

ORIGINALDecision No. 66148

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations)
 and practices of TURNER FEED MILL,)
 a corporation, relating to the)
 transportation of property over)
 the highways of the State of)
 California.)

Case No. 7483

Stanley H. Tibbs, of Brown & Tibbs,
 for respondent.

Hugh N. Orr, for the Commission staff.

O P I N I O N

On November 20, 1962, the Commission instituted its investigation into the operations and practices of Turner Feed Mill. Pursuant to the order instituting investigation, public hearing was held before Examiner Porter on February 19, 1963, at Fresno, on which date the matter was submitted.

The purpose of this investigation is to determine:

(1) Whether respondent, in violation of Public Utilities Code Section 3571, has engaged in the business of transporting property for compensation by motor vehicle on the public highways between points within this State without first having obtained from this Commission proper authorization for such transportation.

(2) Whether respondent has violated Sections 3664 and 3667 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for the transportation of property over the public highways of this State than the applicable rates and charges prescribed by Minimum Rate Tariff No. 2.

(3) Whether respondent has participated in any device to provide transportation of property by motor vehicle on public highways of this State for any shipper at less than the minimum rates or charges established or approved by this Commission in violation of Section 3668 of the Public Utilities Code.

Respondent is a closely held corporation owned and operated by Mr. and Mrs. Nathan B. Turner. It is engaged primarily in the business of milling animal and poultry feed and fertilizer for sale and sells farming and ranching equipment. It buys raw materials in northern California for the mill. To avoid empty out-hauls the corporation buys cottonseed meal, principally, but also coconut, salt, shell, barley, corn, peacake, alfalfa meal and, from the Fresno area, it buys, also, similar materials which it sells to a small number of broker-dealers for deliveries to ultimate consumers, the customers of the brokers, in the areas where respondent obtains raw materials for its mill.

It appears from the record that the operations of this respondent are essentially similar to those of Tom Lally, doing business as Visalia Feed Service, Case No. 7484. The Lally case was decided in Decision No. 65985 by this Commission on September 10, 1963. In Lally, unlike this case, the evidence appeared conclusive that Lally was a bona fide trader in raw feed materials. In this case, involving a smaller operator, it does not appear that the staff has established that respondent was not a bona fide trader in raw materials.

Staff, by exhibits, presented 25 transactions involving three contracts of purchase by respondent. The first contract indicates a purchase of 720 tons of cottonseed meal from Producers Cotton Oil Company of Fresno on October 26, 1961. The same exhibit

includes a contract of sale in writing from respondent to Battaglia-Frey, Inc., of San Francisco of the same date and for the same amount of material. Fifteen deliveries were made under this contract to ultimate consumers, buyers from Battaglia-Frey, Inc., at points in Petaluma (primarily), Richmond, and San Jose.

The second contract of purchase dated January 19, 1962 from J. G. Boswell Co., Corcoran, was for 150 tons of cottonseed meal. Respondent sold, according to a contract also in writing on the same day, essentially the same quantity of the same material also to Battaglia-Frey, Inc., of San Francisco. Five deliveries were made by respondent under this contract pursuant to the directions of the buyer, Battaglia-Frey, Inc. These deliveries were all to Petaluma.

The staff transportation representative testified that Mr. Turner, who is substantially the respondent corporation, stated to him that one of respondent's principal broker-buyers, Battaglia-Frey, Inc., of San Francisco, made arrangements with the producers for meal and then notified Mr. Turner who would contact the producer for a contract. This apparent admission and the correspondence of the "buys and sells" in documentary evidence, together with the testimony of the staff representative that respondent's accounts payable tended to balance its accounts receivable, constitute the case against respondent.

Prior to the presentation of evidence on the minimum rates with a comparison of the difference between the buy and sell prices of the sampled transactions in the exhibits counsel for respondent sought the exclusion of the proposed evidence on the ground that staff had not established a prima facie case. The examiner properly overruled counsel's motion.

