

Decision No. 85401

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 Dan J. Walden; Diamond International Corporation, a Delaware corporation; Marquart-Wolfe Lumber Co., a California corporation, and DOES I through III.

Case No. 9795
(Filed September 24, 1974)

Donald B. Webster, Attorney at Law,
for Dan J. Walden and Marquart-
Wolfe Lumber Co.; and C. C.
Caylor, for Diamond International
Corporation; respondents.
Patrick J. Power, Attorney at Law,
and E. E. Cahoon, for the Com-
mission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the operations, rates and practices of Dan J. Walden (Walden), an individual, for the purpose of determining whether Walden charged less than the applicable minimum rates in connection with transportation performed for Diamond International Corporation (Diamond) and Marquart-Wolfe Lumber Co. (M-W), a corporation, whether Walden failed to issue and maintain shipping documents and timely bill and collect transportation charges in violation of the applicable rules in Minimum Rate Tariff 2 (MRT 2) in connection with transportation performed for M-W and Does I, II, and III, whether Walden altered accounting records in connection with transportation performed for M-W, and whether Walden provided for-hire transportation without charge for the Does.

Public hearing was held before Examiner Arthur M. Mooney in Red Bluff on January 22 and 23, 1975. The matter was submitted on the latter date.

At the time of the investigation by the Commission staff referred to hereinafter, Walden operated pursuant to a radial highway common carrier permit from his home in Red Bluff, he had four trucks and six trailers, he employed four drivers, his wife maintained his books, and he had all applicable minimum rate tariffs and distance tables. His gross operating revenue for the year ending June 30, 1974 was \$205,401 of which \$17,665 was earned from subhauling.

On various days during December 1973 and the early part of 1974 a representative of the Commission staff visited Walden's place of business and examined his records covering the transportation of lumber for M-W and plywood and lumber for Diamond for the period May 1 through October 31, 1973. The witness stated that because of difficulties another staff member had had in reviewing Walden's records in connection with an undercharge citation issued in 1972, he visited 10 weighmasters and nine lumber mills in northern California to determine if they had records of any shipments transported by Walden for which the carrier had not issued freight bills or included in his accounts receivable record, and that as a result of this investigation he found evidence of 14 such shipments. He testified that the documents for four of these shipments were furnished to him by the sales manager of Kimberly Clark Corporation's (Kimberly) lumber mill in Anderson and that he was informed by the sales manager that M-W, the shipper of each of the four shipments, would be informed of this fact. The representative asserted that on March 12 and 13, 1974, he returned to Walden's office and again checked his records; that freight bills for the four M-W shipments from Kimberly were included in the records; that the accounts receivable ledger had been rewritten to include entries for these

shipments and the numbers and amounts of M-W's checks that paid for them; and that he discussed with the carrier the documentation he had discovered for the other 10 shipments for which the carrier had no records. The witness stated that on March 29, 1974, Walden's wife informed him by telephone that she had found shipping documents for four of the ten remaining shipments which were for M-W; that these documents had apparently been misplaced; that one of the ten shipments had been delivered to North Hollywood for M-W in error and was returned to Corning for delivery to the consignee at that location, and because of the delay, no charge had been made for this shipment; and that she could find no records for the other five shipments. He said that the records for the four M-W shipments found by respondent's wife were later given to him. The representative testified that on April 2, 1974, he again returned to Walden's place of business and noticed that the accounts receivable ledger had again been rewritten to include entries for these four shipments and the numbers and amounts of M-W's checks that paid for them. He pointed out that he made true and correct photostatic copies of all freight bills and other related documents and the accounts receivable ledgers he had reviewed on his various visits; that the photocopies relating to M-W and to Diamond are included in Exhibits 2 and 3, respectively; and that Exhibit 5 includes information regarding rail facilities at various origins and destinations of certain of shipments in issue. The witness testified that according to data he obtained, two of the five shipments for which Walden had no records were transported for M-W and that in his opinion it was the intent of Walden and M-W that these two shipments and the other nine M-W shipments referred to above were to be transported free.

Of the remaining three of the 14 shipments for which the representative had obtained information from weighmasters and lumber mills, the staff stipulated to the correctness of Walden's Exhibit 14 which showed that two of the shipments were subhauled by Walden for

another carrier who had paid for the service and that the third was part of a shipment for which Walden had records. This stipulation eliminated all of the Doe respondents herein.

