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JAN 15 1980

Decision No. \_\_\_\_\_

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 Anthony Thomas Azevedo, an individual, doing business as Azevedo Transport; and John Dalerio, Paul Dalerio, and Allied Container Corporation, doing business as Dalerio Pallet and Shook Co., a co-partnership.

OII No. 57  
(Filed August 28, 1979)

Sergius M. Boikan, Attorney at Law, for Anthony Thomas Azevedo, respondent.  
Elmer J. Sjostrom, Attorney at Law, and Edwin H. Hjelt, for the Commission staff.

O P I N I O N

This is an investigation instituted on the Commission's own motion into the operations, rates, charges, and practices of Anthony Thomas Azevedo (Azevedo), doing business as Azevedo Transport, regarding 109 loads of lumber hauled by Azevedo for John Dalerio, Paul Dalerio, and Allied Container Corporation, doing business as Dalerio Pallet and Shook Co. (Dalerio Pallet), a partnership, to determine the following:

1. Whether respondent Azevedo in performing transportation for the above-named shipper respondent violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code by assessing rates and charges less than the applicable minimum rates prescribed in Items 690 and 691 of Minimum Rate Tariff No. 2.

2. Whether respondent Azevedo in performing transportation for the above-named shipper respondent violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code by charging less than the applicable minimum rates by the device of free loads.
3. Whether the above-named shipper respondent has paid less than the applicable rates and charges for the transportation performed by respondent Azevedo.
4. Whether the above-named shipper respondent has sought to obtain or has obtained transportation of property by respondent Azevedo at less than the applicable rates and charges in violation of Section 3669 of the Public Utilities Code.
5. Whether any sum of money is now due and owing respondent Azevedo from the above-named shipper respondent.
6. Whether respondent Azevedo should be ordered to collect from the above-named shipper respondent, or from any other person liable therefor, the difference between the charges collected and the charges due under the aforementioned tariff.
7. Whether respondent Azevedo should be ordered to cease and desist from any and all unlawful operations and practices.
8. Whether the operating authority of respondent Azevedo should be cancelled, revoked, suspended or as an alternative, whether a fine should be imposed pursuant to Section 3774 of the Public Utilities Code.
9. Whether respondent Azevedo should be ordered to pay a fine in the amount of the undercharges pursuant to Section 3800 of the Public Utilities Code.
10. Whether any other order or orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

A hearing was held on the matter on November 7, 1979 at San Francisco before Administrative Law Judge Pilling.

Azevedo was issued a radial highway common carrier permit on October 13, 1976 and at all times pertinent herein subscribed to Minimum Rate Tariffs 2, 7, and 8, Exceptions Rating Tariff 1, and Informal Rulings Manual of October 14, 1976. Azevedo's gross revenue from operations for the year ending March 31, 1978 was \$123,487. He operates three power units and six trailers. The Commission staff reviewed Azevedo's records of operations performed during the period October 1, 1977 through March 31, 1978.

At the hearing a written stipulation executed by the Commission staff and its attorney, the attorney for Azevedo, Azevedo himself, and Paul Dalerio for Dalerio Pallet was entered into evidence without objection as Exhibit 1. The stipulation read as follows:

"STIPULATION OF FACTS, ISSUES AND RECOMMENDED FINES

"Those parties to the above-named action, named by signature hereto, acknowledge and stipulate that they are in agreement as to the facts, issues and recommended, relevant to this matter listed specifically as follows:

- "1. That the document attached hereto as Appendix 1, entitled Carrier Profile is true and correct.
- "2. That on various dates in 1978 a member of the Commission staff conducted an investigation into the operations, rates, charges and practices of respondent Azevedo Transport. The scope of said investigation included transportation listed on the Order Instituting Investigation of this case.
- "3. That the investigation disclosed violation of Sections 3664, 3667 and 3737 of the Public Utilities Code by respondent Azevedo Transport in assessing rates and charges less than the applicable minimum rates prescribed in Items 690 and 691 of Minimum Rate Tariff 2.

- "4. That the investigation disclosed violations of Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code by respondent Azevedo Transport in performing transportation for shipper respondent Dalerio Pallet and Shook Co., by charging less than the applicable minimum rates by the device of free loads.
- "5. That the documents contained in Appendix 2 attached hereto are true and correct copies of the documents covering the transportation which is the subject of Order Instituting Investigation 57.
- "6. That the rate exhibit prepared by the staff of the Transportation Division covering the transportation in question, as amended and attached hereto as Appendix 3 shows total undercharges of \$7,905.15 which are true and correct.
- "7. That Ordering Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of Order Instituting Investigation 57 should be answered in the affirmative.
- "8. That respondent Azevedo Transport should pay a punitive fine of \$5,000.00 pursuant to the provisions of Section 3774 of the Public Utilities Code.

"Dated November 6, 1979, San Francisco, California."

The Commission adopts as its findings of fact the matters set out in the above stipulation.

Conclusions of Law

1. Azevedo violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code in hauling for Dalerio Pallet by undercharging Dalerio Pallet in the amount of \$7,905.15.

2. Azevedo should be ordered to collect the amount specified in Conclusion No. 1.

3. Azevedo should be ordered to cease and desist from any and all operations and practices of the nature found herein to be in violation of the Public Utilities Code.

4. Azevedo should be ordered pursuant to Section 3800 of the Public Utilities Code to pay a fine of \$7,905.15.

5. Azevedo should pay a fine of \$5,000 levied pursuant to Section 3774 of the Public Utilities Code.

The Commission expects that Azevedo 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 Azevedo 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. Anthony Thomas Azevedo 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. Anthony Thomas Azevedo 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. Anthony Thomas Azevedo shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$7,905.15 on or before the fortieth day after the effective date of this order.

3. Anthony Thomas Azevedo 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 Conclusion No. 1 and shall notify the Commission in writing upon collection.

4. Anthony Thomas Azevedo 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. Anthony Thomas Azevedo 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.

6. Anthony Thomas Azevedo may elect to pay the fine levied in Ordering Paragraph 1 in ten consecutive monthly installments of \$500 each, the first installment to be paid on or before the thirtieth day of the month following the month this order becomes effective and the remaining installments on or before the thirtieth day of each month thereafter until the fine is paid in full; provided, however, that if any installment payment is not paid when due, then the entire balance of the fine is due and owing.

The Executive Director of the Commission shall cause personal service of this order to be made upon respondent Anthony Thomas Azevedo and 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 thirty days after completion of service on that respondent.

Dated JAN 15 1968, at San Francisco, California.

  
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President  
*William L. Sturgeon*

  
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Commissioners

We dissent.  
It is our belief that  
the punitive fine should  
be \$2500.

*John E. Gynn*  
*Robert D. Good*