

Decision No. 30848

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Establishment )  
of maximum and minimum, or maximum )  
or minimum, rates, rules, and regu- )  
lations of all common carriers, as )  
defined in the Public Utilities Act )  
of the State of California, as )  
amended, and all highway carriers, )  
as defined in Statutes 1935, Chapter )  
223, as amended, for the transporta- )  
tion, for compensation or hire, of )  
any and all agricultural products. )

Case No. 4293

BY THE COMMISSION:

FIFTH SUPPLEMENTAL OPINION

By Decision No. 30848 of May 19, 1938, as amended, in this proceeding, minimum rates were established for transportation of hay and related commodities by radial highway common and highway contract carriers and by common carriers participating in the movement of these commodities by use of highway vehicles. Specific rates were provided for transportation from Coachella Valley, Salton Sea, Imperial Valley, Lancaster and Bakersfield territories to the Los Angeles-Hynes and San Diego territories, as those territories were defined in the decision; other rates were stated in mileage scale form. Thereafter, by appropriate petition, certain hay dealers sought a modification of the point-to-point rates so established and evidence relative thereto was received at a public hearing held in Los Angeles on September 19, 1939, before Examiner P. W. Davis.

H. M. Maddaford, a hay dealer associated with Williams Bros. Grain and Milling Company; W. E. Kinsey of Western Consumers Feed Company; R. L. Wood, manager of Imperial Valley Hay Growers Association; and W. T. Graham, manager of Antelope Valley Hay Growers Association, testified in behalf of petitioners. Their testimony was substantially the same in all important respects and may be

summarized as follows:

Since the establishment of minimum rates for the transportation of hay and related commodities, hay dealers in southern California have been faced with increasingly serious competition from so-called "itinerant merchants" who purchase hay at producing points and transport it to and sell it at consuming markets. Due to the exceptionally large volume of available tonnage these itinerant merchants are particularly active in connection with the movement of hay from the Imperial Valley territory to the Los Angeles-Hynes territory; they are relatively active also in connection with movements from the other large hay producing territories. 11,000 truckloads of hay, averaging 13 tons per load, were sold during the 1938-1939 season at a lot in Hynes used exclusively by itinerant merchants. Many similar lots are located throughout the territory.

The effect of the increased activities of the itinerant hay merchants has been to depress the price of hay in the Los Angeles-Hynes markets to such an extent that the differentials between the market prices and the prices at points of production are generally substantially less than the minimum rates for the corresponding transportation by for-hire carriers.<sup>1</sup> As a consequence, the established hay dealers have had to forego all business except that for which, due to purchases in large volume and extensions of credit, they have been able to obtain more favorable differentials. In an endeavor to minimize their losses, hay dealers have resorted to proprietary trucking to some extent and producers marketing associations have undertaken proprietary operations on a large scale. Under these conditions,

---

1

An exhibit drawn from reports of Federal and State market news services for the 1938-1939 season shows that the price differential as between Imperial Valley and Los Angeles, for example, seldom exceeded \$3.50 per ton, as compared with the minimum rate of \$3.70 per ton. This differential was often as low as \$3.00 per ton during that period.

however, the hay dealers or marketing associations cannot long survive since, in addition to transportation costs, they must recover buying and selling expenses.

The foregoing change in distribution methods has reacted to the serious detriment of hay producers as well as of hay dealers. Whereas, formerly, producers dealt with dealers who purchased in volume and who were able to stabilize market prices, they must now deal with itinerant merchants who are generally irresponsible and whose need for a quick disposal of their hay causes them to sell at prices which demoralize the market.

Due to the inability of hay dealers to pay the established minimum rates under existing conditions the amount of hay traffic presently being transported by for-hire truck carriers is said to be negligible.

Petitioners made no definite proposals in their petition as to what steps should be taken by the Commission to cure the situation complained of, choosing rather to present only the facts. At the conclusion of the receipt of evidence, however, the witnesses uniformly expressed the opinion that the hay traffic could only be restored to normal distribution channels by making available to hay dealers highway contract carrier rates low enough to render the field unattractive to itinerant merchants. The rates necessary to accomplish this purpose were believed by the witnesses to approximate \$3.00 per ton from Imperial Valley, with rates related thereto on a mileage basis from other producing points. These suggested rates were said to approximate those being paid prior to the establishment of minimum rates. It was not contended that these rates would be fully compensatory to the larger highway contract carriers, but it was asserted that many one or two-truck operators who drive their own

trucks could earn a small profit at these rates and had, in fact, expressed a willingness to accept the business if offered at the proposed rates. The opinion was expressed also that many persons now operating as itinerant merchants would be glad to obtain permits as highway contract carriers and perform the transportation for hay dealers at the suggested rates. Shippers' organizations who have been keeping careful records as to their costs of conducting proprietary operations stated that their costs were about the same as the sought rates.

