

ORIGINALDecision No. 66067

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
 motion into the operations, rates and
 practices of AUGUST H. CARPI, dba GUS
 CARPI, relating to the transportation
 of property by motor vehicle over the
 highways of the State of California.

Case No. 7571

August H. Carpi, by Allan A. Sigel, for respondent.
Hugh N. Orr, for Commission staff.

O P I N I O N

On March 6, 1963, the Commission instituted its investigation into the operations, rates and practices of August H. Carpi, doing business as Gus Carpi, hereinafter referred to as respondent, for the purpose of determining whether respondent has acted in violation of Public Utilities Code Sections 3664 or 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 16, 1963, at Los Angeles, on which date the matter was submitted.

Two staff witnesses testified and two exhibits were placed in evidence by staff counsel. Respondent's counsel placed two exhibits in evidence and cross-examined the staff witnesses. Respondent did not testify.

The issues are (1) whether respondent transported shipments of hay from the Bakersfield area (North Kern Territory) 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 shipments of mineral feed between Los Angeles and Imperial Valley points, 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. 19-51826, since September 19, 1958; 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 La Puente and that he shares a yard elsewhere, used for his truck maintenance work; that in May 1958, he purchased four hay trucks and trailers from C. C. Stafford Milling & Warehouse Co., Inc., hereinafter referred to as Stafford Co.; that he now operates five diesel-powered flat-rack trucks and full trailers; that on

April 4, 1962, he 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 3, 1962 to April 2, 1963; and 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 assists and/or permits said 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 2) that between March 27 and May 19, 1962, respondent transported fifteen shipments of hay between farms in the vicinity of Bakersfield in the North and/or South Kern Territory, and C. C. Stafford Milling & Warehouse Co., Inc., located in the City of Industry in Los Angeles-Artesia Territory; that in each instance 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 each of said transactions the differential between the purported purchase price paid by respondent to Houchin-Bleecker Co. and the

purported selling price to Stafford Co. was \$6.00 per ton although the purchase and selling prices varied according to the market price at the particular time of the transaction; that said transactions were conducted in the following manner: respondent would drive or send his driver to Bakersfield, where he would have his truck and trailer weighed empty by a weighmaster, then the driver would continue to Houchin-Bleecker Co. in Buttonwillow, or to a farm designated by said company, 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 Houchin-Bleecker Co., and giving three copies to respondent's driver, one of which was for respondent and two for Stafford Co. Thereafter, respondent's truck would return to Stafford's yard to await Stafford Co.'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. 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. Some time 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 Houchin-Bleecker 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, with a statement that respondent's account had been credited with an amount purporting to be the price paid to respondent by Stafford Co., which price was in each of the fifteen transactions or sales, \$6.00 per ton more than the price Houchin-Bleecker Co. had billed respondent. Soon after the receipt of Stafford's statement, respondent would receive from Stafford Co. a check for the amount of the sale and respondent, in turn, would mail his check to Houchin-Bleecker Co. 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 indicating that Stafford Co. was the activating party in the transactions.

It was stipulated by counsel for respondent that three shipments of animal feed, transported for Wilbur Ellis Co. of Los Angeles, to points in the Imperial Valley, were improperly rated and resulted in undercharges as set out in Parts 16, 17, & 18 of Exhibit No. 2; the errors resulted from respondent's failure to apply a switching charge, the correct rail base rate, and a constructive mileage from rail team track as set forth in Appendix A of Exhibit No. 2.

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 as follows:

	<u>For-Hire</u>	<u>Proprietary</u>
Last 9 mos. 1961	\$ 20,049.62	-
12 mos. 1962	24,828.00	-
12 mos. 1961		\$ 340,690.59 sales
		255,751.15 purchases
Gross Profit -		\$ 84,939.44

Respondent's attorney objected to the introduction of the data and moved that the testimony be stricken on the grounds of irrelevancy and immateriality, no proper foundation to justify its acceptance, no evidence of any violation pertaining thereto, and that the figures were not in any way connected with the particular violations enumerated or charged in the Commission's order or attempted to be proven.

After argument on the objection and motion a ruling, at the request of staff counsel, was reserved for this Commission. In view of the evidence and findings as herein set out the objection is overruled and the motion to strike is denied.

Based upon the evidence we find that:

1. August H. Carpi, respondent, is operating as a Radial Highway Common Carrier under Permit No. 19-51826 and he has been served with Minimum Rate Tariff No. 2 and Distance Table No. 4 and supplements thereto.
2. Respondent performed transportation services, as a Radial Highway Common Carrier, for Wilbur Ellis Co. for less than the applicable rates and charges established by this Commission by its tariffs which resulted in undercharges as follows: (Parts 16, 17, and 18 of Exhibit No. 2)

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charge Collected</u>	<u>Correct Charge</u>	<u>Under- Charge</u>
3251	5/19/62	\$ 96.00	\$ 152.89	\$ 56.89
3259	5/29/62	120.00	149.39	29.39
3257	6/ 1/62	96.00	120.89	24.89

Total Undercharges \$ 111.17

In the first of said shipments, respondent failed to apply a switching charge, applied the wrong rail base rate, and omitted a charge from rail point to destination, as shown in "Reference Marks" (1), (2), and (3) of Appendix A to Exhibit No. 2, and in two shipments respondent omitted a switching charge and applied an incorrect rail base rate, as shown in "Reference Marks" (1) and (4) of said appendix.

3. Respondent's purported purchases of hay from Houchin-Bleecker Co., of Buttonwillow, 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 specified in the following transactions:

<u>Invoice Number</u>	<u>Date</u>	<u>Charge Collected</u>	<u>Correct Charge</u>	<u>Under- charge</u>
25191	3/27/62	\$ 138.48	\$ 175.41	\$ 36.93
25368	4/ 5/62	149.76	189.70	39.94
25365	4/ 6/62	150.66	190.84	40.18
26082	5/ 5/62	137.88	176.65	38.77
26083	5/ 6/62	136.92	173.43	36.51
26133	5/ 7/62	142.68	180.73	38.05
26200	5/ 9/62	136.80	173.28	36.48
26346	5/12/62	143.40	162.52	19.12
26332	5/14/62	139.14	176.24	37.10
26528	5/15/62	139.14	166.19	19.55
26348	5/15/62	133.20	168.70	35.52
26527	5/16/62	148.50	188.10	39.60
26435	5/16/62	142.50	180.50	38.00
26526	5/18/62	135.18	171.23	37.05
28697	5/24/62	126.90	192.89	<u>65.99</u>

Total Undercharges - \$ 558.79

4. Each of the undercharges enumerated in paragraph 3 of these findings resulted from respondent's failure to apply the rate as provided in Item 658, 4th Revised Page 51-B of Minimum Rate Tariff No. 2 applicable to the transportation of hay from the North Kern Territory 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 August H. Carpi has violated Sections 3664, 3667 and 3668 of the Public Utilities Code.

O R D E R

IT IS ORDERED that:

1. August H. Carpi, doing business as Gus Carpi, 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 and charges 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 \$3000.00.

3. Respondent shall examine its records for the period from June 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 August H. Carpi.

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 H. Bennett
President
W. E. Mitchell
W. E. Mitchell
George E. Hoover
Fredrick B. Hallock
Commissioners