

ORIGINAL

Decision No. 66066

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of FILBERT F. ROWLAND, dba ROWLAND HAY CO., relating to the transportation of property by motor vehicle over the highways of the State of California.

Case No. 7537

(Filed January 22, 1963)

Allan A. Sigel, for Filbert F. Rowland, respondent.
Hugh N. Orr, for the Commission staff.

O P I N I O N

On January 22, 1963, the Commission instituted its investigation into the operations, rates and practices of Filbert F. Rowland, doing business as Rowland Hay Co., hereinafter referred to as respondent, for the purpose of determining whether respondent has acted in violation of Public Utilities Code Sections 3664 and 3667 by charging, demanding, collecting or receiving a lesser rate for the transportation of property than the minimum rates and charges prescribed by Minimum Rate Tariff No. 2; whether respondent, by any means or device, assisted or permitted any corporation or person to obtain transportation for any property at rates less than the minimum rates established or approved by this Commission in violation of Section 3668 of said code; whether respondent should be ordered to cease and desist from any such violations; whether any or all

of his operating authority should be modified, suspended or revoked, or as an alternative, the Commission should impose a fine upon respondent; and whether the Commission should enter any other appropriate order.

A public hearing was held before Examiner Mark V. Chiesa on May 14, 1963, at Los Angeles, on which date the matter was submitted.

Two staff witnesses testified and three exhibits were placed into evidence by staff counsel. Respondent's counsel placed one exhibit in evidence and cross-examined the staff witnesses. Respondent did not attend the hearing, but was represented by counsel.

The issues are (1) whether respondent transported shipments of hay from the Imperial Valley and the Bakersfield area (North and South Kern Territories) to the Los Angeles area (Los Angeles-Artesia Territory) in a proprietary capacity or as a radial highway common carrier in violation of said Section 3668 of the Public Utilities Code, and (2) whether respondent transported shipments of hay between the said territories and Imperial Valley points, on the one hand, and the Los Angeles-Artesia area, on the other hand, as such carrier, at less than the rates prescribed in Minimum Rate Tariff No. 2 in violation of Sections 3664 and 3667 of said code.

The evidence shows that respondent has held a radial highway common carrier permit, No. 19-51829, since September 16, 1958, and that he was served with copies of Minimum Rate Tariff No. 2 and Distance Table No. 4, and supplements thereof; that he

conducts his transportation business from his home in the City of Industry; that in May, 1962, he operated four hay trucks and trailers; that respondent on April 4, 1962, was granted a license by the Department of Agriculture of this State, to act as a Dealer, as defined in Section 1261(f), Chapter 6 of Division 6 of the Agricultural Code of this State, which license was valid from April 1, 1962, to March 31, 1963; that said Section 1261(f) provides, in part, as follows:

" . . . that no dealer shall obtain title, possession, control, or delivery of any farm product except by contract of purchase and sale, or by contract of agreement to purchase, wherein the price to be paid by the dealer to the producer is designated in the contract." (emphasis added)

It is the Commission staff's position that respondent's purported business of buying and selling hay and the transportation of said commodity as a proprietary carrier is a device whereby he assisted and/or permitted C. C. Stafford Milling & Warehouse Co., Inc., hereinafter sometimes referred to as Stafford Co., to obtain transportation at less than the prescribed minimum rates. Respondent, on the other hand, contends that such transportation is incidental to his business as a hay dealer and is not part of his trucking business.

The record shows (Exhibits Nos. 1 and 3) that between April 1 and May 31, 1962, respondent transported twenty shipments of hay from farms in the vicinity of Bakersfield, in the North and/or South Kern Territory, and from Imperial County to said C. C. Stafford Milling & Warehouse Co., Inc., located in the City of Industry, and on to other points in the Los Angeles-Artesia

Territory as directed by Stafford Co.; that in fifteen of said shipments the purported seller of the hay to respondent was Houchin-Bleecker Co. of Buttonwillow, and the purported buyer from respondent was said Stafford Co.; that in five of said shipments the purported seller and buyer was Stafford Co., which also maintained a branch office in Westmoreland in Imperial County; that in each of said transactions the differential between the purported purchase price paid by respondent to Houchin-Bleecker Co. and Stafford Co. and the purported selling price to Stafford Co. was less than the applicable rate or charge established by this Commission in Minimum Rate Tariff No. 2 for the particular shipment; that said transactions were conducted in the following manner: Respondent would drive or send a driver to Bakersfield, or Imperial Valley, where he would have his truck and trailer weighed empty by a weighmaster, then the driver would proceed to Houchin-Bleecker Co. in Buttonwillow, or to Stafford Co. in Westmoreland, and thence to a farm designated by them, where he would pick up the load of hay and return to the weighmaster for weighing. The weighmaster prepared an original and four copies of the weight certificate, keeping one for himself, retaining one at the scales for the purported seller and giving three copies to respondent's driver, one of which was for respondent and two for either Houchin-Bleecker Co. or Stafford Co. Thereafter, respondent's truck would return to the Stafford Co. yard to await the latter's delivery instructions to some dairy or point in the Los Angeles-Artesia Territory. There is no evidence in the record that respondent had previously discussed, bargained, or negotiated

