

Decision No. 59991**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, and practices of FRED A.
SORENSEN.

Case No. 6401

R. E. Ghidella, for Fred A. Sorensen, respondent.J. Calvin Simpson, for the Commission staff.O P I N I O NOrder of Investigation

On January 5, 1960, the Commission instituted its order of investigation into the operations, rates and practices of Fred A. Sorensen, a highway contract carrier, for the purpose of determining:

1. Whether respondent has acted in violation of Sections 3664 and 3667 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of property than the applicable charges prescribed by the Commission in Minimum Rate Tariff No. 2.
2. Whether respondent has acted in violation of Section 3668 of the Public Utilities Code in that, by means of a device, i.e., an alleged "buy and sell" arrangement, respondent assists, suffers, or permits E. D. Wilkinson Grain Co. to obtain transportation for property between points within this State at rates less than those established by the Commission in Minimum Rate Tariff No. 2.
3. The order which should be issued by this Commission in the event it be found that any of the alleged undercharge violations has occurred.

Public Hearing

Pursuant to the order of investigation a public hearing was held in Napa before Examiner Wilson E. Cline on March 9, 1960, and the matter was taken under submission at the close of the hearing.

Evidence Respecting Use of
Device Resulting in Undercharges

Evidence was introduced by the Commission staff to show that in seven instances, Parts 1 through 7 of Commission Staff Exhibit No. 2, respondent, who holds Highway Contract Carrier Permit No. 28-621 and Grain Broker License No. 28214, purchased certain quantities of yellow bulk corn and certain quantities of bulk milo from E. D. Wilkinson Grain Co. to be delivered at various points of origin, and at substantially the same time respondent sold the same quantities of yellow bulk corn and bulk milo to E. D. Wilkinson Grain Co. for delivery to the various points of destination. The grain which was purchased by respondent from E. D. Wilkinson Grain Co. was the same grain sold and delivered by respondent to E. D. Wilkinson Grain Co. The paper work followed the actual transaction and only the net difference between the purchase and sales price was paid to respondent by E. D. Wilkinson Grain Co. The amounts so paid, although reflecting the difference in apparent market price of the grain at the points of origin and the points of destination, were less than the charges for transportation of the same quantities of grain between the said points of origin and destination permitted pursuant to Minimum Rate Tariff No. 2.

The Commission staff urges that these transactions constitute a device within the meaning of Section 3668 of the Public Utilities Code by which respondent permits E. D. Wilkinson Grain Co.

to obtain transportation for property between points within this State at rates less than the minimum rates established by the Commission.

The respondent testified that the transactions were bona fide purchases and sales of grain, and introduced evidence to show that the grain would not have moved between the points of origin and destination at rates equal to those established by this Commission under Minimum Rate Tariff No. 2 because there was not a sufficient differential in the market prices of the grains. As a matter of precaution, however, on these transactions respondent has paid the Federal tax on the transportation of property, the transportation rate fund tax to this Commission, and the transportation tax to the Board of Equalization. He carried no special insurance to protect the grain during the course of transportation, but he testified that he thought that his cargo insurance adequately protected him from loss or damage to the grain while it was in his possession. He further testified that the transactions were profitable to himself because he arranged them as backhauls when his trucks otherwise might have been operated empty. He also transported some shipments of grain as a highway contract carrier for E. D. Wilkinson Grain Co. at minimum rates authorized by this Commission, presumably when the differential in market prices at the points of origin and destination were such as to enable E. D. Wilkinson Grain Co. to pay the minimum rates for such transportation.

Counsel for respondent has requested that if the Commission finds the "purchase and sale" transactions to be a device within the meaning of Section 3668 of the Public Utilities Code

that any penalties be suspended by reason of the fact that respondent has acted in good faith and without prior knowledge that the Commission might hold such transactions to be such a device. Counsel for the Commission stated that to his knowledge the first time the Commission had found purchase and sale transactions to be such a device was in Decision No. 59546, issued January 26, 1960, in Case No. 6222 and Case No. 6272. In that decision, however, the Commission found that there was insufficient evidence to prove that the differences between the purchase prices and the selling prices were less than the minimum rate prescribed.

