

ask

Decision No. 83071

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 LOYAL D. )  
STANLEY and CORDES P. LANGLEY, an )  
individual doing business as Redwood )  
Coast Lumber Company. )

Case No. 9655  
(Filed January 29, 1974)

Robert C. Petersen, Attorney at Law, for  
Cordes P. Langley, and Lucille Stanley,  
for Loyal D. Stanley, respondents.  
Janice E. Kerr, Attorney at Law, and  
Edward H. Hjelt, for the Commission  
staff.

### O P I N I O N

This is an investigation on the Commission's own motion into the operations, rates, charges, and practices of Loyal D. Stanley, a highway carrier, and Cordes P. Langley, an individual doing business as Redwood Coast Lumber Company. The purpose of the investigation is to determine whether respondent Stanley performed transportation services for respondent Langley at less than the authorized minimum rates in violation of Sections 3664, 3667, and 3737 of the Public Utilities Code, and, if so, whether respondent Stanley should be ordered to collect the difference between the rates charged and the minimum rates from respondent Langley and pay a fine in the amount thereof pursuant to Section 3800 of the Public Utilities Code and whether a fine pursuant to Section 3774 should be imposed.

After duly published notice, a public hearing was held in Ukiah on April 17, 1974 before Examiner Bernard A. Peeters and submitted on said date, subject to the late filing of Exhibit 10 and comments thereon by the staff. Said exhibit has been filed and comments thereon were received May 13, 1974. The matter is ready for decision.

The staff presented two witnesses and seven exhibits.

A staff transportation field representative sponsored Exhibits 1, 2, and 3. Exhibits 1 and 2, consisting of 78 and 55 parts, respectively, contain freight bills and supporting documents for the first quarter of 1972 of shipments transported by respondent Stanley for respondent Langley. Exhibit 3 consists of a certification by the transportation representative of his personal observation and description of the destinations shown on the shipping documents contained in Exhibits 1 and 2.

The staff representative testified that he examined the documents and records of respondent Langley for the first quarter of 1972 and that the documents in Exhibits 1 and 2 are true copies of the originals. Respondent holds a radial highway common carrier permit issued in May 1967. He operated 3 tractors, 4 trucks, 4 full trailers, and 3 semitrailers from his terminal located in Ukiah. He employed 7 drivers and 2 mechanics. Respondent Stanley's reported quarterly gross revenue for four quarters beginning with the fourth quarter of 1971 was: \$48,527.96, \$68,439.77, \$66,746.00, and \$69,452.00 for a total of \$253,165.73. The field representative also testified that respondent Stanley ceased operations during the third quarter of 1972 and that within the past two weeks he had filed for bankruptcy.

Exhibits 4, 5, 6, and 7 were sponsored by a staff transportation rate expert. He utilized the information contained in Exhibits 1, 2, and 3 to develop the minimum rates and charges for the transportation represented in said exhibits. Exhibit 4 relates to parts 1 through 43 of Exhibit 1; Exhibit 5 relates to parts 44 through 78 of the same exhibit. The undercharges alleged by the witness in Exhibit 4 amount to \$589.90 and for Exhibit 5, \$493.43. Respondent Stanley stipulated that the undercharges shown in Exhibits 4 and 5 were correct, except for the amount of \$100.77 shown in part 27 of Exhibit 4.

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Exhibit 6 relates to the 55 shipments of grape stakes contained in Exhibit 2. The total undercharges alleged here amount to \$8,606.89. The staff asserts that grape stakes are properly described as wooden plant stakes. As such, they do not appear under the generic heading of Lumber and Forest Products listed in Item 685 of Minimum Rate Tariff 2 (MRT 2) and therefore are not entitled to the lower commodity rate. Consequently, the staff applied the class 35 rating provided for poles or stakes, plant in Item 160400 Sub. 4, of the governing classification.

Respondent Stanley was represented at the hearing by his wife. She testified that it was her responsibility to rate the shipments; that she relied upon the description of the commodity furnished by the shipper and placed on the shipping document by the driver; that she attempted several times to get assistance from the staff on how to rate the shipments; that she was told to use the highest lumber rate; and that she was not qualified in tariff use and interpretation, but she used her best efforts to properly rate the shipments. She also confirmed the fact that they have filed a petition for bankruptcy, and that her husband is now working for another person. We take official notice of the fact that respondent Stanley's radial highway common carrier permit was suspended effective June 23, 1972 by the Commission's Resolution No. 16924 dated June 10, 1972.

