

ORIGINAL

Decision No. 63695

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, charges and practices of CHARLEY TJOELKER.

Case No. 7223

Charley Tjoelker, for self.  
Lawrence Q. Garcia, for the Commission staff.

O P I N I O N

This proceeding, instituted by the Commission on its own motion, is an investigation into the operations, rates and practices of Charley Tjoelker, an individual, it appearing that in the conduct of his business he may have engaged in the transportation of property for compensation by motor vehicle on the public highways of the State without first having obtained from the Commission a permit authorizing such operation as required by the Public Utilities Code of this State, and may have transported property between points in this State at less than rates established by Minimum Rate Tariff No. 2.

A public hearing was held before Examiner Mark V. Chiesa on January 16, 1962, at Los Angeles, on which date the matter was submitted for decision.

Upon the evidence the Commission finds:

That Charley Tjoelker, respondent herein, held a Radial Highway Common Carrier permit, issued by this Commission, during the period from May 6, 1953, until August 10, 1959, at which time said

permit was cancelled for nonuse; that since August 10, 1959, respondent has had no authority from this Commission; that during the period when Tjoelker held a permit he was hired by various shippers to transport hay as a permitted carrier; that one of said shippers was Tony Rietkerk who then was a partner in a hay company doing business as Cypress Hay Company; that about the time of the lapse of respondent's operating authority Tony Rietkerk went into the hay business for himself, as a dealer in hay, under the same name of Cypress Hay Company; that about this time, the latter part of 1959, respondent entered into a business arrangement with said Tony Rietkerk and one J. G. Sumner whereby respondent presumably would buy and sell hay for his own account; and that respondent conducted his so-called "buy and sell" business with said J. G. Sumner and Tony Rietkerk substantially as follows:

J. G. Sumner, an independent hay broker or dealer, would locate and purchase a quantity of hay and notify Tony Rietkerk where the hay could be picked up. Rietkerk would then inform respondent Tjoelker who would proceed to the location with instructions from Rietkerk to deliver the hay to a purchaser in the Los Angeles area to whom Rietkerk had, in the meantime, sold the hay. On occasion the load of hay would be brought back to Rietkerk's place of business and held there in Tjoelker's truck until a resale was made by or for Rietkerk. Tjoelker contended that he bought hay from Sumner and sold it to Rietkerk, but actually Sumner bought the hay from the producer, sold it to Rietkerk, through Tjoelker, and Rietkerk in turn resold the hay to the ultimate consumer. The record does not show one instance when Tjoelker bought hay from a producer and resold it to a consumer for his own account. Rietkerk always paid

Tjoelker an amount which was the sum of Sumner's bill to Tjoelker, plus a fixed additional amount, for Tjoelker's transportation service determined by the distance of the haul between the area of pickup and the point of destination as follows:

\$7.50	per ton	from the	Earlimart	Area	to	Los	Angeles	Area
7.00	"	"	"	"	McFarland	"	"	"
6.50	"	"	"	"	Northern Kern County	Area	to	Los Angeles Area
6.00	"	"	"	"	Southern Kern County	Area	to	Los Angeles Area

Each transaction was consummated by Rietkerk's payment to Tjoelker of an amount which included Sumner's selling price, and Tjoelker's transportation charge less any adjustments for occasional unloading services performed by Rietkerk or his employees and/or previous advances to Tjoelker from Rietkerk. Although respondent contends that he was paying fifty cents per ton to Sumner for finding the hay and one dollar and fifty cents per ton to Rietkerk for finding a buyer, there is no evidence of a principal and agent relationship between Tjoelker, on the one hand, and Sumner or Rietkerk, on the other hand.

Respondent's operating equipment consists of one truck, he has no regular place of business, maintains no warehouse or other facility for the storage and handling of hay, carries no inventory, and does not hold himself out as a dealer in hay by advertising or otherwise, and capital to enable him to operate in the manner hereinabove described is provided by Tony Rietkerk, doing business as Cypress Hay Company.

We further find that respondent, in the performance of the transportation services hereinabove related and as more particularly appearing in Exhibits Nos. 1 and 2 herein, has operated

as a Radial Highway Common Carrier without first having obtained from the Commission a permit authorizing such operation and that respondent, in the performance of such transportation service assessed and collected charges less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 2 as specifically set forth in said Exhibit No. 2. That the total amount of said undercharges on ten shipments transported between the period of November 21, 1960, and February 10, 1961, inclusive, was \$145.83.

There is evidence indicating that the respondent may have been unaware that his operation was not bona fide "buy and sell" business and that he had no intention of evading the provisions of the Public Utilities Code or Minimum Rate Tariff No. 2.

The Commission having found the facts as hereinabove set forth, and concluding that respondent has violated Sections 3541, 3571, 3667 and 3668 of the Public Utilities Code and the provisions and requirements of certain items of Minimum Rate Tariff No. 2, as set forth in Exhibit No. 2, makes its order as follows:

O R D E R

The Commission having instituted an investigation into the operations and practices of Charley Tjoelker, a public hearing having been held thereon, and having made the foregoing findings and conclusions,

IT IS ORDERED:

1. That Charley Tjoelker shall cease and desist from transporting, or causing to be transported, in any manner or by any device, directly or indirectly, individually or in concert with any other person, firm or corporation, property for compensation by

motor vehicle on any public highway in this State unless and until he shall have obtained from this Commission authority to engage in such business.

2. That Charley Tjoelker shall examine his records for the period from July 1, 1960, to the effective date of this order, for the purpose of ascertaining if any additional undercharges have occurred other than those referred to in the foregoing opinion, and set forth in Exhibit No. 2 in this proceeding, and within ninety days after the effective date of this order shall complete the examination of his records and file with the Commission a report setting forth all undercharges found pursuant to said examination, and he is 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 this paragraph, and he shall notify the Commission in writing upon the consummation of such collections.

3. That in the event any undercharges required to be collected as provided in paragraph 2 of this order remain uncollected one hundred twenty days after the effective date of this order, respondent Charley Tjoelker 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 results thereof until such charges have been collected in full or until further order of this Commission.

4. That respondent shall cease and desist from using fictitious "buy and sell" transactions, including such transactions as are described herein, as a device for evading the minimum rate orders of this Commission.

5. That Charley Tjockker shall pay to this Commission, within sixty days after the effective date hereof, all fees required by Chapter 6 of Division 2 of the Public Utilities Code.

The Secretary of the Commission is directed to cause personal service of this order to be made upon the respondent.

The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California,  
this 14<sup>th</sup> day of MAY 1, 1962.

*Everett H. Foye*  
President  
*[Signature]*  
*[Signature]*  
*[Signature]*  
*[Signature]*  
Commissioners

DECISION NO. 63697 CASE NO. 5437 APP. NO. \_\_\_\_\_

*pt. #79*