Comparison of minimum tariffs to the "profits" of respondent on the 25 "transactions" analyzed shows an average

undercharge of \$46.85 and an average "profit" or difference between the buy and sell price per trip of \$95.53.

Mr. Turner testified that he pays for the raw materials that he buys at the end of the calendar month whereas his buyers pay him thirty days after each delivery. At the time of hearing Battaglia-Frey owed respondent \$20,000 whereas respondent owes the supplier, Producers Cotton Oil Company, \$8,000. Sales to respondent were without condition. Turner denied that he sold the cottonseed to Battaglia-Frey, Inc., the same day that he bought it from Producers Cotton Oil Company, that is, on October 26, 1961. He had received the order from the buyer two days previous to the purchase. Frequently Battaglia-Frey executives would phone Turner to say that they had a place to go with so many tons, then respondent would buy from one of three possible suppliers and sell to Battaglia-Frey to make the deliveries. Occasionally respondent would be long and it could supply Battaglia-Frey or other customers from its buy contract.

Turner testified that the documentary evidence was deceptive where it indicated that all of the cottonseed meal shipped to the order of Battaglia-Frey came from Producers Cotton Oil Company. Some came from Bob Dorris, that is, J. G. Boswell Company of Comoran and from Kingsburg.

Respondent carries its own insurance on its merchandise, pays taxes on its purchases and on its merchandise contracted for on March 1 of each year and not delivered. It has always accepted and paid for the amounts contracted for from suppliers. Respondent usually has both buy and sell contracts on hand. Through speculation on one deal respondent made a profit of \$10 a ton on a long position.

Respondent uses cottonseed meal in its feed mixtures. It keeps an average of 20 tons on hand in the mill and has had as much as 200 tons on its lot. Mr. Turner never hauled for another, though such a request had been made and refused. Mr. Turner only recently realized that the freight bill forms bought by his driver and used by his bookkeeper were inappropriate for use as delivery slips and tended to indicate that respondent was a carrier.

If sacking is required by the buyer, respondent causes supplier to sack and charges buyer the cost only of the sacking without taking a profit thereon. The market of cottonseed meal consists of two standard varieties only, peacake and fine meal.

Respondent started trading locally in raw feed materials in 1959 with bob-tail trucks. It extended into northern California trading when it, in 1961, bought the large truck of M. R. Gomez, a common carrier who was in trouble with this Commission for undercharges.

Respondent is able normally to obtain out-hauls of raw materials for about two-thirds of its trips. But, presently about 50 percent of its out-hauls are empty.

Besides selling to Battaglia-Frey, Inc., the buyer of the contracts in evidence, respondent sells to Consolidated Milling Company. Respondent buys from Bob Dorris and Lacey Milling Company as well as from Producers Cotton Oil Company of Fresno. Mr. Turner said that he bought the large truck to trade and compete with competitors because rail rates discriminate against him as he cannot get a rail spur.

Based upon the evidence, we find that:

1. There is here present substantial evidence of bona fide buy and sell incidents and characteristics. The success of

respondent's trading business, as distinguished from its mill, depends upon market conditions, Mr. Turner's knowledge of animal and poultry feeds, his awareness, based upon experience of his customers' probable needs and his ability to satisfy such needs. He assumes all of the risks of a person engaged in selling commodities, including the possibility of loss due to inability to secure profitable sales and to maintain sound credit.

2. Respondent is engaged as a dealer in bona fide buy and sell transactions and such transactions do not constitute a device to evade regulation by this Commission.

3. Respondent transports its own property and not the property of others.

In accordance with the foregoing findings, we conclude that respondent has not violated Sections 3571, 3664, 3667 or 3668 of the Public Utilities Code or either or any thereof.

O R D E R

IT IS ORDERED that this investigation be and the same is hereby 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 completion of such service.

Dated at San Francisco, California, this 15th day of OCTOBER, 1963.

William M. Burrows
 President

George E. Grover

Frederick B. Holoboff
 Commissioners