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ORIGINAL

Decision No. 84958

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of VIDMA WILLSON and GEORGE M. CRANE, dba WILLSON TRUCKING; and MARQUART-WOLFE LUMBER CO., a California corporation.

Case No. 9815
(Filed November 6, 1974)

Thomas M. Banks, Attorney at Law, for Vidma Willson, and Knapp, Stevens, Grossman & Marsh, by Warren N. Grossman and David Christianson, Attorneys at Law, for Marquart-Wolfe Lumber Co., respondents.
Patrick J. Power, Attorney at Law, and Edward J. 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 Vidma Willson (Willson) and George M. Crane, doing business as Willson Trucking, for the purpose of determining whether Willson charged less than the applicable minimum rates and failed to observe certain documentation and other rules in Minimum Rate Tariff 2 (MRT 2) in connection with the transportation of lumber for Marquart-Wolfe Lumber Co. (M-W), a corporation. Exhibit 5, which is signed by both George M. Crane and Vidma Willson, states that on June 17, 1973, which is prior to the period covered by the investigation herein, George M. Crane ceased to be a partner with Vidma Willson who continued to do business under the name Willson Trucking subsequent to that date. Although the radial highway common carrier permit was issued to both George M. Crane and Vidma Willson and has not

been amended, it is apparent from Exhibit 5 that since June 17, 1973, Willson Trucking has been operated as a sole proprietorship by Vidma Willson and that he is solely responsible for any actions of the business subsequent to that date. The motion by staff counsel to dismiss George M. Crane as a respondent herein has been granted.

Public hearing was held before Examiner Arthur M. Mooney in Los Angeles on December 3 and 4, 1974 and March 4, 1975. The matter was submitted upon the filing of the last volume of transcript on March 18, 1975.

As stated, Willson operates pursuant to a radial highway common carrier permit. He has no terminal. His operations are conducted through a telephone answering service. He has one tractor and one flatbed, semitrailer and employs two drivers and two office personnel. He was served with all applicable minimum rate tariffs and distance tables. His gross operating revenue for the last three quarters of 1973 and for the first three quarters of 1974 was \$87,903.32 and \$287,645, respectively.

Two former bookkeepers of Willson were subpoenaed by the Commission staff as witnesses. One was employed by Willson in latter November or early December 1973 and worked for him for approximately six weeks. The other was employed by him some time in December 1973 and terminated her employment in mid-February 1974. Each did all of her work in her own home. Both presented similar testimony regarding the procedure used for the billing and payment of the M-W shipments. Following is a summary of their testimony: The underlying documents for the transportation performed by Willson for M-W were furnished to the bookkeeper. Generally, if the transportation was performed by a subhauler, the subhauler mailed the documents to the bookkeeper's home, and if it was performed by Willson's own equipment, he brought the documents to her home.

The bookkeeper prepared a freight bill for each shipment. She obtained the rate and charge shown thereon from the applicable minimum rate tariff. The bookkeeper was informed by Willson that there was an agreed rate between M-W and him for all of the lumber shipments. The agreed rate was based on a per 1,000-board foot measurement and ranged from \$13.50 to \$17.50 or \$18, depending on the origin. Once a week an invoice summarizing the freight bills for the transportation performed during the week was prepared and the freight bills were attached to it. There were various columns on the invoice for listing the freight bill number, origin, destination, M-W purchase order number, the minimum rate, the agreed rate between Willson and M-W, and the difference between the two rates for each shipment included thereon. Except for one time when an invoice was mailed, Mr. Willson picked up the invoices with the attached freight bills. A copy of the invoice was later returned to the bookkeeper, and certain of the freight bills listed thereon had the notation "TA" next to them, which meant throw away that particular freight bill. At the bottom of the returned copy, the total of the charges on the freight bills to be thrown away was subtracted from the total of the minimum rate tariff charges for all of the shipments listed on the invoice. The information on the returned invoice was posted in the general ledger. Willson would call three or four days after the copy of the invoice was returned and inform the bookkeeper that it had been paid. Later the bookkeeper would receive the bank voucher for this and would enter it in the receivables. The amount shown on the voucher would correlate with the agreed charges which were computed by M-W. The bookkeeper was instructed by Willson to destroy the returned invoices and the "TA" freight bills. However, she retained these copies and noted "TA"

opposite the freight bill number in the general ledger. Most of the transportation for M-W was performed by subhaulers; however, the majority of the "TA" freight bill were for loads hauled by Willson. The split delivery provisions of the minimum rate tariff were not clearly explained to the bookkeeper, and she did not completely understand them.

