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Decision No. 83495

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 LARRY QUIGLEY; TWIN
HARBORS LUMBER CO., INC., a Washington
corporation; SIERRA PACIFIC INDUSTRIES,
INC., a California corporation; LASSEN
MOULDING COMPANY, a California
corporation; TWIN WOOD PRODUCTS, an
Oregon corporation; and KOPPERS
COMPANY, INC., a Delaware corporation.

Case No. 9676
(Filed March 12, 1974)

Larry L. Quigley, for himself, and
Robert F. Roda, Attorney at Law,
for Koppers Company, Inc.,
respondents.
Timothy E. Treacy, Attorney at Law,
and E. H. Hjelt, for the Commission
staff.

O P I N I O N

This is an investigation instituted on the Commission's own motion to determine whether or not Larry Quigley (Quigley), a radial highway common carrier, violated Sections 3664, 3667, and 3737 of the Public Utilities Code in charging and collecting from the respondent shippers less than the applicable minimum rates on 50 shipments. A hearing was held on the matter at Oroville on August 8, 1974 before Examiner Pilling. Respondents Quigley and Koppers Company, Inc. (Koppers) and a representative of the Commission's staff appeared at the hearing.

The undisputed facts are that Quigley was issued a radial highway common carrier permit on August 24, 1965 which is still in effect and was served with and subscribes to Minimum Rate Tariffs 2, 3, 8, 14, Distance Table 7, and Exceptions Rating Tariff 1; that

Quigley employs 3 shopmen, 2 office clerks, and 15 truck drivers and has a terminal at Oroville; that Quigley operates 10 tractors, 5 trucks, and 22 trailers and grossed \$872,732 during the year ended June 30, 1974; that Quigley transported 41 shipments of lumber for respondent Twin Harbors Lumber Co., Inc. (Twin Harbors) during the year 1972, the majority of which moved from Sound Stud Lumber Co. within the Dinsmore extended area to places such as San Bernardino, Hacienda Heights, Rosemead, and Santa Ana; that Quigley transported 4 shipments during 1972 for Koppers, 3 of which were destined to the point of Korbel or vicinity; that Quigley transported 1 shipment of moulding for respondent Lassen Moulding Co. (Lassen) during 1972, involving a split pickup; that Quigley transported 2 shipments of grape stakes for respondent Twin Wood Products (Twin Wood) during 1972; and that Quigley transported 2 shipments for respondent Sierra Pacific Industries, Inc. (Sierra) during 1972. Copies of actual shipping documents covering the above described shipments were introduced into evidence by a witness from the Commission's staff.

A rate expert for the Commission's staff testified that he audited the subject shipping documents and concluded that Quigley had undercharged Twin Harbors a total of \$3,033.37, Koppers a total of \$170.94, Lassen a total of \$118.58, Twin Wood a total of \$86.43, and Sierra a total of \$277.16 for the transportation of their respective shipments, each of which was subject to the Commission's minimum rate regulation. The witness contended that the alleged undercharges resulted from rating errors falling in one or more of the following categories: using only alternative application of common carrier (railroad) rates without assessing beyond charges where the consignee's premises were not served by railroad; use of ~~incorrect mileage for calculating~~ rates; misclassification of the commodity "grape stakes"; assessing lumber rate for the transportation of "moulding"; failure to assess proper number of split pickup or

split delivery charges; and assessment of incorrect rates. This witness introduced into evidence Exhibits 5, 6, 7, 8, and 9 which were extracts of shipper's or Quigley's freight bills covering each of the 50 shipments, followed by what the staff contended the charges should have been, with tariff references supporting each contention.

