

Decision No. 85185

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 Stidham Trucking, Inc., a California corporation; American Forest Products, a Delaware corporation; American International Forest Products, Inc., an Oregon corporation; Burns Lumber Company, a California corporation; Lamson Lumber Company, a partnership; Neeley-Nelson Lumber Company, a partnership; Oregon Pacific Industries, Inc., an Oregon corporation; Publishers Forest Products Company of California, a California corporation; Rygel Lumber Sales, a sole proprietorship; Van Noy Plywood, a California corporation, now known as Davidson Plywood and Lumber Company; Clarence Dudley dba Dudley Ranch; and Sandman Motels, Inc., a California corporation.

Case No. 9910
(Filed May 6, 1975)

Martin J. Rosen, Attorney at Law, for
Stidham Trucking, Inc., respondent.
Ira R. Alderson, Jr., Attorney at Law,
for the Commission staff.

O P I N I O N

By its order dated May 6, 1975, the Commission instituted an investigation into the operations, rates, charges, and practices of Stidham Trucking, Inc. (Stidham), American Forest Products, American International Forest Products, Inc., Burns Lumber Company, Lamson Lumber Company, Neeley-Nelson Lumber Company, Oregon Pacific Industries, Inc., Publishers Forest Products Company of California, Rygel Lumber Sales, Van Noy Plywood (now known as Davidson Plywood and Lumber Company),

Clarence Dudley, doing business as Dudley Ranch, and Sandman Motels, Inc. to determine whether Stidham (1) violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code by assessing and charging respondent shippers less than minimum rates for certain transportation, (2) whether respondent shippers paid less than the applicable minimum rates and charges, (3) whether Stidham violated provisions of Items 255 and 256 of Minimum Rate Tariff 2 by failing to issue or maintain required documentation, or process earned revenue through its books, (4) whether Stidham failed to comply fully with Section 5003.1 of the Public Utilities Code in reporting less than gross operating revenue, and paying less than the required fee, (5) whether Stidham violated Item 280 of Minimum Rate Tariff 2 by failing to bill and collect, (6) whether Stidham should be required to collect the undercharges, (7) whether Stidham should be fined pursuant to Section 3800 of the Public Utilities Code, (8) whether Stidham should suffer revocation, cancellation, or suspension - or be fined - pursuant to provisions of Section 3774 of the Public Utilities Code, (9) whether Stidham's operating authority should be suspended or revoked pursuant to Section 5007 of the Public Utilities Code, and (10) whether Stidham should be ordered to cease and desist from any and all unlawful operations and practices in the future.

Public hearing was held before Examiner Weiss on September 17, 1975 at San Francisco at which time the case was submitted. At onset of the hearing the staff entered a motion to dismiss American International Forest Products, Inc. as a respondent in that, although named in the order instituting investigation, the staff subsequently concluded there were no rate violations pertaining to that respondent shipper. The examiner granted the motion.

Stidham is engaged in the business of transporting property over the public highways of this State for compensation pursuant to the following operating authorities:

- Radial Highway Common Carrier Permit - issued 4/18/66.
- Highway Contract Carrier Permit - issued 4/15/69.
- Dump Truck Carrier Permit - issued 12/18/69.
- Petroleum Contract Carrier Permit - issued 4/15/69.
- Cement Contract Carrier Permit - issued 4/18/66.
- Household Goods Carrier Permit - issued 4/22/69.
- Livestock Carrier Permit - issued 4/4/73.

Stidham subscribes to Minimum Rate Tariffs 1-B, 2, 3-A, 4-B, 6-A, 8, 9-B, 11-A, 13, 14-A, 15, 17, 18, and 19, Distance Table 7, Exception Ratings Tariff 1, and Directory 1.

Stidham, with principal office and terminal located at Yreka, and another terminal at Red Bluff, employs twenty-five in operating 15 trucks and 20 trailers. Gross operating revenue for the four quarters ending June 1974 was \$1,697,041.

