

Decision No. 64315

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 ANTOINE DE SUTTER. }

Case No. 7257

Antoine De Sutter, respondent.
Elmer J. Sjoström, for the Commission
 staff.

O P I N I O N

On December 19, 1961, the Commission instituted its investigation into the operations, rates and practices of Antoine De Sutter.

Pursuant to the order instituting investigation, public hearing was held before Commissioner Frederick B. Holoboff and Examiner Martin J. Porter on April 4, 1962, at Los Angeles, on which date the matter was submitted.

The purpose of this investigation is to determine whether respondent, in violation of Section 3668 of the Public Utilities Code, has engaged in a device whereby shippers were permitted to obtain transportation of property at rates less than those prescribed in Minimum Rate Tariff No. 2.

The Evidence

It was stipulated that respondent is the holder of Radial Highway Common Carrier Permit No. 19-29910 issued February 20, 1948, and that he had been served with a copy of Minimum Rate Tariff No. 2 and Distance Table No. 4 and supplements thereto. Respondent operates five trucks and trailers and employs five drivers and two part-time swappers. He uses his home for an office and the yard behind the house to park and service his trucks.

An Associate Transportation Representative testified that he made an investigation of respondent's operations commencing about

June 13, 1961, consisting of an examination of respondent's books and records and conversations with respondent relative to his method of operation. The substantial facts regarding respondent's operations are not in dispute. Respondent goes to brokers or growers of hay in the Imperial Valley from whom he purchases specific quantities of hay for an agreed price which varies from season to season depending upon growing conditions, the demand for hay by dairymen and the type and quality of the hay. Sometimes respondent "ties" up the hay by making a down payment and other times he pays the grower after he sells the hay. All of respondent's customers are dairymen in the Artesia area of Los Angeles with whom he has dealt for several years. In about half of the transactions, respondent takes the purchaser to the Imperial Valley for the purpose of showing him the hay. If the customer is satisfied with the quality, they negotiate the sales price, whereupon respondent delivers the hay to the customer's feed lots in Artesia. In other transactions, the customer takes specified quantities of hay sight-unseen, relying upon the judgment of respondent to deliver hay of a specified quality.

Respondent's books show accounts payable and accounts receivable and his records otherwise identify each transaction by freight bill number and weight certificates. The transportation representative presented an exhibit (Exhibit 1) consisting of 22 freight bills and weight certificates. Freight Bill No. 1318, for example, relates to Weight Certificate No. 10517 and identifies a transaction consisting of 52,660 pounds of hay which was purchased from John Pfister for \$26.50 per ton and sold to Vander Poel Dairies for \$33.00 per ton. Respondent's records also show that Vander Poel Dairies was billed a total of \$868.89 for this quantity of hay. Based upon the aforesaid 22 transactions, respondent's compensation varied from \$5.00 per ton to \$7.00 per

ton. Journal entries disclose the date when the hay was purchased and the date it was sold. Respondent's books and records disclose that for the first six months of 1961 his purchases amounted to \$277,536.53 and his sales amounted to \$338,490.22.

Respondent testified that he holds an itinerant merchant's license issued by the California State Board of Equalization and a certificate of license issued by the California Department of Agriculture, Bureau of Market Enforcement, certifying that respondent is a licensed dealer pursuant to Chapter 6, Division 6, of the Agricultural Code of California.¹ He also has on file with the Department of Agriculture a surety bond in the amount of \$2,000, the proceeds of which would be payable to the hay grower in the event of default by respondent. He also carries cargo insurance, the proceeds of which would be payable to respondent in the event of loss.

Respondent testified that he has never had a bad debt loss and attributed this to the fact that he was born and raised in the Artesia area and has come to know his customers intimately. He further testified that good business judgment to a great extent determines how much of a profit he makes because of the highly competitive conditions which exist in the hay market. If the hay which respondent delivers is not what the prospective customer wants, he refuses to purchase it. On one occasion it took five months after he had "tied-up" a quantity of hay before he finally sold it and derived a \$14.00 per ton profit. On another occasion he had to sell some of the hay at a loss and rather than take a loss on the entire transaction, he dumped the remainder of the hay

¹ Sec. 1261(f) of the Agricultural Code defines a "dealer" as "any person other than a commission merchant or cash buyer who solicits, contracts for or obtains from the producer thereof title, possession or control of any farm product, or who buys or agrees to buy any farm product from the producer thereof."

on an acre and a half of land he owns, bought some steers and fed it to them. Respondent testified that the only commodity he hauls on a for-hire basis is commercial fertilizer to the Imperial Valley.

The Rate Analysis Unit rated the aforementioned 22 transactions as transportation for hire and concluded that in each instance there would have been an undercharge based upon the difference between what respondent paid for the hay and what he received for it.

Based upon the foregoing evidence, it appears that a substantial number of the incidents of bona fide buy and sell transactions are present here. Respondent's compensation depends upon hay market conditions, his knowledge of types and qualities of hay, his knowledge based upon experience of customers' specific needs and his ability to satisfy those needs. Respondent assumes the usual risks of a person engaged in selling a commodity, namely, the risk of loss resulting from a failure to secure a profit as well as credit losses. Accordingly, we find that respondent on these facts is engaged in bona fide buy and sell transactions and that the transportation involved is merely incidental to said transactions. We further find that the evidence fails to show that respondent is in violation of Section 3668 of the Public Utilities Code.

O R D E R

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

IT IS ORDERED that this investigation be discontinued.

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

Dated at San Francisco, California, this 25th
day of SEPTEMBER, 1962.

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President
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Commissioners