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ORIGINAL

Decision No. 91245 JAN 15 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
own motion into the operations, )  
rates and practices of Steve T. )  
Allen, an individual, dba Riggs )  
and Allen Transportation; Hampton )  
Lumber Sale Co., dba All Coast )  
Forest Products, a corporation; )  
H & M Wholesale Lumber Company, )  
a corporation; Georgia-Pacific )  
Corporation, a corporation and )  
Rolando Lumber Sales, Inc., )  
a corporation. )

OII No. 31  
(Filed December 7, 1978)

Ann M. Pougiales, Attorney at Law, for Steve T.  
Allen, respondent.  
Elmer J. Sjostrom, Attorney at Law, for the  
Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion to determine whether Steve T. Allen (Allen), an individual doing business as Riggs and Allen Transportation, operating under a radial highway common carrier permit issued by this Commission, charged less than the minimum rates in connection with intrastate shipments for the following shippers: Hampton Lumber Sale Co., doing business as All Coast Forest Products, a corporation; H & M Wholesale Lumber Company, a corporation; Georgia-Pacific Corporation (Georgia-Pacific); and Rolando Lumber Sales, Inc.

Public hearing was held in Sacramento, California, on January 10, 1979, and the matter was submitted on that date. The record establishes that Allen and the previously named shippers were served with appropriate notice, and that Allen has been served with the applicable minimum rate tariffs (MRTs).

The Staff's Presentation

The staff investigation reviewed Allen's records from December 1, 1977 to May 31, 1978. Records for the first quarter of 1978 showed Allen's gross revenue to be \$144,087 and that Allen paid \$108,256 to subhaulers. Allen has one terminal in West Sacramento and operates one tractor and nine trailers.

James Higbee, an Associate Transportation Representative with the Commission staff, testified to the scope of his investigation. He compiled Exhibit 2 which contains documentation of unbilled shipments for all of the named shippers.

Dallas M. Cooper, Associate Transportation Rate Expert with the Commission staff, sponsored Exhibits 3 through 6 which were compiled from the detailed documentation in Exhibit 2. These exhibits tabulated the following unbilled shipments:

TABLE 1

<u>Shipper</u>	<u>Unbilled Shipments</u>	
	<u>Number</u>	<u>Amount</u>
Rolando Lumber Sales	14	\$ 7,938.47
H & M Wholesale Lumber	8	4,162.20
All Coast Forest Products	5	2,049.87
Georgia-Pacific	6	<u>3,404.28</u>
Total		\$17,554.82

Witness Higbee stated that he had discussed the documentation with Allen, who admitted that providing free transportation for some shipments was a device to attract business. Allen stated that all the business was transacted by telephone.

Allen's Presentation

Allen took the stand in his own behalf. The staff stipulated to the introduction of a prepared statement by him (Exhibit 7).

The statement pointed out that Riggs and Allen Transportation was a relatively new and small business, that business is conducted primarily through subhaulers, that despite the size of the business it has always maintained itself in a solvent position, and that Allen is seeking to improve its profitability by seeking Interstate Commerce Commission (ICC) authority and by hiring a salesperson. Allen states that the imposition of a major fine would impair the company's finances, resulting in a loss of jobs and possibly preventing the company from achieving its expansion goals.

The statement further invites attention to Allen's cooperation with the Commission staff and asserts that no free transportation has been provided since the staff's audit. The statement says that Allen has discussed the undercharges with the shippers and has begun a voluntary collection program. Exhibit 8, introduced by Allen, shows one such payment from Georgia-Pacific amounting to \$3,404.28.

Lastly, the statement notes that the free transportation was offered during a period when the minimum rates for lumber were high and when there was difficulty in getting the shippers to pay such rates (all the transportation was for lumber). The rates in effect at that time resulted in Petition for Modification No. 771 in Case No. 5432 (the Commission's continuing investigation of minimum rates), which ended with Decision No. 89029 dated June 27, 1978. This decision lowered lumber rates. Allen's statement recognizes that the higher rate levels did not excuse the undercharges but argues that the Commission should consider the competitive situation when setting the level of any punitive fine.