In response to a subpoena duces tecum issued at the request of the staff, the custodian of documents of M-W introduced in evidence various checks issued by his company to Walden, including those issued for payment for seven of the eight shipments which were added to Walden's accounts receivable ledger on the two occasions it was rewritten. According to the dates on these checks, they were all issued within a week, more or less, of the dates on which the shipments were made. However, the staff pointed out that M-W's checks are sequentially numbered; that the seven shipments in question were transported prior to October 31, 1973; that the check number on each of these checks were higher than the number shown on a check issued by M-W on February 19, 1974; and that this clearly establishes that the checks were issued after this date. The custodian of records testified that it did not appear that the checks for the seven shipments were processed by a bank. He stated that it is possible these checks were cashed by M-W for Walden without going through a bank. ✓

A rate expert for the Commission staff testified that he took the sets of documents and data in Exhibits 2, 3, and 5, together with the supplemental information testified to by the representative, and formulated Exhibits 9, 10, and 11 which related to M-W and Exhibit 12 which relates to Diamond. He explained that these exhibits show the rates and charges assessed by Walden, the minimum rates and charges computed by the staff, and the resulting undercharges alleged by the staff for the transportation in issue. He pointed out that the eleven shipments summarized in Exhibits 9 and 10 were those for which the representative had obtained data from Kimberly and other northern California lumber mills and weighmasters; that according to information in the representative's Exhibit 2 and

testified to by him, Walden collected nothing for this transportation; and that the undercharge computed for each of the eleven shipments was based on this information. The representative stated that the undercharges shown in the two shipments for M-W included in Exhibit 11 resulted from failure to comply with the documentation requirements in MRT 2 for split-delivery shipments and that the undercharges for the Diamond shipments in Exhibit 12 resulted from the incorrect application of alternative rail rates, failure to assess off-rail charges, failure to comply with the time limitation for picking up multiple lot shipments, incorrect application of split delivery rules, and incorrect extensions of charges. The total of the undercharges in Exhibits 9, 10, and 11 relating to the transportation performed for M-W is \$4,885.37, the total of the undercharges in Exhibit 12 relating to Diamond is \$3,303.92, and the total of the undercharges in the four exhibits is \$8,189.29.

The following stipulations were entered into by Walden and the staff: The undercharges shown in the staff's rate Exhibits 9, 10, 11, and 12 are correct; the staff's Exhibit 2 accurately reflects Walden's accounts receivable ledger relating to the M-W account; Walden was paid by M-W for the four shipments summarized in Exhibit 9 and for four of the seven shipments summarized in Exhibit 10 after the staff investigation was commenced in December 1973, and he has not been paid by M-W for the other three shipments summarized in Exhibit 10 or for undercharges for the two shipments summarized in Exhibit 11; and the dates appearing on M-W's checks which paid for eight of the shipments for which Walden did not initially have records do not accurately reflect the dates on which such payments were actually received.

The representative of Diamond stipulated that the undercharges shown in the staff rate Exhibit 12 relating to his company were correct and that his company would pay them.

Walden testified as follows: He has been in the trucking business since 1968; he had operated five trucks and five or six trailers; he now operates two trucks and trailers, one of which is inoperative; the other equipment was repossessed because he could not make the payments for them; he no longer hauls for M-W; his gross operating revenue has declined to nothing; and his current financial condition is extremely poor.

In his closing statement, staff counsel asserted that the evidence clearly demonstrates eleven instances in which Walden performed free transportation for M-W during the staff review period; that it was only after the staff investigation uncovered this practice that M-W made payment to Walden for eight of the shipments; and that there was a deliberate attempt to cover this up by Walden by rewriting his accounts receivable ledger entries and by M-W by antedating its checks that paid for the shipments. He recommended that Walden be directed to collect all unpaid undercharges; that a fine in the amount of the undercharges plus a punitive fine of \$1,500 be imposed on him; and that Walden be directed to cease and desist from all illegal practices and violations of the Commission's minimum rate tariffs.

The attorney for Walden argued that there was no attempt on the part of his client to mislead the staff investigator; that the errors that were made were honest mistakes; that the revisions of Walden's accounts receivable ledger was for the purpose of recording the additional payments made by M-W and not an attempt to cover up; that his client's bookkeeping procedures had been poor, but this has been corrected; that his client was paid in cash by M-W for the transportation covered by the antedated checks; and that the facts and circumstances herein do not warrant the imposition of any fines.

