

ORIGINAL

Decision No. 87875 SEP 20 1977

## 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 STIDHAM TRUCKING, INC., a California Corporation; D&S TRUCKING, a Partnership; DONALD E. DUKES, an Individual; LOUISIANA PACIFIC CORPORATION, a Delaware Corporation; WISCONSIN-CALIFORNIA FOREST PRODUCTS, INC., a California Corporation; CALIFORNIA WHOLESALE PLYWOOD, INC., a California Corporation; LUMBER DEALERS MATERIALS CO. OF REDDING, a California Corporation; HAROLD P. HENRIS, an Individual, dba HENRIS ROOFING; MOUNTAIN VALLEY MOULDING CO., a California Corporation; OREGON MOULDING & LUMBER CO., an Oregon Corporation; GRAY WHOLESALE CO., an Oregon Corporation; NATIONAL PLYWOOD, INC., a California Corporation.

Case No. 10319  
(Filed April 26, 1977)

Silver, Rosen, Fisher & Stecher, by James S. Clapp, Attorney at Law, for Stidham Trucking, Inc., D&S Trucking, and Donald E. Dukes, respondents.  
Radovan Z. Pinto, Attorney at Law, and Eugene E. Cahoon, 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 Stidham Trucking, Inc. (Stidham), Donald E. Dukes (Dukes), and D&S Trucking (D&S) for the purpose of determining (1) whether Stidham charged less than the applicable minimum rates in Minimum Rate Tariff 2 (MRT 2) in connection with the transportation of lumber, panelling, roofing, and/or related items for Louisiana Pacific Corporation (Louisiana), Wisconsin-California Forest Products, Inc. (Wisconsin), California

Wholesale Plywood, Inc. (Plywood), Lumber Dealers Materials Co. of Redding (Dealers), a corporation, Harold P. Henris (Henris), doing business as Henris Roofing, Mountain Valley Moulding Co. (Mountain), a corporation, Oregon Moulding & Lumber Co. (Oregon), a corporation, Gray Wholesale Co. (Gray), a corporation, and National Plywood, Inc. (National); (2) whether Dukes charged less than the applicable minimum rates in MRT 2 in connection with transportation performed for Plywood, and whether he performed for-hire transportation during a period when his operating authority was in voluntary suspension; and (3) whether D&S operated as an underlying carrier for Stidham without the required operating authority, and whether D&S made any illegal payments to an employee of National.

Public hearing was held before Administrative Law Judge Arthur M. Mooney in San Francisco on July 13, 1977, on which date the matter was submitted. Notice of the hearing was sent to all respondents. The three respondent carriers, Stidham, Dukes, and D&S, were represented by the same counsel. None of the shipper respondents appeared or were represented at the hearing. A written stipulation by counsel for the respondent carriers and the Commission staff was received in evidence as Exhibit 1. The stipulation covered all matters at issue in this proceeding.

#### Findings

The following matters were stipulated to by counsel for the respondent carriers and the Commission staff (Exhibit 1), and we find them to be facts:

1. Stidham operates pursuant to a radial highway common carrier permit. It also holds various other carrier permits which are not at issue in this proceeding. Larry Stidham owns all of the company's outstanding stock. It has an office and terminal at Yreka and also a terminal at Red Bluff. It has an average of 24 employees, including supervisors, office personnel, dispatchers, mechanics, and drivers, and operates 12 trucks and tractors and 15 trailers. It has

been served with all applicable minimum rate tariffs, distance tables, and exception ratings tariffs. Its total gross operating revenue for the year 1976 was \$2,033,198, of which \$1,624,532 was earned from California intrastate operations. During this period, it paid \$1,281,263 to subhaulers and earned \$65,272 from subhauling.

2. Dukes operates pursuant to a radial highway common carrier permit from his residence at Carmichael. He is the sole owner of the company. The permit was in voluntary suspension from September 15, 1975 to March 12, 1976. He employs one driver and operates two trucks and trailers. He was served with all applicable minimum rate tariffs and exception ratings tariffs. His gross operating revenue for the year 1976 was \$211,879, of which \$115,003 was earned from California intrastate operations. During this period, he earned \$50,981 from subhauling.

3. D&S is a co-partnership of Larry Stidham and Dukes and has never held any operating authority from the Commission. It operated as an underlying carrier for Stidham during the investigation period referred to in Finding 4 below. It no longer performs any for-hire carrier operations.

4. On January 29, 1976 and various other days thereafter, a representative of the Commission's staff conducted an investigation into the operations of Stidham, Dukes, and D&S during latter 1975 and early 1976. The representative made true and correct photostatic copies of various freight bills and other documents relating to transportation performed by the respondent carriers for the nine respondent shippers during the review period, and the copies are included in Appendices 3 through 7 of Exhibit 1. Based on the documents and other information obtained by the representative, the staff prepared the rate statements in Appendices 8 through 16 of Exhibit 1 which show the rates and charges assessed by Stidham or Dukes, the correct minimum rates and charges computed by the staff, and the resulting undercharges for the transportation performed for eight of the respondent shippers. There were no undercharges alleged by the staff for the transportation performed for National.

