

Decision No. 66720

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates, sales and practices of)
 BILLY J. GREENFIELD, relating to)
 the transportation of property by)
 motor vehicle over the highways)
 of the State of California.)

Case No. 7681

Howard E. Meyers, for respondent.

Hugh N. Orr and Frank O'Leary, for
 the Commission staff.

O P I N I O N

By its order dated August 13, 1963, the Commission instituted an investigation into the operations, rates, sales and practices of Billy J. Greenfield.

A public hearing was held before Examiner Porter on November 14, 1963, at Bakersfield, on which date the matter was submitted.

Respondent presently conducts operations pursuant to a radial highway common carrier permit.

Respondent has a terminal in McFarland, California. He owns and operates one truck and one trailer. His total gross revenue for 1962 was \$10,561 and for the first three quarters of 1963, \$956, excluding purported purchase and sale transactions.

It was stipulated that respondent had been served with Minimum Rate Tariff No. 2, Distance Table No. 4 and applicable supplements thereto.

The Commission's staff presented evidence covering a period of the carrier's operations during June, July and August, 1962. Twenty-three representative transactions wherein respondent

was allegedly buying and selling hay were analyzed. The respondent's method of operation involved A. J. Hopkins, a hay broker who buys hay from the farmers in and around the North Kern territory. Hopkins then allegedly sells the hay to respondent, and tells respondent where to pick up the hay. The hay is weighed at Hopkins' scale and then delivered to Miller Hay Company, Bellflower. The hay is left on the vehicle until Miller Hay Company finds a buyer. Respondent then is informed by the hay company where to make delivery.

Respondent pays Hopkins fifty cents above the market price of the hay as purchased from the farmers. Miller pays respondent some amount above this price when the hay is sold to the ultimate consumer.

The respondent did not contest these facts but testified that he could not buy direct from the farmers because the hay would cost him more. He could not extend credit to the farmers.

The respondent further testified that he had a license, permit and bond that permitted him to be a dealer in hay and that he had cargo insurance.

Evidence was also introduced that respondent had purchased hay from others besides Hopkins and had sold to others than customers of Miller's.

Respondent trusted Hopkins and Miller and believed they were fair with him in their business dealings.

The Rate Analysis Unit of the Commission's staff rated these twenty-three transactions considering the respondent as performing transportation rather than engaging in buy and sell transactions, and a rate expert testified that in each instance the amount the respondent received was less than the applicable minimum rate.

After consideration the Commission finds that:

1. The alleged "buy-sell" transactions hereinabove referred to were not in fact purchase and sale transactions but were in fact transportation of property for compensation on the public highways subject to the provisions of the Highway Carriers' Act (Sections 3501-3809 of the Public Utilities Code).

2. Said transactions constituted a device whereby respondent, in violation of Section 3668 of the Public Utilities Code, has transported property as a permitted carrier at rates less than the applicable minimum rates and charges established by this Commission.

3. Respondent assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate Tariff No. 2, which resulted in undercharges as set forth in Exhibit No. 2, totaling \$704.82.

The order which follows will direct respondent to review his records to ascertain all undercharges that have occurred since June 1, 1962, in addition to those set forth herein. The Commission expects that when undercharges have been ascertained, respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them. The staff of the Commission will make a subsequent field investigation into the measures taken by respondent and the results thereof. If there is reason to believe that respondent, or his attorney, has not been diligent, or has not taken all reasonable measures to collect all undercharges, or has not acted in good faith, the Commission will reopen this proceeding for the purpose of formally inquiring into the circumstances and for the purpose of determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Within twenty days after the effective date of this order Billy J. Greenfield shall pay to this Commission a fine of one thousand dollars.
2. Respondent shall cease and desist from using fictitious "buy and sell" transactions, such as those disclosed herein, as a device for evading the minimum rate orders of this Commission.
3. Respondent shall examine his records for the period from June 1, 1962, to the present time, for the purpose of ascertaining all undercharges that have occurred.
4. Within ninety days after the effective date of this order, respondent shall complete the examination of his 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 amounts 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. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 28th day of JANUARY, 1964.

Hollinger Brundt
President

Walter S. Mitchell
Wesley H. Hoag

George E. Grover

Fredrick B. Hallock
Commissioners