Discussion

We concur with the staff ratings and undercharges shown in its four rate exhibits. The thorough investigative work by the staff and the stipulations secured from Mr. Walden make the facts quite

clear. According to the record, part of the undercharges relating to M-W have been collected by Walden, and Diamond has agreed to pay all undercharges relating to it.

In addition to ordering collection of \$8,189.29 in undercharges the conduct of Walden must be evaluated. The evidence clearly shows that Walden performed free transportation for M-W in the eleven instances during the review period. Further, and more seriously, Walden attempted to cover up this conduct from detection by the Commission by altering his accounts receivable ledger and having M-W supply antedated checks. We realize that Mr. Walden is in dire financial condition. His counsel requests that the \$1,500 punitive fine sought by the staff not be imposed. Violation of the statutes before us can result in a punitive fine of up to \$5,000. We find this conduct so offensive that we would levy that full amount were it not for the mitigating circumstances of Mr. Walden's finances. We believe the staff's request to be quite restrained under the circumstances; such intentional violation of the minimum rate tariffs and deliberate cover-up undermines the basic regulations of this Commission. Undeterred, such violations can lead to disrespect for the law and the economic destruction of those carriers who abide the law. This cannot be tolerated. A punitive fine in the sum of \$1,500 will be levied against Mr. Walden.

Findings

1. Walden operates pursuant to a radial highway common carrier permit.
2. Walden was served with all applicable minimum rate tariffs and distance tables, together with all supplements and addition thereto.
3. Walden transported eleven shipments for M-W during the period May 1 through October 31, 1973 and did not bill or collect any charges for this transportation within the time review period specified in MRT 2.

4. Walden collected all or part of the transportation charges for eight of the eleven shipments referred to in Finding 3 after the staff investigation was commenced in December 1973.

5. Walden altered his accounts receivable ledger and M-W issued antedated checks in an attempt to cover up the fact that the billing and collection for the eight shipments referred to in Finding 4 were substantially after the credit period provided in MRT 2.

6. The minimum rates and charges computed by the staff in its rate Exhibits 9, 10, 11, and 12 are correct.

7. Walden charged less than lawfully prescribed minimum rates in the instances set forth in Exhibits 9, 10, and 11, which relate to M-W, in the amount of \$4,885.37 and in the instances set forth in Exhibit 12, which relate to Diamond, in the amount of \$3,303.92, and the total of the undercharges in the four staff rate exhibits is \$8,189.29.

8. As pointed out in Finding 4, part of the M-W undercharges referred to in Finding 7 have been collected by Walden.

9. Diamond has agreed to pay Walden the undercharges referred to in Finding 7 which relate to it.

Conclusions

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

2. Walden should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$8,189.29 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$1,500.

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

The Commission expects that Walden will proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges, including, if necessary, the timely filing of complaints pursuant to Section 3671 of the Public Utilities Code.

The staff of the Commission will make a subsequent field investigation into such measures. If there is reason to believe that Walden or his attorney has not been diligent, 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. Dan J. Walden shall pay a fine of \$1,500 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Walden 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. Dan J. Walden shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$8,189.29 on or before the fortieth day after the effective date of this order.

3. Dan J. Walden shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 7 and shall notify the Commission in writing upon collection.

4. Dan J. Walden 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 Walden 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

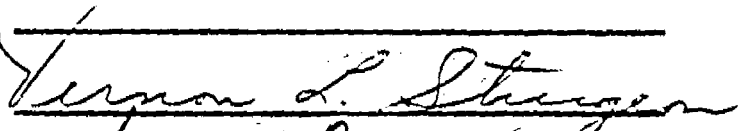
such undercharges have been collected in full or until further order of the Commission. Failure to file any such monthly report within fifteen days after the due date shall result in the automatic suspension of respondent Walden's operating authority until the report is filed.

5. Dan J. Walden 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 Executive Director of the Commission is directed to cause personal service of this order to be made upon respondent Dan J. Walden 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 FEBRUARY, 1976.


President






Commissioners

Commissioner William Swens, Jr., being necessarily absent did not participate in the disposition of this proceeding.