

Decision No. 61457

**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 DONALD C. PELLANDINI, DAVID L. PELLANDINI, and LOUIS E. PELLANDINI, doing business as PELLANDINI TRUCKING COMPANY.

Case No. 6949

Phillip C. Wilkins, for the respondents.

Elinore Charles, for the Commission staff.

O P I N I O N

Order of Investigation

Counsel for the parties herein stipulated that the title of this proceeding be amended to show Pellandini as the proper name of the respondents. The Commission heretofore instituted its order of investigation into the operations, rates and practices of said respondents for the purpose of determining:

1. Whether respondents have acted in violation of Section 3664 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 respondents have acted in violation of Section 3663 of the Public Utilities Code in that, by means of a device, i.e., an alleged "buy and sell" arrangement, respondents assist, suffer, or permit Pacific Limestone Products, Inc., 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 have occurred.

Public Hearing

Pursuant to the order of investigation, a public hearing was held in Sonoma before Examiner Edward G. Fraser, on November 2, 1960, and the matter was taken under submission at the close of the hearing.

Stipulations

It was stipulated that the respondents hold Radial Highway Common Carrier Permit No. 49-138, which authorizes the handling of grain, feed, sand and gravel within a radius of 500 miles from Sonoma; that respondents were served with Minimum Rate Tariffs Nos. 2 and 7, and Distance Table No. 4 and all supplements and corrections thereto. The respondents further stipulated that the photostatic copies of documents in Exhibits Nos. 1, 2, and 3 are true and correct copies of the original documents in the records of the respondents.

Evidence Respecting Use of Device  
Resulting in Undercharges

A representative from the Field Section of the Transportation Division of the Commission testified that he made an examination of the transportation records of the respondents on February 23, 1960. These records covered transportation performed during January of 1960. Seven freight bills were selected by the representative as being typical of the records available for the transportation performed during the month.

The witness introduced Exhibit No. 1, which consists of the seven freight bills, along with the shipping tags and Pacific Limestone Products, Inc., sales orders. Each freight bill has printed thereon the word "shipper" followed by the name "Pacific

Limestone, Santa Cruz"; the Shipping Orders of Pacific Limestone Products, Inc., list "Pellandini Trucking Co", as the buyer, and then show "ship via truck" to named consignees (in Petaluma, Santa Rosa, Novato, San Rafael, and Napa).

The staff witness testified regarding Exhibit No. 3, which is an agreement dated February 28, 1955, between Edgar Tully and Louis and Donald Pellandini. The witness also testified concerning Exhibit No. 2, an agreement dated February 1, 1955, between Fred W. Johnson and Mabel M. Johnson (since deceased), doing business as Pacific Limestone Products, and Louis and Donald Pellandini. The course of conduct pursued by respondents and Pacific Limestone Products, Inc., in performing under the provisions of this agreement indicates that it was considered that Pacific Limestone Products, Inc., was substituted as a party to the agreement in place of Pacific Limestone Products.

The witness testified as to several conversations he had with Mr. Louis Pellandini. The latter advised the staff representative that the respondents hauled poultry feed from Pacific Limestone Products, Inc., but not as a permitted carrier under the provisions of Minimum Rate Tariff No. 2. Respondents purchase the feed at the Santa Cruz plant of the Pacific Limestone Products, Inc., and then haul it to their ranch, or to a point where it is to be delivered to a consignee. If delivered to a consignee, the title passes to Mr. Edgar Tully, on delivery. Mr. Tully pays the respondents for the load, and then collects from the consignee. Mr. Tully is a salesman who contacts prospective customers, takes orders and calls the respondents to make delivery.

A rate expert from the Rate Analysis Unit of the Commission staff testified that the respondents received \$101.00 for each of the loads transported under the seven parts of Exhibits Nos. 1 and 4. This sum is the difference between the so-called sale price paid by the respondents and the sum for which the respondents sold each load. The witness authenticated Exhibit No. 4 and stated the \$101.00

received by the respondents for the transportation of each load is less than the charges obtained by applying the provisions of Minimum Rate Tariff No. 2. ✓

Position of the Respondents

Respondent Louis E. Pellandini testified that he and his two sons own and manage the Pellandini Trucking Company.

He testified that the 1955 agreements were drawn by a Santa Cruz attorney who assured all parties the contracts were legal. Prior to executing the contracts, a copy of each was delivered to the Santa Rosa office of the Public Utilities Commission. The witness was advised the legality of the contracts would be checked and he would be informed. He received no further word and therefore deduced that the contracts were approved.

The witness stated that Mr. Tully, who does business as Kalkar Distributors, calls Pellandini Trucking Company when an order is obtained and the latter then fills the order. Usually the goods are picked up by the respondents and delivered to the consignee. Mr. Pellandini said title passes to respondents on each load when it is loaded on their truck. They carry cargo insurance in favor of Pacific Limestone Products, Inc., but this is to insure their being able to pay the purchase price. ✓

When his load is delivered to the consignee, title passes to Edgar W. Tully and the latter pays Pellandini for the merchandise. Tully must then collect from the consignee. The respondents look only to Tully for their money. Tully testified that if he could not contact one of the "Pellandinis", after receiving an order, he called Pacific Limestone Products, Inc., direct and the latter arranged for Pellandini to pick up and deliver.

The respondent Louis Pellandini stated that he is the local agent for Pacific Limestone Products, Inc. He has a warehouse on his ranch where he carries an inventory and he frequently sells direct to neighbors who haul their own goods. The respondent is a feed broker and has a license to mix and sell poultry feed. His principal service on the counts enumerated by the staff, however, was transporting the goods.

