

**ORIGINAL**

Decision No. 83903

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  
CHARLES A. VANDER HEYDEN, an  
individual, VALK ENTERPRISES, INC.,  
a California corporation, and  
VALK WHOLESALE LUMBER COMPANY.

Case No. 9762  
(Filed July 2, 1974)

Frank R. Gasdia, Attorney at Law, for  
Charles A. Vander Heyden, respondent.  
Ira R. Alderson, 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 Charles A. Vander Heyden (Heyden), an individual, for the purpose of determining whether he charged less than minimum rates in connection with transportation performed for Valk Enterprises, Inc., and Valk Wholesale Lumber Company, a wholly owned subsidiary of Valk Enterprises, Inc. (respondents Valk).

Public hearing was held before Examiner Arthur M. Mooney in Los Angeles on October 16, 1974, on which date the matter was submitted.

Findings

The following undisputed facts are established by the record and we find them to be such:

1. Heyden operates pursuant to a radial highway common carrier permit.

2. During August and November 1973, the Commission staff conducted an investigation of Heyden's operations and reviewed his records for the period March through August 1973.

3. The investigation disclosed various rate errors in connection with the transportation of lumber and plywood for respondents Valk during the review period. The errors resulted from charging less than applicable minimum rates and, in one instance, from the failure to assess a split delivery charge.

4. At the time of the staff investigation, Heyden had a terminal at his home in Downey; operated three tractors, two semitrailers, and one full trailer; employed three drivers; and had all applicable minimum rate tariffs and distance tables. All office work was done by Heyden and his wife. Heyden's gross operating revenue for intrastate operations for the year 1973 was \$94,768.

5. The rate errors referred to in Finding 3 are summarized in the staff's Exhibit 3. The minimum rates and charges computed by the staff in Exhibit 3 are correct.

6. Heyden charged less than the lawfully prescribed minimum rates and charges in the instances set forth in Exhibit 3 in the total amount of \$6,615.91.

#### Discussion

The only matter requiring discussion is the penalty, if any, that should be imposed on Heyden.

We are of the opinion that Heyden should be directed to collect the undercharges found herein and that a fine in the amount of the undercharges plus a punitive fine of \$500 should be imposed on Heyden. In arriving at the punitive fine, we have taken into account the testimony by Heyden and the assertions by his counsel that prior to 1972 Heyden subhailed lumber for another carrier; that the other carrier had given him a rate sheet, but he was not aware until after the investigation herein that the rates shown thereon were for shipments of greater volume than those in issue; that respondents Valk rated all the freight bills, and Heyden checked the ratings against his rate sheet; that he was of the opinion that the rates that were assessed were correct; that there was never any intent on his part or conspiracy with respondents Valk to charge below the minimum rate level; that there were no rate errors in connection with other transportation performed by Heyden; that Heyden no longer hauls for respondents Valk; and that substantially all of his business now is interstate. However, it is a well-settled principle that a carrier has a duty to assess and collect not less than applicable minimum rates and charges for all transportation subject to the Commission's minimum rate tariffs and that any errors resulting from reliance upon a shipper or anyone else or from lack of knowledge on the carrier's part does not exonerate it from this responsibility.

Conclusions

1. Heyden violated Sections 3664, 3667, and 3737 of the Public Utilities Code.
2. Heyden should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$6,615.91 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$500.

3. Heyden should be directed to cease and desist from violating the rates and rules of the Commission.

The Commission expects that Heyden 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 Heyden 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. Charles A. Vander Heyden 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. Charles A. Vander Heyden 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. Charles A. Vander Heyden shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$6,615.91 on or before the fortieth day after the effective date of this order.

3. Charles A. Vander Heyden shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 6, and shall notify the Commission in writing upon collection.

4. Charles A. Vander Heyden 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 Charles A. Vander Heyden's operating authority until the report is filed.

5. Charles A. Vander Heyden 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 Charles A. Vander Heyden 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 30th  
day of DECEMBER, 1974.

Vernon L. Stevenson  
President  
William J. Lyons  
Thomas Moran  
Robert E. McLeod  
Commissioners