5. Stidham charged less than the applicable minimum rates for the transportation summarized in Appendices 8 through 15 of Exhibit 1, resulting in undercharges in the total amount of \$21,060.06. The amount of undercharges for each of the eight respondent shippers it provided transportation for were as follows:

<u>Shipper</u>	<u>Amount of Undercharges</u>
Louisiana	\$6,675.04
Wisconsin	6,485.79
Plywood	6,765.69
Dealers	396.87
Henris	70.89
Mountain	269.64
Oregon	116.56
Gray	279.58

6. Dukes charged less than the lawfully prescribed minimum rates for the transportation it performed for Plywood, which is summarized in Appendix 16 of Exhibit 1, resulting in undercharges in the total amount of \$1,160.58.

7. Stidham transported 13 of the 45 shipments for Wisconsin summarized in Appendix 9 to Exhibit 1 and the 18 shipments for Louisiana summarized in Appendix 8 of the exhibit free.

8. The reason for the undercharges for the transportation for Plywood summarized in Appendices 10 and 16 of Exhibit 1 by Stidham and Dukes, respectively, was that the carriers had rated the commodities transported as plywood; whereas, they were in fact panelling, vinyl overlay or print, and moulding, vinyl covered or print, which are subject to truckload ratings of Class 35, minimum weight 36,000 pounds, provided in Items 193960 and 38050, respectively, of the applicable National Motor Freight Classification.

9. The remaining undercharges in the rate statements resulted from assessing incorrect rates.

10. Dukes transported several of the shipments summarized in Appendix 16 of Exhibit 1 for Plywood during the period of time his operating authority was in voluntary suspension.

11. D&S made five payments of \$200 each to the employee of National who controlled the engagement of carriers and leasing of

carrier equipment. As a result of these payments or commissions, D&S leased a tractor and two trailers to National on November 12, 1975.

12. Stidham has heretofore been issued three undercharge letters, and by Decision No. 85185 dated December 2, 1975 in Case No. 9910, it was found to have undercharged and penalties were imposed on it.

13. Two undercharge letters have heretofore been issued to Dukes under prior permit authority held by him.

14. Stidham, Dukes, and D&S agree to the conclusions and order set forth below.

Conclusions

1. Stidham violated Sections 3664, 3667, 3668, 3670, and 3737 of the Public Utilities Code.

2. Stidham should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$21,060.06 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$5,000.

3. Dukes violated Sections 3664, 3667, 3668, 3670, 3737, and 3771 of the Public Utilities Code.

4. Dukes should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$1,160.58 and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$2,000.

5. D&S violated Sections 3541, 3571, 3664, 3667, 3668, 3670, and 3737 of the Public Utilities Code. Since D&S is no longer in business and since penalties are being imposed upon its owners, no additional penalties will be imposed on them for these violations.

6. Stidham, Dukes, and D&S should cease and desist from any and all illegal operations as carriers.

The Commission expects that Stidham and Dukes will each 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 taken by each respondent. If there is reason to believe that Stidham or Dukes or the attorney of either 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 on either or both of the respondent carriers.

O R D E R

IT IS ORDERED that:

1. Stidham Trucking, Inc. 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. Stidham Trucking, Inc. 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. Stidham Trucking, Inc. shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$21,060.06 on or before the fortieth day after the effective date of this order.
3. Donald E. Dukes shall pay a fine of \$2,000 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Donald E. Dukes 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.
4. Donald E. Dukes shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$1,160.58 on or before the fortieth day after the effective date of this order.
5. Stidham Trucking, Inc. and Donald E. Dukes shall each take such action, including legal action, as may be necessary to collect the undercharges set forth in Findings 5 and 6, respectively, and shall each notify the Commission in writing upon collection.

6. Stidham Trucking, Inc. and Donald E. Dukes shall each 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 either or both of the respondents by paragraph 3 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, such respondent or both shall file with the Commission, on the first Monday of each month at 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 by either respondent to file any such monthly report within fifteen days after the due date shall result in the automatic suspension of that respondent's operating authority until the report is filed.

7. Stidham Trucking, Inc., Donald E. Dukes, and D&S Trucking shall cease and desist from any and all illegal operations as carriers.

The Executive Director of the Commission shall cause personal service of this order to be made upon respondents Stidham Trucking, Inc., Donald E. Dukes, and D&S Trucking 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 20th day of October, 1977.

Robert Bateman  
President  
William J. Lyons  
Vernon L. Sturgeon  
Richard D. Howell  
Clair L. Delich  
Commissioners