

Decision No. 84184**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 ALLAN L. WENGER, an individual; BAY CITIES BUILDING MATERIALS CO., INC., a corporation, doing business as MILLBRAE MATERIALS CO. and B.C.B.M. TRUCKING COMPANY, INC., a corporation.

Case No. 9498

ORDER AMENDING DECISION NO. 81562

Decision No. 81562 dated July 3, 1973 in Case No. 9498 found that Allan L. Wenger (Wenger) had charged the respondent shipper \$8,948.54 less than the prescribed minimum rates for transportation performed for it during the period June through November 1971 and directed him to collect the undercharges and pay a fine in the amount thereof plus a punitive fine of \$500. The punitive fine was paid in September 1973. Wenger filed suit against the respondent shipper for over \$25,000 in undercharges. The suit covered a period of time in excess of that specified in Decision No. 81562.

By letter dated December 2, 1974, Wenger's attorney informed the Commission that the suit had been settled for \$22,000 with \$10,000 to be paid in December 1974 and the balance, plus interest thereon at seven percent from November 25, 1974, to be paid on April 1, 1975. A check for one-half of the undercharge fine was attached to the letter. The letter pointed out that the settlement was for approximately 85 percent of the total claim and requested that the fine in the amount of the undercharge be reduced accordingly or by the amount of the punitive fine heretofore paid by Wenger. The letter also requested that Wenger be authorized to pay the balance of the undercharge fine after the remaining amount of the settlement has been collected in April 1975.

Upon consideration, we find that the request for a reduction of the fine in the amount of the undercharges is not justified and conclude that it should be denied. We will not object to Wenger's settlement of his entire claim against the respondent shipper. The amount he will collect is substantially in excess of the undercharge fine. There is, therefore, no reasonable basis for any reduction of such fine on the grounds of hardship or for any other reason. His suit against the shipper was the result of the directive in Decision No. 81562 to collect undercharges, and it is unlikely that Wenger would have reviewed his records beyond the period covered in this proceeding and included additional undercharges in his suit had it not been for the investigation herein. We will, however, authorize Wenger to pay the balance of the undercharge fine by April 15, 1975 and not require the filing of any additional reports in connection therewith.

IT IS ORDERED that:

1. The request by Allan L. Wenger for a reduction of the fine imposed on him by Decision No. 81562 is denied.
2. The balance owing on the fine imposed on Allan L. Wenger by Decision No. 81562 shall be paid on or before April 15, 1975.
3. Allan L. Wenger need not further comply with the reporting requirements of Decision No. 81562.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 11th
day of MARCH, 1975.

Victor L. Sturgeon
President
William J. Symons Jr.
Commissioners
Leonard Ross
Commissioners