Gleaned from examination of Stidham's records during an approximate half dozen visits, primarily made in January and February 1974, the detailed documentation^{1/} submitted into evidence by the staff

^{1/} The documentation submitted by the staff, without objection from Stidham, consisted of Exhibits 1 and 2, and was in the form of photocopy reproductions of freight bills, weighmaster certificates, delivery receipts, etc., and provides detailed substantiation of the specific violations charged and set forth in the Commission's investigation order, as well as a summary data sheet and the report of the Associate Transportation Representative who made the investigation.

covered tariff and other violations incurred during a four-month review period in 1973. The amounts of the resultant undercharges ascribable to the various respondent shippers are as follows:

American Forest Products	\$ 749.40
Burns Lumber Company	248.63
Lamon Lumber Company	80.38
Neeley-Nelson Lumber Company	53.95
Oregon Pacific Industries	139.08
Publishers Forest Products	
Company of California	288.12
Rygel Lumber Sales	851.21
Van Noy Plywood	29.92
Clarence Dudley	89.00
Sandman Motels, Inc.	350.32
Total of undercharges	\$2,880.01

Prior to hearing on August 29, 1975 Stidham and the staff reached agreement on a stipulation^{2/}. By this Stidham conceded, and the Commission finds, that the staff's rating of the transportation involved in the violations alleged was true and correct, and that in performing these transportation services for the respondent shippers, Stidham committed the violations charged in Ordering Paragraphs 1 through 7 of the Order Instituting Investigation (and summarized above in Items 1 through 7 of the initial paragraph of this decision).

It was further stipulated, and we agree, that Stidham should be ordered to collect the amount of the undercharges from the above respondent shippers and/or from any persons liable therefor.

^{2/} The stipulation, signed by Stidham's attorney and staff counsel for the Commission, was formally filed with the Commission on August 29, 1975 and served on respondents.

Lastly, it was stipulated that a fine in the amount of the total undercharges of \$2,880.01 would be appropriate and should be imposed pursuant to the provisions of Section 3800 of the Public Utilities Code. We agree and so find.

There remain several additional matters - whether Stidham's operating authorities should be revoked, canceled, or suspended, or as an alternative, a fine be imposed pursuant to Section 3774 of the Public Utilities Code; whether Stidham's operating authority should be suspended or revoked pursuant to Section 5007 in view of his conceded failure to comply fully with Section 5003.1; and whether Stidham should be ordered to cease and desist from any and all future unlawful operations and practices. The staff in the stipulation recommended that a punitive fine of \$300 be imposed pursuant to Section 3774. Stidham's attorney at the hearing argued that Stidham had been cooperative with the staff and that no deception or misleading actions were involved so that no punitive fine or penalty under Section 3774 should be imposed. Regretfully, we cannot agree with respondent's view. Neither deception nor misleading actions are a prerequisite to a fine pursuant to Section 3774.

While failure of a highway carrier to issue freight bills in and of itself has been held to constitute grounds for revocation of a carrier's permit (M. Kaplan (1938) Decision No. 31401 in Case No. 4331), the Commission has discretion to impose a punitive monetary fine in the alternative (Section 3774, *supra*). We believe that revocation is not appropriate, but a fine is. We note and find that Stidham willfully concealed and failed to report approximately \$1,250 of revenue and pay quarterly fees due the Commission on this revenue, for the transportation of five shipments of concrete roofing

tile during October and November of 1973 from Lodi to the Sandman Motel being constructed at that time in Yreka. Stidham stated to Commission representative Schieck on or about May 10, 1974 that he concealed these shipments because he "...wanted some cash and just did it that way." We find the \$300 punitive fine recommended by the staff reasonable and not disproportionate to the undercharge fine of \$2,880.01. Accordingly, we impose it.

Stidham's failure to report the approximate \$1,250 revenue concealed on the five Sandman Motel shipments, and the uncertainty of the evidence of the exact amount, forces us to use that estimate as a base for imposition of the twenty-five percent penalty invoked mandatorily under Section 5007,^{3/} so as to determine the additional gross operating revenue against which to apply the one-third of one

3/ Public Utilities Code, Section 5007:

"If any transportation agency referred to in this chapter is in default in the payment of the fees prescribed, other than filing fees, for a period of 30 days or more, the commission may suspend or revoke any certificate of public convenience and necessity, permit, or license of such agency, and shall estimate from all available information the gross operating revenue of such agency, and shall add to such estimate a penalty of 25 percent for failure, neglect, or refusal to report. The transportation agency shall be estopped from complaining of the amount of such estimate. . . ."

percent fee required under Section 5003.1.^{4/} Under the discretionary authority we possess (see Section 5007), we will not take action to suspend or revoke Stidham's operating authority unless after expiration of a forty-day grace period from effective date of this decision, Stidham has not paid this \$5.20 fee.

