



Public hearing was held in San Francisco on May 8, 1940, at which time and place Miles & Sons and Schuler-O'Connell appeared by counsel, evidence was introduced, oral argument was held, and the matter was submitted and is now ready for decision.

It appears from the record that Miles & Sons are co-partners engaged in the transportation of property for compensation or hire as a business over the public highways in this State by means of motor vehicles as a highway carrier other than a highway common carrier, and that Schuler-O'Connell is a grain brokerage firm which purchases and sells large quantities of grain and hires various carriers, including Miles & Sons, to transport such grain from the places at which it is purchased to the points at which it is resold.

The evidence in this proceeding relates primarily to the transportation of six shipments of barley from three ranches near Los Banos to the warehouse of the Islais Creek Grain Terminal Corporation in the City and County of San Francisco. All of such barley was purchased from the respective ranchers by Schuler-O'Connell, who thereafter hired Miles & Sons to perform the transportation. Two shipments, on July 11th and 12th, 1939, respectively, weighing 46,020 and 48,620 pounds, respectively, originated at the C. H. Thomas Ranch, which is situated approximately fourteen and one-half miles east of Los Banos; two others, both on July 29, 1939, weighing 49,410 and 48,000 pounds, respectively, originated at the Fraible & Zora Ranch, which is situated approximately eight miles southeast of Los Banos; and the remaining two, on August 1st and 9th, 1939, respectively, weighing 46,140 and 46,220 pounds, respectively, originated at the Red Top Ranch, which is situated approximately twenty miles east of Los Banos. All of the grain

was stacked in roadside piles on the respective ranches at the time it was purchased by Schuler-O'Connell and also at the time it was tendered by Schuler-O'Connell to Miles & Sons for transportation to San Francisco.

Minimum rates, rules, and regulations applicable to such transportation, when performed by highway carriers other than highway common carriers, were established by the Commission in Decision No. 30640, as amended, in Case No. 4028, Part "F". Item No. 105 of Appendix "A" of that decision sets forth rates in cents per 100 pounds which vary according to the weight of the shipment and the constructive mileage between points of origin and destination. Said decision provides that such mileage rates shall alternate with the lowest common carrier rates for the same transportation<sup>(1)</sup> and may also be used in combination with the lowest common carrier rates.<sup>(2)</sup> The minimum rates, constructed in accordance with said decision, applicable to each of the shipments in question is 13 $\frac{1}{2}$ ¢ per 100 pounds. Such rate is a combination of the 9¢ rate<sup>(3)</sup> of Southern Pacific Company, a common carrier,

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(1) Item No. 80, Appendix A, Decision No. 30640.

(2) "Rates in this appendix may be used in combination with the lowest common carrier rates for the same transportation, as follows: . . .

"(1) When point of origin is located beyond railhead, team track or established depot of a common carrier, add to the common carrier rate used the rate provided in Item No. 105 for the distance from point of origin to the team track or established depot from which such common carrier rate applies." Item No. 85, Appendix A, Decision No. 30640.

(3) Second Revised Page 115, and Item No. 57-B, Third Revised Page 28 of Southern Pacific Company Tariff 659F, C.R.C. 3552; Tariff of Increased Rates and Charges X-123, C.R.C. No. 7 of J. P. Haynes, Agent, and Item No. 100 List No. 1 and Item No. 205 of Pacific Freight Tariff Bureau Tariff No. 240-C, C.R.C. 26 of J. P. Haynes, Agent.

between San Francisco and Los Banos, and of the  $4\frac{1}{2}\%$  mileage rate set forth in said decision for the transportation between Los Banos and each of the three ranches.<sup>(4)</sup> The record shows, and it is conceded by all the parties hereto, that said  $13\frac{1}{2}\%$  rate is the lowest rate for the transportation in question which can be constructed under the various methods provided for by said decision.

Representatives of both Miles & Sons and Schuler-O'Connell testified that they were familiar with the minimum rate order in question and knew that  $13\frac{1}{2}\%$  was the minimum rate. The evidence shows that the charges assessed by Miles & Sons and paid by Schuler-O'Connell for the transportation described above were based on a rate of  $11\%$  per 100 pounds. It is contended, however, that the full  $13\frac{1}{2}\%$  rate was paid by Schuler-O'Connell,  $11\%$  having been given directly to Miles & Sons and the remaining  $2\frac{1}{2}\%$  having been "advanced" on behalf of Miles & Sons to the respective ranchers from whom Schuler-O'Connell bought the grain for picking up the sacks of grain at the harvester dumps in the field and stacking them in the roadside piles.<sup>(5)</sup> While no payment described as such an "advance"

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(4) Item No. 105, Appendix A, Decision No. 30640, prescribes a rate of  $4\frac{1}{2}\%$ , subject to a minimum weight of 30,000 pounds, for shipments of barley transported over 5 but not over 20 miles. The constructive highway mileage to Los Banos from the C. H. Thomas Ranch is 14.5 miles, from the Fraihlo & Zora Ranch, 8 miles, and from the Red Top Ranch, 20 miles.

(5) The minimum rate order in question provides for no differential as between grain tendered to the carriers at roadside and that tendered in harvester dumps in the field.

or "allowance" was made to the ranchers, Schuler-O'Connell maintains that it passed on the  $2\frac{1}{2}\%$  to the ranchers in the form of a higher price for their grain. Thus, it is argued, the situation is the same as if Schuler-O'Connell had paid  $13\frac{1}{2}\%$  per 100 pounds to Miles & Sons, and the latter had then paid  $2\frac{1}{2}\%$  to the respective ranchers as compensation for stacking the grain at roadside.

