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ORIGINAL

Decision No. 14187

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Investigation	)	
into the methods, charges and service	)	
of ALLAN A. HARDIE, doing business	:	
under the fictitious name of Beverly	)	Case No. 2027
Hills-Sherman Transfer Company on	)	
the Commission's own initiative.	)	
	)	
	)	

A. A. Hardie, respondent in propria persona.

BY THE COMMISSION:

O P I N I O N

Under date of July 25, 1924, the Railroad Commission issued its Order to Allan A. Hardie, doing business under the fictitious name of Beverly Hills-Sherman Transfer Company, to appear and show cause, if any he had, why the certificate granted him under Decision No. 11,956, on Application No. 8861, dated April 24, 1923, should not be revoked and annulled, because of his failure to properly transmit to consignors the proceeds of C.O.D. collections on shipments from consignees.

A public hearing on the order to show cause was conducted by Examiner Williams at Los Angeles, at which time respondent appeared and conducted his own response to the citation.

According to the testimony of F.K. Leonard, Secretary and Treasurer of the Columbia Mills, this consignor shipped to Martin Bros. at Beverly Hills a consignment on June 10, 1924,

C.O.D. \$18.40, for which remittance was received July 22, 1924.

Also, on June 12, 1924, a similar shipment to Martin Bros. was made, remittance also being received July 22. Further, a shipment to the same consignees on August 7, 1924, brought remittance from respondent on August 18. This witness testified that all efforts to induce Hardie to remit the collection failed, until informal complaint was made to the Commission on July 16.

Earlo E. Sidebottom, traffic manager of the Germain Seed & Plant Company, testified that a consignment had been shipped to Geo. H. Stoll, Beverly Hills, March 26, C.O.D. \$22.50; and on May 19, a shipment to J. R. Robertson, C.O.D. \$6.65, and that no remittance had been made at the time of the hearing. Further, on June 28, a shipment had been made to Will Rogers, Beverly Hills, C.O.D. \$9.00; and on June 7 another to N. D. Courtney, Beverly Hills, C.O.D. \$9.30, and no remittance had been received therefor. This witness had also filed informal complaint with this Commission.

C. D. Pirie, traffic manager of Harper-Reynolds Co., Los Angeles, made shipment to H. C. Waugh April 26, 1923, and received no remittance from the carrier until July 20, 1923, and then only after presenting informal complaint to the Railroad Commission.

Frank H. Shepard, Credit Manager of the Kay Motor Supply Company, testified that this company shipped to B.G. Ainsworth on September 28, 1923, a consignment C.O.D. \$8.86, for which remittance was not received until August 2, 1924, and then only after appeal to this Commission. Another shipment made November 1, 1923, C.O.D. \$14.18, was not remitted until May 8, 1924.

W. L. Rutledge, credit manager of the Firestone Rubber Company, testified to a shipment on May 2, 1924, of tires to Oscar Robinson, Beverly Hills, C.O.D. \$60.80, and that remittance was

not received until July 21, 1924, and then only after complaint to this Commission.

According to informal complaint No. 7951, L.A.Libby, McNeil & Libby shipped to T.J.House a consignment on March 18, 1924, C.O.D. \$55.77, and on April 25, to the same consignee, C.O.D. \$101.64. No remittance having been made up to July, this firm made complaint to this Commission, with result that the carrier tendered a check for \$160.24 on July 22, but which check was refused payment by the bank on which it was drawn. This claim, according to the record herein, is still unsettled.

Respondent Hardie testified in his own defense, explaining the delay as to the Columbia Mills account by saying that this consignor had failed to acknowledge receipt of checks received by him and made payable to the consignor instead of the carrier, and for this reason he had held up the C.O.D. account complained of. As to the complaint of the Germain Seed & Plant Company, respondent testified that he was holding up these accounts because the Germain Company owed him money for prepaid shipments other than C.O.D. As to the complaint of the Firestone Company, respondent testified that he was in the Northern part of the State at that time and the collections had been made by an employee and not accounted for. As to the Libby-McNeil & Libby complaint, witness testified that he had paid this in cash about August 4, 1924.

Respondent excused his actions upon the ground that he had been required to be away from his business a great deal and had trusted to dishonest employees, on whom he had no recourse, and also that he had not been careful in keeping books in which his C.O.D. transactions were recorded. He also admitted that he had been asked to produce records of his C.O.D. shipments for inspection

by this Commission, but had failed to do so. At the time of the hearing, he testified that his business was being attended to by employes while he was engaged in other trucking business in another district.

The testimony discloses that this applicant came into possession of the operating right, herein sought to be revoked, on the 24th of April, 1923; it further shows that two days later he received a C.O.D. shipment which was not returned to the consignor until three months thereafter. The testimony shows frequent repetition of this practice. It further shows applicant, at the time of the hearing, still in possession of all the C.O.D. amounts due the Germain Seed & Plant Company, amounting to \$44.95, none of which has been paid, and for the payment of which respondent indicated no purpose to make provision.

The record appears very clear that this carrier is heedless as to the responsibility attaching to his duty to both the consignee and the consignor in the transaction of C.O.D. business, and that his handling of such business, since April 1923, is such as to justify withdrawal of confidence in him for the future.

This Commission cannot make it too emphatic that it regards the withholding of moneys collected by carriers, for the amount of consignors, as a grave offense against propriety in the exercise of an operating right, if not violation of the penal laws, and the action of this Commission, when invoked, must, in justice to the protection of the public, be used against such offenders.

Based upon the evidence herein the Commission finds as a fact that respondent herein has retained unlawfully, returns from C.O.D. collections coming into his possession on numerous occasions, for unreasonable periods, and has relinquished them to the consignor only after process of complaint through this Commission;

further, that he now holds, and has not transmitted to the Germain Seed & Plant Company, an amount of \$44.95, and that said amount is due and owing to the said Germain Seed & Plant Company as the proceeds of a collection of charges upon freight transported by respondent Hardie between Los Angeles and Beverly Hills, and that the money so held, is and should be in the possession of the Germain Seed & Plant Company; and, further, that by reason of such improper and unlawful acts, the said Hardie is an unfit person to possess and exercise the certificate rights transferred to him by Decision No. 11,956 on Application No. 8881, dated April 24, 1923, and that said certificate rights should be revoked.

#### O R D E R

THE RAILROAD COMMISSION having issued on July 25, 1924, its Order to Allan A. Hardie, doing business under the fictitious name and style of Beverly Hills-Sherman Transfer Company, to show cause why the certificate of public convenience and necessity, heretofore transferred to him under Decision No. 11,956, on Application No. 8881, dated April 24, 1923, should not be revoked, a public hearing having been held at which time respondent duly appeared in response to the Order, the matter having been duly submitted; the Commission being now fully advised, and basing its order on the finding of fact, as set forth in the Opinion preceding this order,

IT IS HEREBY ORDERED: That the certificate of public convenience and necessity, heretofore granted by this Commission in its Decision No. 8601, upon Application No. 6502, dated January 26, 1921, such decision transferring the operative right of

L. Hooper to F.C. and J.C.Orvis, and under Decision No. 11,956, on application No. 8881, dated April 24, 1923, transferring the interest of F. and J.C.Orvis to Allan A. Hardie, be and the same hereby is revoked and annulled; and that no further operation by said Hardie may be given over any route between the termini and over the route stated in such decisions, or by the authority of the certificate granted thereunder.

Dated at San Francisco, California, this 27<sup>th</sup> day of September, 1924.

C. Seaver  
H. B. Brundige  
James Martin  
F. V. Whitting  
Commissioners