Respondents also haul rice, bran, alfalfa, and meat scraps for Albers Milling Company under their permitted authority. The proper minimum rate is assessed and collected on these loads. Less than 5% of their hauling is performed under their permit. The rest is under their agreement with Pacific Limestone Products, Inc.

Mr. Fred W. Johnson, president of Pacific Limestone Products, Inc., testified for the respondents. He corroborated the statements of Mr. Pellandini and said his company is the sole producer of "Kalkar", the poultry feed hauled by the respondents. He sells direct from his plant to his customers as a rule, with title passing at his plant and most of the hauling being done by the buyers. The respondents are the only trucker used by Pacific Limestone Products, Inc.

The witness stated the Pellandini warehouse was necessary to his business, since customers in the Sonoma area can go to Pellandini for their Pacific Limestone Products, Inc. supplies, rather than having to make arrangements with the main office of Pacific Limestone Products, Inc., in Santa Cruz.

#### Discussion

The evidence shows the transportation was performed as alleged. It also shows that the principal - if not the entire - service performed by the respondents in each of the seven charged counts was that of transporting goods to the consignee.

When operating as a highway carrier the respondents must observe all of the rates and provisions of the tariffs concerned, along with the minimum rate provisions prescribed by this Commission. If a contrary decision were adopted, it would nullify the regulations governing highway carriers in the State of California.

The contracts executed by the Pellandinis (Exhibits Nos. 2 and 3) cannot be interpreted so as to exempt the transportation in question by the respondents from the application of the Minimum Rate Provisions promulgated in the tariffs adopted by this Commission. "The tariff applicable, on the facts, to any particular shipment cannot be changed by an agreement between the parties." Gardner vs. Rich Manufacturing Co., (1945) 68 Cal. App. (2), 725, 730.

#### Findings and Conclusions

Upon the evidence of record the Commission finds that:

Respondents are engaged in the transportation of property over the public highways for compensation as a radial highway common carrier pursuant to Radial Highway Common Carrier Permit No. 49-188 issued by this Commission.

The aforementioned "buy and sell" transactions constitute a device within the meaning of Section 3668 of the Public Utilities Code by which respondents have permitted Pacific Limestone Products, Inc., to obtain transportation for property between points within this State at rates less than the applicable minimum rates then established by the Commission.

Respondents 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 4):

<u>Exhibit No. 4</u> <u>Part No.</u>	<u>Respondents'</u> <u>Frt. Bill No.</u>	<u>Date</u>	<u>Amount of</u> <u>Undercharge</u>
1	3660	1/ 4/60	\$ 39.00
2	3656	1/ 5/60	54.00
3	3688	1/13/60	15.25
4	3680	1/18/60	39.00
5	3683	1/19/60	34.00
6	3687	1/22/60	24.00
7	3699	1/27/60	<u>34.00</u>

The total of the above undercharges is \$239.25

The Commission therefore concludes that:

1. Respondents, through the use of the "buy and sell" arrangement, more fully described above, have acted in violation of Section 3668 of the Public Utilities Code in that, by means of such device, i.e., the "buy and sell" arrangement, respondents have assisted, suffered and permitted Pacific Limestone Products, Inc., to obtain transportation for property between points within this State at rates less than the applicable charges prescribed by the Commission in Minimum Rate Tariff No. 2.
2. Respondents have also acted in violation of Section 3664 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.

#### Penalty

The respondents' permit will be suspended for a period of five days. Due to mitigating circumstances and the fact that the total of the undercharges is small, the imposition of said suspension will be deferred and held in abeyance for a period of one year.

The Commission having found the facts as hereinabove set forth and concluding that the respondents have violated Sections 3664 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. Donald C. Pellandini, David L. Pellandini and Louis E. Pellandini are ordered to cease and desist from acting in violation of Section 3668 of the Public Utilities Code by assisting, suffering, or permitting Pacific Limestone Products, Inc., 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. Radial Highway Common Carrier Permit No. 49-188 issued to Donald C. Pellandini, David L. Pellandini and Louis E. Pellandini, is hereby suspended for five consecutive days; and they shall not lease their equipment or other facilities used in operations under this permit for the period of the suspension or directly or indirectly allow such equipment or facilities to be used to circumvent the suspension; provided, however, the execution of said suspension will be deferred and held in abeyance pending further order of the Commission.

3. If no further order of the Commission is issued affecting said suspension within one year from the date of issuance of this decision, the provisions of paragraph 2 hereof shall be of no further force or effect.

4. Respondents shall examine their records for the period from January 1, 1960, to the present time for the purpose of



ascertaining if any additional undercharges, unlawful remittances, or unlawful refunds have occurred other than those mentioned in this decision.

5. Within ninety days after the effective date of this decision respondents shall complete the examination of their records hereinabove required by paragraph 4 and file with the Commission a report setting forth all undercharges and all unlawful transportation charges found pursuant to that examination.

6. Respondents are hereby directed to take such action, including legal 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, respondents shall institute legal proceedings to effect collection and 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 Donald C. Pellandini, David L. Pellandini and Louis E. Pellandini and this order shall

be effective twenty days after the completion of such service upon the respondents.

Dated at San Francisco, California, this 7th day of FEBRUARY 1961.

[Signature]  
 President

[Signature]

[Signature]  
 Fox

[Signature]  
 George H. Hoover

[Signature]  
 Commissioners