The record does not support this contention. The stacking of grain was no part of Miles & Sons' undertaking with Schuler-O'Connell. The grain was tendered at roadside; Miles & Sons' undertaking commenced at roadside; and the minimum rate of  $13\frac{1}{2}\%$  per 100 pounds applied from roadside. The ranchers, in picking up the grain from the fields, were not performing any service for Miles & Sons. If Schuler-O'Connell paid the ranchers  $2\frac{1}{2}\%$  per 100 pounds above the normal purchase price of the grain such sums were not paid on account of any obligation of Miles & Sons. It is apparently by no means unusual for the ranchers to haul their grain from the harvester dumps to roadside and stack it there. The record shows it has been customary for the ranchers to do this for some years, even prior to the establishment of minimum rates, obviously for some advantage to themselves other than the expectation of any such "allowance."

It is evident, therefore, that there were no advances made by Schuler-O'Connell on behalf of Miles & Sons and that Miles & Sons simply charged and Schuler-O'Connell paid for the service  $2\frac{1}{2}\%$  per 100 pounds less than the minimum lawful rate. This follows

so clearly and inevitably from the admitted fact that Miles & Sons' hiring and undertaking commenced at the roadside piles that it seems highly implausible that Schuler-O'Connell could have seriously believed it was doing anything else. It is not conclusively demonstrated in the record that the benefit of the 2 $\frac{1}{2}$ % per 100 pounds undercharge was passed on to the ranchers by Schuler-O'Connell, but if it was it is reasonable to assume that some benefit would thereby flow to Schuler-O'Connell as well as to the ranchers. Miles & Sons should accordingly be ordered to cease and desist from such violations and to collect from Schuler-O'Connell all undercharges resulting from the application of such unlawful rates. While this proceeding is limited in its scope to certain specific shipments and the order to collect undercharges will accordingly be restricted thereto, the record indicates that similar undercharges were made on numerous other shipments during the 1939 grain season; proper adjustments should, of course, be made as to those shipments also.

An order of this Commission directing that an unlawful practice cease and desist is in effect not unlike an injunction of a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a party is adjudged guilty of a contempt a fine may be imposed in the amount of \$500.00, or he may be imprisoned for five days, or both. C.C.P. Sec. 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; Re Ball & Hayes, 37 C.R.C. 407; Wermath v. Stamper, 36 C.R.C. 458; Pioneer Express Co. v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 14 of the Highway Carriers' Act a person who violates an order of the Commission is guilty of a misdemeanor and punishable by a fine not exceeding \$500.00, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment.

Upon full consideration of all the evidence of record, I hereby find that on July 11th and 12th, 1939, respectively, said W. R. Miles, W. W. Miles, and Pat L. Nolet, co-partners, transported two shipments of barley weighing 46,020 and 48,620 pounds, respectively, for said Schuler-O'Connell Grain Company, a corporation, from the C. H. Thomas Ranch near Los Banos, California,, to the warehouse of the Islaís Creek Grain Terminal Corporation in San Francisco; that on July 29, 1939, said W. R. Miles, W. W. Miles, and Pat L. Nolet, co-partners, transported two shipments of barley weighing 49,410 and 48,000 pounds, respectively, for said Schuler-O'Connell Grain Company, a corporation, from the Fraible & Zora Ranch near Los Banos, California, to said warehouse; that on August 1st and 9th, 1939, respectively, said W. R. Miles, W. W. Miles, and Pat L. Nolet, co-partners, transported two shipments of barley weighing 46,140 and 46,220 pounds, respectively, for said Schuler-O'Connell Grain Company, a corporation, from the Red Top Ranch near Los Banos, California, to said warehouse; that the minimum rate established by the Commission applicable to such service is 13 $\frac{1}{2}$ ¢ per 100 pounds; that said W. R. Miles, W. W. Miles, and Pat L. Nolet, co-partners, knowingly and wilfully charged and collected from said Schuler-O'Connell Grain Company, a corporation, and said Schuler-O'Connell Grain Company, a corporation, knowingly and wilfully paid to said W. R. Miles, W. W. Miles, and Pat L. Nolet, co-partners, as full compensation for transporting each of said shipments charges based

on a rate of 11¢ per 100 pounds; and that at the time such rates and charges were charged, collected, and paid said W. R. Miles, W. W. Miles, and Pat L. Nolet, co-partners, and said Schuler-O'Connell Grain Company, a corporation, had full knowledge that the minimum rate established by the Commission applicable to each of said shipments was 13½¢ per 100 pounds.

The following form of order is recommended:

O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that said W. R. Miles, W. W. Miles, and Pat L. Nolet, individually and as co-partners, cease and desist and hereafter abstain from charging and collecting for the transportation of grain as a highway carrier other than a highway common carrier rates and charges less than the applicable minimum rates and charges established by order of this Commission.

IT IS HEREBY FURTHER ORDERED that said W. R. Miles, W. W. Miles, and Pat L. Nolet, individually and as co-partners, proceed forthwith to collect all undercharges disclosed by the record in this proceeding, report to the Commission under oath the progress made in such collection within fifteen days from the effective date of this order, and report to the Commission under oath when such collections have been made.

The Secretary is directed to cause a certified copy of this opinion and order to be personally served upon said W. R. Miles, W. W. Miles, Pat L. Nolet, and Schuler-O'Connell Grain Company, a corporation, and each of them, and this order shall become effective as to each of said persons on the 20th day after the date of such personal service.

The foregoing opinion and order are hereby approved  
and ordered filed as the opinion and order of the Railroad  
Commission of the State of California.

Dated at San Francisco, California, this 21<sup>st</sup> day of  
May, 1940.

Ray & Rice  
Frank R. Decker  
Ray D. [unclear]  
[unclear]  
Justin J. Casner

COMMISSIONERS.