Evidence Respecting Other Undercharges

The Commission staff also introduced evidence Parts 8 through 16 of Exhibit No. 2, to show that in certain cases where respondent admittedly was engaged in the transportation of property for compensation over highways within the State of California the charges for such transportation were less than the established minimum rates. Respondent offered no evidence to contradict this showing but testified that any such undercharges were unintentional.

Findings and Conclusions

Upon the evidence of record the Commission finds that:

Respondent is engaged in the transportation of property over the public highways for compensation as a highway contract carrier pursuant to Highway Contract Carrier Permit No. 28-621 issued by this Commission.

The aforementioned "buy and sell" grain transactions constitute a device within the meaning of Section 3668 of the Public Utilities Code by which respondent has permitted E. D. Wilkinson Grain Co. to obtain transportation for property between points within

this State at rates less than the applicable minimum rates then established by the Commission.

Respondent assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate Tariff No. 2, which resulted in undercharges as follows (from Exhibits Nos. 1 and 2):

<u>Exh. No. 2</u> <u>Part No.</u>	<u>Respondent's Freight</u> <u>Bill Number</u>	<u>Date</u>	<u>Amount of</u> <u>Undercharge</u>
1	1155	Not shown	\$24.74
2	1305	1/10/59	26.37
3	1264	Jan./59	37.02
4	1157	1/14/59	15.09
5	0978	1/13/59	15.28
6	0874	Not shown	27.49
7	1280	1/31/59	27.76
8	1262	1/ 7/59	14.85
9	0766	1/ 8/59	8.40
10	0972	1/14/59	8.64
11	0777	1/21/59	7.14
12	1165	1/22/59	5.56
13	0980	1/22/59	10.00
14	0983	1/26/59	7.22
15	0984	1/26/59	6.55
16	0873	Not shown	15.33

The amount of undercharges for Parts 1 through 7 is \$173.75 and for Parts 8 through 16, \$83.69. The total undercharges amount to \$257.44.

Respondent, through the use of the "buy and sell" arrangement, more fully described above, has acted in violation of Section 3668 of the Public Utilities Code in that, by means of a device, i.e., the "buy and sell" arrangement, respondent has assisted, suffered and permitted E. D. Wilkinson Grain Co. to obtain transportation for property between points within this State at rates less than those established by the Commission in Minimum Rate Tariff No. 2. Respondent has also acted in violation of Sections 3664 and 3667 of the Public Utilities Code by charging, demanding, collecting,

or receiving a lesser compensation for the transportation of property than the applicable charges prescribed by the Commission in Minimum Rate Tariff No. 2.

The Commission having found the facts as hereinabove set forth and concluding that respondent has violated Sections 3664, 3667 and 3668 of the Public Utilities Code, makes its order as follows:

O R D E R

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED that:

1. Fred A. Sorensen is ordered to cease and desist acting in violation of Section 3668 of the Public Utilities Code by assisting, suffering, or permitting E. D. Wilkinson Grain Co. or any other corporation or any other person, through the use of "buy and sell" arrangements such as those described in the opinion above, to obtain transportation for any property between points within this State at rates less than the minimum established or approved by this Commission.

2. Highway Contract Carrier Permit No. 28-621 issued to Fred A. Sorensen, respondent herein, is hereby suspended for three consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order.

3. Respondent shall post at his terminal and station facilities, not less than five days prior to the beginning of the suspension period, a notice stating that his highway contract carrier permit has been suspended by the Commission for a period of three

days; that within five days after such posting respondent shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

4. Respondent shall examine his records for the period from January 27, 1959 to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

5. Within ninety days after the effective date of this decision, respondent shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 4.

6. Respondent is hereby directed to take such action as may be necessary to collect the amounts of undercharges set forth in the preceding opinion, together with any additional undercharges found after the examination required by paragraph 4 of this order, and to notify the Commission in writing upon the consummation of such collections.

7. In the event charges to be collected as provided in paragraph 6 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order, respondent shall submit to the Commission, on the first Monday of each month, a report of the undercharges remaining to be collected and specifying the action taken to collect such charges and the result of such until such charges have been collected in full or until further order of this Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Fred A. Sorensen and this order shall become effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 19th day of April, 1960.

Ernest R. Payne
President
W. H. L. L. L.
Michael D. L.
E. L. L. L.
Theodore J. L.
Commissioners