Respondent Langley presented a transportation consultant as a witness who disagreed with the staff's ratings in Exhibit 6. It is his contention that grape stakes can be described as poles, which are listed in the Lumber and Forest Products item and are therefore entitled to the lower commodity rate. He utilized the commodity list found in California Motor Tariff Bureau's Local Freight Tariff No. 2, Cal. P.U.C. No. 5 (Exhibit 9) under the alternative application of common carrier rates provision of MRT 2.

Late-filed Exhibit 10 contains the ratings of the shipments in question by the traffic consultant. His re-rating of the shipments produced undercharges in the amount of \$965.26 as compared to the staff's undercharges of \$8,606.89, or a difference of \$7,641.63. He also determined that there were overcharges by the carrier in the amount of \$328.66. According to the witness the net undercharges amount to \$636.60. Pursuant to agreement of the parties, the staff reviewed late-filed Exhibit 10 and verified that, using the alternative application of common carrier rates, the computations are mathematically correct. The staff does not agree that commodity rates may be used for the transportation of grape stakes under the provisions of the tariff items relied upon by the transportation consultant.

Discussion

The controversy revolves around the description of the commodity transported. The parties agree that the commodity was grape stakes, but they disagree as to the tariff description that would include grape stakes since grape stakes, as such, are not listed in the tariffs.

Commodity rates are applicable if the commodity is listed in Item 685 of MRT 2, otherwise class rates are applicable. Item 685 contains three lists of specific products under the generic heading of Lumber and Forest Products (Exhibit 7). Neither grape stakes nor wooden plant stakes are found in Item 685. The closest items would be Poles, wooden, NOI (113060) and Posts, NOI, wooden (113100). The parenthetical numbers refer to items in the governing classification. Their purpose is to limit the application of the commodity rates to the specific products. The classification items read as follows: 113060, Poles, wooden, NOI, Class 35 in truckload quantities; 113100, Posts, NOI, wooden, whether or not creosoted or otherwise preservative treated, Class 35 in truckload quantities. Only by analogy could grape stakes be included in these descriptions. The staff

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rate expert used Item 160400, Sub. 4, Poles or Stakes, plant: wooden, in the rough or rough turned, whether or not creosoted or otherwise preservatively treated, Class 35 in truckload quantities.

The transportation consultant utilized the provision in MRT 2 which permits the use of common carrier rates when they are lower than the minimum rates. He concluded that grape stakes are posts, and therefor used the commodity description of Posts, NOI, wooden, found in Column 1 of Item 270 in California Motor Tariff Bureau's Local Freight Tariff No. 2, Cal. P.U.C. No. 5 (Exhibit 9) and applied the lower commodity rate therein. Item 270 was published under authority of Decision No. 73943 dated April 2, 1968 in Case No. 5432, Petition No. 492. That decision modified Item 685 of MRT 2, among other things, by including reference to the governing classification item numbers. Common carriers were required and authorized to publish the item on the same basis as MRT 2.

Exhibit 9 shows that Item 270 in the common carrier tariff does not contain reference to the classification numbers as published in Item 685 of MRT 2. The transportation consultant's rationale was that since the common carrier tariff descriptions of lumber and forest products were not restricted by the specific classification item numbers and that a tariff must be read as published, he was free to use the item under the alternative provisions of MRT 2, and thereby apply the lower commodity rate. Thus, he related grape stakes to Posts, NOI, wooden, relying upon a Funk and Wagnall's dictionary definition of a stake as a stick or post, sharpened at one end.

We do not agree with the transportation consultant's rationale that grape stakes are Posts, not otherwise indexed, wooden. Webster's Third New International Dictionary (unabridged) defines stake as follows: "(1) a pointed piece of wood or other material driven or designed to be driven into the ground usually for a specific purpose (as a mark of a boundary, site, or claim, support for a plant, part of a framework, or a tethering rod); (2) a post or other support

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to which a person is bound for execution usually by burning;... (9) a wooden post formerly used in leather manufacturing to support a blunt semicircular steel blade over which skins are drawn to and fro to be stretched and softened" (underscoring added). It is readily discernable that the preferred definition relates to a piece of wood for a plant support, not a post. This definition supports the staff's position that the grape stakes are wooden plant stakes.

While it is true, as the transportation consultant contends, that a tariff must be read as published, it is also true that a more specific description takes precedence over a general description. The commodities listed under the generic heading Lumber and Forest Products in Item 270 of the common carrier tariff and Item 685 of MRT 2 and under the same heading in the governing classification do not list stakes, grape stakes, or wooden plant stakes. However, under a separate and distinct listing in Item 160400, Sub. 4, of the governing classification there is the following description: Poles or Stakes, plant: Wooden, in the rough or rough turned whether or not creosoted or otherwise preservatively treated. Therefore, as between general descriptions in tariffs or exceptions and specific descriptions in the classification, the latter are applicable (Indian Refining Co. v Cleveland, Cincinnati, Chicago & St. Louis RR (1937) 222 ICC 409, 417). Having decided that the staff's description is correct, we do not reach the issue of the alternative application of common carrier rates and whether the common carrier rate sought to be used is a legal, but unlawful, rate.