The following stipulation was entered into between Willson and the staff: During early 1974, a staff representative conducted an investigation of Willson and reviewed his records for the period October 1973 through January 1974 for transportation performed for M-W; the representative prepared true and correct photostatic copies of the carriers documents for this transportation, and the copies are included in Exhibits 1-A through 1-E; during the investigation, the representative interviewed two former bookkeepers of Willson, and from these interviews and various documents shown to him by one of the bookkeepers, the representative determined that there was a means or device by which Willson was providing transportation for M-W at less than the minimum rates and charges provided in MRT 2; the device was the attempt to conceal the fact that certain transportation had been performed so that the agreed charges for all of the transportation would approximate the minimum charges for the balance of the transportation, and the procedure used to accomplish this was the instructions from M-W to Willson to throw away certain freight bills and adjust his records accordingly; Willson performed split delivery services for M-W without the required documentation and charge therefor; and during the review period, Willson engaged subhaulers without having the required bond on file with the Commission.

A second stipulation was entered into by Willson and the staff, and following is a summary thereof: The representative personally observed various origins and destinations to determine whether they were served with rail facilities, and his observations are summarized in Exhibit 3; the transportation covered by the documents in Exhibits 1-A through 1-E is summarized in Exhibit 6, and the minimum rates and charges shown therein, which were computed by the staff, are correct; and the total of the undercharges shown in Exhibit 6 is \$17,589.42 and is a correct calculation of the differences between the agreed charges and minimum charges for all of the transportation in issue.

Counsel for M-W pointed out that neither his client nor Willson had prepared an independent rate study concerning the transportation covered by the staff exhibits. For this reason, he stated that he did not know with certainty whether the minimum rates and undercharges computed by the staff in Exhibit 6 were correct but that he did not intend to challenge the figures and calculations shown therein. Counsel argued that he did not agree with and saw no purpose for the first stipulation between Willson and the staff; that the statements therein regarding schemes and devices are mere conclusions and are not an issue in this proceeding; and that the staff has attempted through this stipulation to establish with no evidentiary support certain issues that will be involved in a civil litigation which is pending against his client. Counsel for M-W also asserted that since George M. Crane was no longer a partner in Willson Trucking during the time covered by the staff investigation and Vidma Willson did not hold a radial highway common carrier permit in his own name, the effect was that he had no operating authority during this period, and this raises a question as to whether the Commission has jurisdiction to entertain this proceeding.

Willson testified as follows: He commenced hauling for M-W in latter 1971 or early 1972. Around June 1972, it was suggested to him by M-W that he haul for it on a per 1,000-board feet basis, and he agreed. He realized that this was in violation of the applicable minimum rate tariff. M-W informed him that its attorney would take care of any problems that might arise with the Commission. He informed M-W when the investigation herein was commenced. The shipper told him that it had an attorney, and he was of the opinion that its attorney would take care of the matter. At the beginning of the investigation, he was not cooperative with the staff investigator and did not show him any of his records. M-W's attorney had not advised him regarding this. M-W paid him on the basis of the agreed rates, and it was it who determined which freight bills were to be thrown away so that the minimum rate tariff charges for the balance of the freight bills would approximate the agreed charges for the transportation performed. He was not familiar with the documentation requirements for split delivery shipments during the time period covered by the staff investigation. He used sub-haulers for some of the M-W transportation and although he did have a subhaul bond for several months, it was canceled before the time period covered by the investigation and never reissued. He did not employ a traffic consultant during the review period, but has used one since mid 1974. His transportation business is now very limited.

Counsel for the Commission staff recommended that Willson be directed to collect the undercharges found herein, to pay a fine in the amount of the undercharges, and to pay a punitive fine in the amount of \$5,000. Counsel for Willson stipulated to these recommendations. Staff counsel argued that the violations herein are serious, and that they have either been stipulated to or proven.

Additionally, he recommended that M-W be placed on notice to cease and desist from the sort of practices alleged and proven by the staff in this proceeding.