with Houchin-Bleecker Co. or with Stafford Co. concerning the price he was to pay or receive for hay. The billing and payments were handled as follows: After each trip, Houchin-Bleecker Co., or Stafford Co., would forward an invoice to respondent showing the date of sale, origin point, ticket number, number of bales, weight of shipment, sale price per ton and total amount of sale. Sometime after respondent had delivered the shipment to Stafford Co.'s designee (Stafford's customer), Stafford Co. presented respondent with a document in the form of an invoice showing date, name of respondent, name of purported seller (Houchin-Bleecker Co. or Stafford Co.), name of farm or grower where hay was picked up, invoice number, scale ticket number, number of bales, weight, purchase price per ton and total purchase price, including a statement that respondent's account had been credited with an amount purporting to be the price paid to respondent by Stafford Co. for said shipment. Following receipt of Stafford's statement, respondent would also receive from Stafford Co. a check for the amount of the purported sale to Stafford and respondent, in turn, would then mail his check to Houchin-Bleecker Co. It does not appear in what manner Stafford Co. compensated respondent for the Imperial Valley transactions. The evidence shows (Parts 1 to 5, Exhibit No. 3 and Exhibit No. 1) that in the five Imperial Valley transactions, Stafford Co. was the seller and the buyer of the same load of hay. There is no evidence that respondent billed Stafford Co. for the hay, or used any business forms of his own showing that he was in the hay business as a dealer, nor does it appear that respondent

engaged in the purchase and sale of hay as a dealer in compliance with the aforesaid provision of the Agricultural Code. On the contrary, there is testimony and documentary evidence indicating that Stafford Co. was the activating party in the transactions and did all the billing for respondent's purported hay business. ✓

The staff's attorney also offered testimonial evidence of respondent's "for-hire" gross revenue and also of his purported proprietary hay-dealer gross purchases and sales. For the year 1962, respondent's gross for-hire revenue was \$5,529.00 and his purported proprietary gross sales and purchases for the year 1961 were \$244,976.35 and \$178,228.19, respectively, or a gross profit of \$66,748.16.

Based upon the evidence we find that:

1. Filbert F. Rowland, respondent, was and is operating as a radial highway common carrier under Permit No. 19-51329 and he has been served with Minimum Rate Tariff No. 2 and Distance Table No. 4 and supplements thereto. ✓

2. C. C. Stafford Milling & Warehouse Co., Inc., a corporation, had its principal place of business in the City of Industry in Los Angeles County, and maintained an office or branch in the City of Westmoreland in Imperial County, and respondent's purported purchase of hay from Stafford Co. at Westmoreland, and purported resale of said hay to Stafford Co. at the City of Industry, was a subterfuge and device whereby said Stafford Co. was enabled to obtain transportation from respondent at less than the applicable rates and charges established by this Commission in ✓

Minimum Rate Tariff No. 2, and resulted in undercharges as follows:

<u>Invoice Bill Nos.</u>	<u>Date</u>	<u>Charge Collected</u>	<u>Correct Charge*</u>	<u>Under- charge**</u>
26617-26621	5/23/62	\$ 150.08	\$ 189.34	\$ 39.26
26618-26622	5/24/62	150.24	189.35	39.11
26699-26713	5/29/62	137.02	172.86	35.84
26736-26746	5/29/62	144.04	181.72	37.68
26738-26744	5/30/62	149.79	188.97	<u>39.18</u>
Total Undercharges				\$191.07

* Item No. 658, Fourth Revised Page 51-B, Minimum Rate Tariff No. 2. (Parts 1 to 5 and Appendix "A" (1) of Exhibit No. 3).

** Difference between alleged sale price received from Stafford Co. as shown on first invoice number, and alleged purchase price paid to Stafford Co. as shown on second invoice number (Parts 1 to 5 of Exhibits 1 and 3).