There remains to be discussed the controversy over Part 27 of Exhibit 4. This shipment consisted of wooden posts and palings, as shown on the shipping document in Exhibit 1. The staff applied the same rationale to this shipment as it did to the shipments discussed above, and applied the class rather than the commodity rate. Exhibit 4 shows (Fence Pickets) after the commodity description. This added description does not appear on the shipping document and

appears to be the staff's interpretation. The traffic consultant, on the other hand, also applied the same rationale as he did for the grape stakes. In this instance, we agree with the traffic consultant, since the commodity, as shown on the shipping document, is clearly a post and falls within the commodity description in both the common carrier tariff and MRT 2. The shipment, as rated by the traffic consultant, results in a charge higher than produced by the minimum rate in an amount of \$18.00.

Although respondent Stanley's rating of Part 27 produces a charge higher than that produced by the minimum rate, this does not mean that there is an overcharge, as that word is used when dealing with specific common carrier tariff rates, or that an offset should be authorized. Under Section 3662 of the Public Utilities Code the Commission may establish just, reasonable, and nondiscriminatory maximum or minimum or maximum and minimum rates to be charged by any highway permit carrier. The Commission has established only minimum rates, below which a carrier may not charge. It has not established maximum rates in MRT 2. Therefore, there is no upper limit on rates which a permitted carrier may charge under MRT 2, unlike the specific common carrier tariff rate which is both a minimum and maximum rate. Thus, under minimum rates only, there can be no overcharge.

The staff recommended that a fine in the amount of the undercharges (\$9,690.22) be assessed, but that no punitive fine be imposed. In view of the fact that Mrs. Stanley, although not qualified in the application and interpretation of tariffs, did her best to determine the correct rate, and the fact that respondent Stanley has filed for bankruptcy, we agree with the staff that a punitive fine should not be imposed in this instance.

#### Findings of Fact

1. Respondent Stanley operated pursuant to a radial highway common carrier permit.

2. The shipments covered by the staff's investigation were transported during the first quarter of 1972 for the account of respondent Langley, doing business as Redwood Coast Lumber Company.

3. Respondent Stanley's gross operating revenues for the four quarters ending with the third quarter in 1972 amounted to \$253,165.73.

4. Respondent Langley stipulated to the undercharges shown in Exhibits 4 and 5, except Part 27 of Exhibit 4.

5. The undercharges in Exhibits 4 and 5, excluding Part 27, amount to \$489.13 and \$493.43, respectively, for a total of \$982.56.

6. Part 27 of Exhibit 4 was correctly rated by respondent Langley and results in a charge higher than produced by the minimum rate in an amount of \$18.00.

7. Grape stakes are encompassed in the classification description, Poles or Stakes, plant, wooden, in the rough or rough turned, whether or not creosoted or otherwise preservatively treated.

8. The undercharges developed in Exhibit 6 amount to \$8,606.89.

9. Respondent Stanley's permit was suspended, effective June 23, 1972, by Resolution No. 16924 dated June 10, 1972.

#### Conclusions

1. Respondent Stanley violated Sections 3664, 3667, and 3737 of the Public Utilities Code.

2. Respondent Stanley should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$9,589.45.

3. When respondent Stanley's permit is reinstated, he should be directed to cease and desist from violating the rates and rules of the Commission.

The Commission expects that respondent Stanley 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 respondent Stanley, 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. Loyal D. Stanley shall pay a fine of \$9,589.45 to this Commission pursuant to Public Utilities Code Section 3800 on or before the fortieth day after the effective date of this order.
2. Respondent Stanley shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Findings 5 and 8 and shall notify the Commission in writing upon collection.
3. Respondent Stanley 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 and paid by paragraph 2 of this order, or any part of such remain uncollected sixty days after the effective date of this order, respondent Stanley 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. Failure to file any such monthly report within fifteen days after the due date shall result in the automatic revocation of respondent Stanley's operating authority.
4. Respondent Stanley, upon reinstatement of his suspended permit, 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.

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The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent Stanley and to cause service by mail of this order to be made upon respondent Cordes P. Langley. 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 2nd  
day of JULY, 1974.

William J. Syron  
President  
[Signature]  
[Signature]  
Commissioners

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