No highway carriers appeared in opposition to the proposal although one carrier who is engaging in other types of transportation in the Imperial Valley indulged in cross-examination of petitioners' witnesses and indicated that, in his opinion, the reduced rates sought would not be compensatory. Rail carriers were represented at the hearing but did not state their position in the matter.

It will be seen from the foregoing recitation of evidence that petitioners do not contend that the minimum rates now in effect for the transportation here under consideration are in excess of the cost of performing the service by highway carriers generally, or are otherwise unreasonable per se. Their sole complaint is that, due to the activities of irresponsible itinerant hay merchants, prices of hay in the Los Angeles-Hynes market have become so depressed that hay dealers cannot afford to pay the established minimum rates. Reductions below the normal and reasonable level of minimum rates are sought principally to alleviate or cure a marketing evil, with the idea that the traffic will no longer be attractive to itinerant hay merchants; that highway carriers who cannot obtain traffic elsewhere will be willing to accept the reduced rates; and that other for-hire carriers will not be injured since they are not now enjoying any substantial portion of this business.

The Commission recognizes the need of the hay industry for stable marketing conditions. It is not convinced, however, that the means chosen is the proper one or that, if adopted, the desired purpose would be accomplished. Itinerant hay merchants were prevalent for a considerable period of time prior to the establishment of minimum rates, when rates of highway contract carriers were admittedly as low as or lower than those here proposed.<sup>2</sup> Although a reduction in the present rates would possibly enable hay dealers to offer more traffic to highway contract carriers and thus encourage some of the itinerant hay merchants to change their status to for-hire carriers, and although some of the itinerant merchants would find the field no longer attractive, it seems probable that enough itinerant merchants would still remain to cause a serious threat to market stability. In any event, the for-hire carriers who would be willing to engage in the transportation at the depressed rates would not ordinarily be those who are in a position to provide the dependable and satisfactory service which the hay industry requires.

By legislation effective September 19, 1939 (Statutes of

---

2

In Decision No. 30025 of August 20, 1937, in Case No. 4088, Part "R", in which decision minimum rates for this transportation were first established, the Commission said:

"An important factor to be considered in this case is the effect of any given rate adjustment upon the volume of tonnage handled by the itinerant trucker. The record indicates that at the present time 50 per cent of the hay brought into the Hynes area is handled on private trucks. A substantial portion of this is purchased by the truck operator at the ranch and re-sold by him at destination, thus changing his status from that of a 'for hire' carrier to that of a dealer. From a study of 99 trucks engaged in hauling, only 46.5 per cent operated consistently upon a 'for hire' basis and this group not only operated the lighter equipment but it may be assumed that it was not as actively employed as were the large dealers' own fleets. After making allowance for this movement by the dealers (including the independent trucker who buys for his own account) and for the approximate 20-25 per cent of the tonnage moving by rail, it appears that there cannot be much more than 25-35 per cent of the total movement directly subject to a truck rate order, nor much more than 50 per cent subject to a rail and truck rate order."

1939, Chapter 876) there has been conferred upon the Commission regulatory and licensing jurisdiction over itinerant merchants. Persons engaging or desiring to engage in that business must now satisfy the Commission of their character, responsibility and good faith; execute surety bonds conditioned upon the use of honest weights, measures and grades, upon accurate representation as to quality or class of goods sold, upon actual payment of checks, drafts or notes, and similar instruments issued for goods purchased, and upon the actual performance of conditional sales, consignment or security contracts made in connection with goods to be sold; and they must keep proper records of their transactions. Manifestly, this legislation was designed to alleviate just such marketing evils as are here being sought to be curbed by a reduction in the rate level. The hearing in this proceeding was held on the date this Act became effective, hence no opportunity has been had to test or observe its effect in actual operation. It would not appear appropriate, therefore, to adopt other means of remedying the situation at this time without according the new legislation a reasonable and fair trial. If after a reasonable opportunity has been had to observe the effects of the new legislation petitioners find that the conditions shown still obtain, the matter of adjusting the minimum rates will be given further consideration.

In view of these conclusions, no further order is necessary at this time.

Dated at San Francisco, California, this 3<sup>rd</sup> day of October, 1939.

Raymond W. [unclear]  
Frank [unclear]  
Alfred [unclear]  
[unclear]  
Justice F. Grauer  
Commissioners