3. Respondent's purported purchases of hay from Houchin-Bleecker Co. of Buttonwillow, in the North and/or South Kern Territory, and subsequent sales of the hay to C. C. Stafford Milling & Warehouse Co., Inc., of the City of Industry in the Los Angeles-Artesia Territory, were not bona fide "buy and sell" transactions of respondent as a private hay dealer, but were a means or device whereby respondent assisted and permitted C. C. Stafford Milling & Warehouse Co., Inc., to obtain transportation of property at rates less than the minimum rates established

by Minimum Rate Tariff No. 2 which resulted in undercharges as follows:

<u>Invoice Bill Nos.</u>	<u>Date</u>	<u>Charge Collected</u>	<u>Correct Charge*</u>	<u>Under- charge**</u>
25367-4931	4/5 & 4/10/62	\$ 147.42	\$ 186.74	\$ 39.32
25414-4931	4/6 & 4/10/62	150.60	190.76	40.16
25366-4931	4/6 & 4/10/62	150.84	191.07	40.23
25413-4931	4/8 & 4/10/62	138.60	175.56	36.96
25488-4943	4/10 & 4/16/62	131.16	148.65	17.49
25666-4977	4/18 & 4/20/62	134.04	169.79	35.75
25751-4995	4/22 & 4/24/62	138.72	157.22	18.50
26040-5046	5/3 & 5/7 /62	134.10	151.98	17.88
26252-5117	5/10 & 5/24/62	128.76	163.10	34.34
26529-5142	5/16 & 5/31/62	142.02	160.96	18.94
26436-5114	5/18 & 5/24/62	127.32	144.30	16.98
26530-5135	5/18 & 5/28/62	147.24	186.51	39.27
26695-5135	5/24 & 5/28/62	124.55	189.32	64.77
26658-5142	5/25 & 5/31/62	104.20	158.39	54.19
26657-5142	5/27 & 5/31/62	113.35	172.30	58.95
Total Undercharges				\$533.73

* Item No. 658, Fourth Revised Page 51-B, Minimum Rate Tariff No. 2. (Parts 6-20 and Appendix "A" (2) and (3) of Exhibit No. 3).

** Difference between alleged sale price received from Stafford Co. as shown on first invoice number, and alleged purchase price paid Houchin-Bleecker Co. as shown on second invoice number (Parts 6 to 20 of Exhibits Nos. 1 and 3).

4. Each of the undercharges enumerated in paragraphs 2 and 3 of these findings resulted from respondent's failure to apply the applicable rate as provided in Item 658, Fourth Revised Page 51-B of Minimum Rate Tariff No. 2 applicable to the transportation of hay from the Imperial Valley and/or the North and South Kern Territories to the Los Angeles-Artesia Territory.

5. Said purported "buy and sell" transactions were not, in truth and in fact, bona fide sales, but were mere shams and devices employed by respondent to circumvent and violate the law, and such transactions constituted for-hire carriage within the regulatory jurisdiction of this Commission.

Based upon the foregoing findings of fact, the Commission concludes that Filbert F. Rowland has violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code.

O R D E R

IT IS ORDERED that:

1. Filbert F. Rowland, doing business as Rowland Hay Co., respondent herein, shall forthwith cease and desist from charging, demanding, collecting, or receiving for the transportation of property, or for any service in connection therewith, rates and charges less than the minimum rates applicable to such transportation established or approved by the Commission, and shall observe the provisions of any tariff, decision or order applicable to respondent.
2. Respondent shall, on or before the thirtieth day after the effective date of this order, pay a fine of \$3,000.00.
3. Respondent shall examine its records for the period from April 1, 1962, to the effective date of this order, for the purpose of ascertaining all undercharges that have occurred.

4. Within ninety days after the effective date of this decision, respondent shall complete the examination of its records required by paragraph 3 of this order, and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.

5. Respondent shall take such action, including legal action, as may be necessary to collect the amount of undercharges set forth herein, together with those found after the examination required by paragraph 3 of this order, and shall notify the Commission in writing upon the consummation of such collections.

6. In the event undercharges ordered to be collected by paragraph 5 of this order, or any part of such undercharges, remain uncollected one hundred twenty days after the effective date of this order, respondent shall institute legal proceedings to effect collection and shall file with the Commission, on the first Monday of each month thereafter, a report of the undercharges remaining to be collected and specifying the action taken to collect such undercharges and the result of such action, until such undercharges have been collected in full or until further order of the Commission.

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

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

Dated at San Francisco, California, this 24th day of September, 1963.

William L. Bennett
President
George E. Grover
Frederick B. Holdhoff
Commissioners