint and then cut to standard or custom ordered lengths. The lengths are surfaced and sides are tongue-and-grooved (T & G). Four lengths are butted together side-by-side but not fastened and a heavy kraft paper backing is laminated to one side of the panel. There are tear strings in the paper backing which are over the joints between the board lengths. The end result is what appears to be a 20-inch wide by 1-1/2-inch thick panel of four T & G boards. The paper keeps the boards together and serves as a hinge between each board.

Eight or ten of the panels are stacked flat, and wrapped in a bundle or unit for shipping. Forest Products advertises Bond-Deck for use as roofing and decorative sub-flooring (ceiling) or any other purpose where 2" x 6" T & G lumber would be used. Instructions in a brochure direct the installer to place the panel in position (paper up), draw it up tight against the adjacent panel using a pull-up tool (furnished), pull tear strings so that each board becomes free, blind nail the tongue at each support with one 16d nail, and then nail individual 2" x 6" runs at each support with two 16d nails.

The evidence shows that the paper backing serves only to facilitate handling and installing. The advertising brochure claims that Bond-Deck is installed two to three times faster than regular decking of T & G 2" x 6" lumber.

The evidence shows that Bond-Deck is nothing more than four 2" x 6" T & G wooden planks set side-by-side, with ends cut square, joined together with a kraft paper backing. The 2" x 6" T & G planks are lumber. The paper backing has not changed the characteristics of the commodity any more than if the four boards were bound together with rope or banding material. It merely facilitates handling. We find that Bond-Deck is lumber and that the List C commodity rates named in Items 690 and 691 of Minimum Rate Tariff 2 apply. There are no undercharges with respect to these shipments.

Parts 6 and 14

These counts cover shipments of Bond-Deck which were rated by Fernandez as split delivery shipments. It was stipulated by both respondents that there was insufficient documentation of the shipments to entitle the use of split delivery rates. The applicable rates for those shipments are the rates on surfaced lumber for each individual shipment or component part. With respect to Part 6, Fernandez charged \$244.03 for a single split delivery shipment having two components. The applicable charges for the two individual shipments are \$150.52 for F/B 3244 (Newark) and \$197.94 for F/B 3243 (Menlo Park), for a total of \$348.46. Fernandez undercharged Forest Products \$104.43. With respect to Part 14 the undercharges are \$143.66 as shown in Exhibit 4.

Part 16

Fernandez rated this shipment as a split delivery shipment. Both respondents stipulated that because of insufficient documentation the split delivery rates were not applicable. The undercharge was \$23.76.

Part 19

This count covers a straight shipment of plywood from Martell to East Stockton. Fernandez assessed the rail rate applicable from Martell to Stockton which did not apply to East Stockton. The undercharge is \$13.54.

Parts 20 and 21

Part 20 covers a split pickup shipment. The bill of lading directs Fernandez to pick up a consignment designated Order No. 8752 at Sierra Pacific Industries in Susanville, and then a consignment designated Order No. 8686 at Sierra Pacific Industries, Chico, and deliver to Forest Products at Newark. The document lists the articles in the consignments by dimensions, such as "8 units 11/16 x 4-9/16 x 6-8". The freight ticket issued by Fernandez at Susanville describes the consignment as "16 units Jambs & Heads". The freight ticket issued at Chico describes that consignment as "10 units Pine Jambs". The invoice issued by Fernandez makes reference to the freight tickets and order numbers, and describes the commodity as "1 T&T lumber". Fernandez assessed a commodity rate applicable to lumber.

It is readily discernible that the shipment consisted of pine boards, surfaced four sides, suitable for making door jambs (sides of door frames) cut to length and bundled into units, and pine boards, surfaced four sides, suitable for door frame heads (tops of door frames) cut to length and each size bundled into separate units.

The bill of lading covering Part 21 directs Fernandez to pick up at Forest Products, Stockton 11 units of "Pine Mldg" and deliver 2 units to Randall Enterprises at Walnut Creek and deliver 9 units to Forest Products at Newark. The delivery ticket for Walnut Creek describes the articles delivered as "Standard Grade Pine Mldg (501)". The delivery ticket for Newark describes the

shipment as "9 units Pine Mouldings, Pine Carpenters Mldg. as per tally. Std. Grade Pine Mldg. F. J. (503) 9/16 x 1 5/8 Casing S-779. 8320 Sets Fin. (illegible) x 6 1/8 (illegible) lin. as per tally." Fernandez' invoice refers to the delivery tickets and to the mill order numbers and describes the commodity as "1 T&T Lumber". (Apparently T&T denotes truck and trailer load.)