Discussion

The only matters requiring discussion are the comments by counsel for M-W questioning the Commission's jurisdiction, and whether M-W knowingly participated so as to substantiate the shipper penalty action undertaken by this Commission.

As to the jurisdictional question raised by M-W's counsel, it has no merit. During the review period, Willson was operating under permit authority duly issued to both George M. Crane and him. The fact that Crane ceased to be a partner of Willson prior to this time and the permit was not amended to reflect this is irrelevant. It is a well-established principle that if an individual operates as a for-hire highway carrier without any operating authority whatsoever, such operations are subject to the Commission's jurisdiction. This principle likewise applies to anyone performing such operations with a defective permit. As stated above, the directives and fines specified in the following order will apply to Vidma Willson only.

By Resolution L.158, dated November 26, 1974, the Commission authorized its attorney to institute an action against M-W in Superior Court, for penalties under Section 3804 of the Public Utilities Code. The record in this proceeding establishes that the action was well-founded. It appears from the evidence presented

that this carrier and M-W were engaged in a flagrant device to violate minimum rates. We are advised that counsel proposes a reasonable settlement, and by action later we may accept that settlement. If we do not, we direct our counsel to proceed vigorously with prosecution of the action.

Findings

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

2. Willson was served with all applicable minimum rate tariffs and distance tables.

3. Prior to the staff investigation herein, George M. Crane ceased to be a partner in Willson Trucking, and Vidma Willson operated the business as a sole proprietorship and is solely responsible for its actions subsequent to the date of the dissolution of the partnership.

4. The minimum rates and charges computed by the staff for the transportation summarized in Exhibit 6 are correct.

5. Willson and M-W attempted to conceal the fact that transportation was being performed by Willson for M-W.

6. Willson and M-W knew that the charges collected from M-W for the transportation in issue were in violation of the applicable minimum rate tariff.

7. Willson charged less than the lawfully established minimum rates and charges for the transportation summarized in Exhibit 6, resulting in undercharges in the total amount of \$17,598.42.

7. Willson engaged subhaulers to perform transportation for it without having the required subhaul bond on file with the Commission.

Conclusions

1. Willson violated Sections 3575, 3664, 3667, 3668, and 3737 of the Public Utilities Code.

2. Willson should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$17,598.42 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$5,000.

3. Willson should be directed to cease and desist from violating the rates and rules of the Commission, including those relating to subhaulers.

4. Vidma Willson should immediately take the necessary steps to have the radial highway common carrier permit issued to George M. Crane and him transferred to himself to reflect the fact that he is operating the business as a sole proprietorship.

5. M-W is placed on notice that it shall cease and desist from entering into devices to evade the minimum rates.

The Commission expects that Willson 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 Willson 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. Vidma Willson shall pay a fine of \$5,000 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Vidma Willson 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. Vidma Willson shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$17,598.42 on or before the fortieth day after the effective date of this order.

3. Vidma Willson 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. Vidma Willson 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 Vidma Willson's operating authority until the report is filed.


5. Vidma Willson 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 and from engaging subhaulers without having the required subhaul bond on file with the Commission.

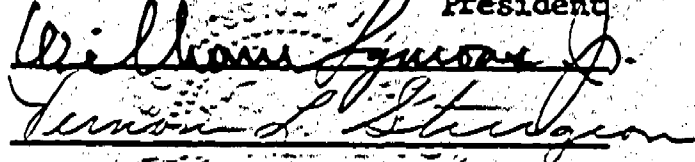
6. Vidma Willson shall immediately take the necessary steps to have the radial highway common carrier permit issued to George M. Crane and him transferred to himself to reflect the fact that he is operating the business as a sole proprietorship.

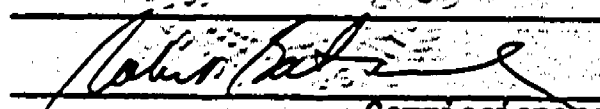
7. Marquart-Wolfe Lumber Co. shall cease and desist from entering into devices to evade the minimum rates.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent Vidma Willson and to cause service by mail of this order to be made upon Marquart-Wolfe Lumber Co., a corporation. 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 7th
day of OCTOBER, 1975.



President




Commissioners

Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.