#### Discussion

The staff requests a fine of \$5,000. Allen raises no issue relating to any order to collect undercharges but requests a lesser fine for the reasons set forth in this statement.

None of the reasons advanced by respondent in mitigation of the admitted free transportation of lumber shipments is sufficient to justify a reduction of the maximum punitive fine that may be imposed. This Commission has repeatedly pointed out in enforcement proceedings that it considers the evasion of regulatory requirements by the falsification of documents or the handling of free loads is reprehensible conduct, and we have informed shippers and carriers that a carrier who has been found, after investigation, to have engaged in such practices should expect the imposition of maximum penalties. In similar proceedings involving free loads, we have consistently imposed the maximum punitive fine in addition to a fine in the amount of the undercharges.<sup>1/</sup>

We iterate in this proceeding that we consider that there are no mitigating circumstances that justify the furnishing of free loads, and we again place carriers on notice that carriers found to engage in such practice will receive the maximum penalty.

In addition to a fine in the amount of the undercharges, we will levy a fine of \$5,000. Allen is admonished that if there are future violations of this type, the Commission may suspend or revoke his operative rights.

#### Findings of Fact

1. Allen, an individual doing business as Riggs and Allen Transportation, operated at the time of the investigation in this case as a radial highway common carrier under Permit T-112,315, with one terminal, at 621 A Harbor Boulevard, West Sacramento.

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<sup>1/</sup> See, for example, Stidham Trucking, et al. (Decision No. 87875 dated September 20, 1977 in Case No. 10319), Walt Wilson Trucking (Decision No. 87751 dated August 23, 1977 in Case No. 10171), and Snookie Shavings, Inc. (Decision No. 90723 dated August 28, 1979 in Case No. 10036).

2. Allen was served with all applicable MRTs, distance tables, and exception ratings.

3. During the period December 1, 1977 to May 31, 1978 Allen transported free of charge the shipments documented in Exhibit 2, resulting in undercharges in violation of the applicable MRTs for the respondent shippers as more specifically set forth in Table 1.

4. During the course of the Commission staff investigation, Allen initiated a collection program for some of the undercharges. Allen cooperated with the staff during the investigation.

Conclusions of Law

1. Allen violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code in that, as device to avoid the applicable minimum rates, he offered the respondent shippers free transportation for certain shipments as set forth in Finding 3.

2. Allen should be ordered to pay a fine to the Commission pursuant to Public Utilities Code Section 3800 in the amount of the undercharges (\$17,554.82) and should be ordered to collect the undercharges from the respondent shippers.

3. Allen should be ordered to pay an additional fine pursuant to Public Utilities Code Section 3774 in the amount of \$5,000.

4. Allen should be directed to collect the outstanding undercharges from the respondent shippers and to cease and desist from violating the rates and rules of the Commission.

The Commission expects that Allen 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 Allen 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 sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Steve T. Allen (Allen) 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. Allen 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. Allen shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$17,554.82 on or before the fortieth day after the effective date of this order.

3. Allen shall take such action, including legal action instituted within the time prescribed by Section 3671 of the Public Utilities Code, as may be necessary to collect the undercharges set forth in Finding 3 and shall notify the Commission in writing upon collection.

4. Allen 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 his operating authority until the report is filed.

5. Allen 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 shall cause personal service of this order to be made upon respondent Allen and cause service by mail of this order to be made upon all other respondents. The effective date of this order shall be thirty days after completion of service on respondent Allen. ✓

The effective date of this order shall be thirty days after the date hereof.

Dated JAN 15 1980, at San Francisco, California.

*We dissent:*

*It is our belief that the punitive fine in this case should be \$3,000*

*John E. Guyon  
Robert W. Howell*

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President  
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Commissioners