Although the documents refer to moulding, it seems apparent that the shipment consisted of pine boards, surfaced four sides, of given dimensions which would be suitable for door frame casings, stops and what is commonly called the moulding around a door frame.

As it pertains to the issue at hand, lumber is defined as timber sawed into beams, planks, boards, etc. of convenient sizes. Lumber may be rough or finished; that is to say it can be sawed or sawed and planed. In breadth and thickness the four sides are rectangular. Molding (or Moulding) connotes a shaped board; that is to say one that has been processed through a shaper so as to have an ornamental contour. Typical moldings are quarter-rounds, half-rounds, cavetto and conge'. Molding is used to mask a joint, such as between wall and ceiling, door and wall, or wall and floor. Finished lumber may be, and often is, used as a molding, such as around a door frame. Finely finished lumber suitable for that purpose is sometimes referred to as molding or casing; however, it is no less lumber than heavy rough beams or planks.

The shipments in Parts 20 and 21 consisted of lumber subject to the List C commodity rates in Items 690 and 691 of Minimum Rate Tariff 2. There are no undercharges.

Parts 17 and 18

These shipments consisted of the same kind of articles as in the shipments in Parts 20 and 21. We have already determined that the articles described in the documents as "mouldings" were actually lumber. In the instant counts, however, Fernandez applied split delivery rates. It was stipulated that the documentation

did not permit the use of split delivery rates. Each component was required to have been rated as a straight shipment. Because of the weights of the shipments, except in the case of the 24,702 pounds to Newark in Part 18, the class rates for lumber provide lower charges than the commodity rate. It happens that the class rate applicable to lumber also applied to moldings so that the rates and charges contended by the staff also apply to the shipments of lumber. The undercharges in Part 17 are \$77.29.

Because the commodity rate results in a lower charge than the class rate applicable to the transportation of 24,702 pounds of lumber from Martell to Newark, the charges applicable to the shipments in Part 18 are different from those contended by the staff. The minimum rate and charges applicable to the shipments in Part 18 are as follows:

F/B 3201 Martell to San Jose 16,468 lbs. as 20M @ .61	\$122.00
Surcharges	9.02
	<u>\$131.02</u>
F/B 3202 Martell to Newark 24,702 lbs. as 40M @ .37	\$148.00
Surcharges	7.40
	<u>\$155.40</u>

The undercharges in Part 18 are \$89.05.

In summation there is one count of violation that resulted from Fernandez applying a rate applicable to Stockton that was not applicable to East Stockton which was in fact the destination of the shipment. The remaining counts of violation involve the application of split delivery rates to shipments where the documentation was insufficient to permit the use of those rates. Parts 17 and 18 cover the same kind of movement as Parts 20 and 21. In all four instances Fernandez applied the split delivery rates. In two instances the documentation was sufficient to permit use of the rates and in two instances it was not. The evidence indicates that the violations resulted from mistake rather than by design. Fernandez employs a traffic consultant to rate all shipments. Forest Products has a traffic department that audits all freight bills.

The staff recommended that Fernandez be fined in the amount of the undercharges as required by Section 3800 of the Public Utilities Code, and that it be fined an additional \$500 pursuant to Section 3774.

Findings

1. Fernandez operates as a highway permit carrier under a permit issued by this Commission.
2. Fernandez was served with appropriate minimum rate tariffs and distance table (Exhibit 3).
3. Fernandez charged less than the lawfully prescribed minimum rates in connection with the shipments described in Parts 6, 14, 16, 17, 18, and 19 of Exhibit 1. The undercharges on those parts total \$451.73.
4. There are no undercharges involved in Parts 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 15, 20, and 21.

Conclusions

1. Fernandez violated Sections 3664 and 3737 of the Public Utilities Code.
2. Fernandez should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$451.73.
3. A punitive fine under Section 3774 of the Public Utilities Code is not warranted.
4. Fernandez should be directed to cease and desist from violating the rates and rules of the Commission.

The Commission expects that Fernandez 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 such measures. If there is reason to believe that Fernandez 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 determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Delmar Fernandez (Fernandez), a corporation, shall pay a fine of \$451.73 to this Commission pursuant to Public Utilities Code Section 3800 on or before the fortieth day after the effective date of this order.

2. Fernandez shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 3, and shall notify the Commission in writing upon collection.

3. Fernandez shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. In the event the 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, 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. Fernandez 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 Fernandez and to cause service by mail of this order to be made upon all other respondents. The effective date of this order as to each respondent shall be twenty days after completion of service on that respondent.

Dated at San Francisco, California, this 29th
day of JANUARY, 1974.

Vernon L. Stanger
President
William L. Synnott Jr.
[Signature]
[Signature]
Commissioners

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