Quigley presented no evidence which tended to counter the staff witness' position that it was an error to use only the alternative application of common carrier (railroad) rates but defended his action in doing so by stating that he charged the rail rate where the shipper had told him that the consignee was served by rail. The staff witness testified that he personally viewed these consignees' premises and found they were not served by rail. Quigley takes issue with the staff witness' interpretation of Distance Table 7 in calculating mileages by use of the distance map. Several of the shipments alleged by the staff witness to have been accorded less mileage than as shown on the distance map were picked up at a black basing point shown on the distance map, moved through several other black basing points, and were delivered at a red basing point beyond. The staff witness contends that the proper way to figure the total mileage for the trip for ratemaking purposes is to total the individual mileages between each basing point as shown on the map. Quigley concedes that under ordinary circumstances this is the proper method of calculation of total mileage for ratemaking purposes; however, he alleges that since the publication of the distance map a new highway was constructed between two of the intermediate black basing points over which he performed the hauls and which considerably shortened the distance between those two intermediate basing points. The new highway does not show on the distance map. Quigley contends he should be able to include those actual short miles in computing the overall mileage rather than use the longer constructive miles between those intermediate basing points as shown on the distance map in arriving at the overall mileage. Quigley attributed the assessing of the lumber rate on the two shipments of mouldings to his driver's failure to investigate fully the nature of the shipment.

The representative from Koppers brought out from the staff's rate expert witness that 3 of the 4 Koppers' shipments under investigation were consigned to the point of Korbel and that there are two such points of Korbel located in California, one in Sonoma County at a distance of 181 miles from the origin point of the shipment and one in Humboldt County at a distance of 262 miles from point of origin but that only the point of Korbel located in Sonoma County is listed in Distance Table 7 to which the shipments were rated. The shipment actually moved to Korbel in Humboldt County. The Koppers' representative argued that the misrating of the Koppers' shipments by Quigley was inadvertent clerical error and stated that Koppers is willing to pay the balance owing on the full applicable rate.

The representative of the Commission's staff urged that the Commission issue an order requiring that Quigley collect the balance of the alleged undercharges within 60 days from the effective date of the order and that a fine be levied against Quigley in the amount of such undercharges, and further that the Commission fine Quigley in the amount of \$2,500 under Section 3774 of the Public Utilities Code. In support of his request for the fines he pointed out two other cases (Decisions Nos. 75635 and 78808) in which the Commission investigated Quigley's operations and found that Quigley had charged less than the applicable minimum rates.

Findings

1. During the year 1972 Quigley operated as a radial highway common carrier under a permit issued by this Commission and had been served with appropriate tariffs and distance table.
2. In the conduct of his permitted operation Quigley transported the 50 shipments described above, each of which was subject to the Commission's minimum rate regulation.
3. Quigley assessed and collected less than the applicable minimum rate as authorized in the Commission's minimum rate tariffs for transporting each of the 50 shipments to the extent contended by the Commission's staff as set forth in Exhibits 5, 6, 7, 8, and 9 and in violation of Sections 3664, 3667, and 3737 of the Public Utilities Code.

4. Rule 3 of Section 1 of Distance Table 7 requires that total mileages between two black mileage basing points be computed from the total of mileages shown on the Constructive Mileage Maps along the continuous route resulting in the least constructive mileage between said points and does not permit the use of mileages along routes not shown on the Constructive Mileage Maps.

5. Quigley should be ordered to collect undercharges of \$3,033.37 from Twin Harbors, \$170.94 from Koppers, \$118.58 from Lassen, \$86.43 from Twin Wood; and \$277.16 from Sierra.

The Commission expects that Larry 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 such measures. If there is reason to believe that Larry Quigley 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. Larry Quigley shall pay a fine of \$500 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Larry Quigley shall pay interest at the rate of seven percent per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent.

2. Larry Quigley shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$3,686.48 on or before the fortieth day after the effective date of this order.

3. Larry Quigley shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 5, and shall notify the Commission in writing upon collection.

4. Larry Quigley 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 3 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. Failure to file any such monthly report within fifteen days after the due date shall result in the automatic suspension of Larry Quigley's operating authority until the report is filed.

5. Larry 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 this Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent Larry Quigley 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 24th
day of SEPTEMBER, 1974.

Vernon L. Sturgeon
President
William J. Lyons, Jr.
Barbara
Commissioners

Commissioner Thomas Moran, being

necessarily absent, did not participate
in the disposition of this proceeding.