Findings

1. Stidham is engaged in transporting property for compensation under various authorities granted by this Commission.
2. There were no rate violations found pertaining to respondent American International Forest Products, Inc.
3. Between September 4, 1973 and December 28, 1973, Stidham assessed, charged, and received from the ten respondent shippers, other than American International Forest Products, Inc., less than minimum rates set forth in Minimum Rate Tariff 2 in violation of Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code.
4. Stidham's failure to assess, charge, and collect the prescribed minimum rates resulted in undercharges in the total amount of \$2,880.01 ascribable to the ten respondent shippers other than American International Forest Products, Inc.

4/ The additional fee required under Section 5003.1 and generated by operation of Section 5007 is \$5.20. It is computed as follows:

The additional unreported revenue to be added to Stidham's gross operating revenue is estimated to be \$1,250. Added to this is the 25 percent penalty of Section 5007, or \$312, for a total of \$1,562. One-third of 1 percent of \$1,562 is \$5.20.

5. Between September 4, 1973 and December 28, 1973, Stidham violated provisions of Items 255, 256, and 280 of Minimum Rate Tariff 2 by failing to issue and maintain required documentation, and during October and November of 1973 willfully concealed and failed to process approximately \$1,250 of earned income through the books covering transportation of five shipments of concrete roofing tile for respondent Sandman Motels, Inc.

6. Stidham failed to report the approximate \$1,250 revenue on the concealed five Sandman Motel Shipments or to pay the required fees pursuant to Section 5003.1 of the Public Utilities Code.

7. Stidham acknowledged the above violations in a stipulation reached between Stidham and the Commission staff dated August 29, 1975.

8. Pursuant to the provisions of Section 3800 of the Public Utilities Code Stidham should be assessed a fine in the amount of the undercharges.

Conclusions

1. Stidham violated Sections 3664, 3667, 3668, 3737, and 5003.1 of the Public Utilities Code, and Items 255, 256, and 280 of Minimum Rate Tariff 2.

2. Stidham should be required to pay a fine of \$2,880.01 pursuant to Section 3800 of the Public Utilities Code.

3. Stidham should be required to pay a fine of \$300 pursuant to Section 3774 of the Public Utilities Code.

4. The Commission expects that Stidham will proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the \$2,880.01 in undercharges. The staff of the Commission will make a subsequent field investigation into such measures. If there is reason to believe that Stidham, 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 the proceeding for the purpose of determining whether further sanctions should be imposed.

5. Stidham must also be required to pay to the Commission the sum of \$5.20 for the Transportation Rate Fund pursuant to Section 5007 of the Public Utilities Code, representing mandatory fees due under provisions of Section 5003.1 of the Public Utilities Code.

6. Stidham should be ordered to cease and desist from any and all unlawful operations and practices in the future.

7. American International Forest Products, Inc. was properly dismissed as a respondent.

O R D E R

IT IS ORDERED that:

1. Stidham Trucking, Inc. shall pay to this Commission a fine of \$2,880.01 pursuant to Public Utilities Code Section 3800, and a fine of \$300 pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Stidham Trucking, Inc. shall pay interest on the \$300 fine at the rate of seven percent per annum; such interest is to commence upon the day the payment of the fine is delinquent.

2. Stidham Trucking, Inc. shall take such action, including legal action, as may be necessary to collect the \$2,880.01 undercharges as found by the Commission, and shall notify the Commission in writing upon collection and payment.

3. Stidham Trucking, Inc. shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. In the event undercharges ordered to be collected by paragraph 2 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, Stidham Trucking, Inc. shall file with this 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.

4. Stidham Trucking, Inc. shall pay to this Commission a fee of \$5.20 pursuant to Public Utilities Code Section 5007 on or before the fortieth day after the effective date of this order.

5. Stidham Trucking, Inc. shall cease and desist from any and all unlawful operations and practices.

6. American International Forest Products, Inc. is dismissed as a respondent.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent Stidham Trucking, Inc., 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 2nd day of DECEMBER, 1975.

William Lysons, Jr. President
Vernon A. Stenger
Edward Ross
Robert Fitch Commissioners