

Decision No. 67022

**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 RUSSELL P.  
SAMPOUL, an individual doing  
business as COLONIAL VAN & STORAGE  
COMPANY.

Case No. 7758

William H. Kessler, for respondent.  
B. A. Peeters, for the Commission staff.

O P I N I O N

By its order dated October 29, 1963, the Commission instituted an investigation into the operations, rates and practices of Russell P. Sampoul, an individual doing business as Colonial Van & Storage Company.

A public hearing was held before Examiner Daly on January 15, 1964, at Fresno.

Respondent is presently engaged in the business of a public utility warehouseman pursuant to a prescriptive right described by order in Case No. 6636, dated July 26, 1960. He is authorized to operate 32,500 square feet of warehouse space in Fresno, California. Respondent employs one office manager, one bookkeeper, one warehouseman and three drivers. His gross revenue for the year 1962 amounted to \$148,509.43. Respondent's warehouse rates and charges are published in California Warehouse Tariff Bureau Warehouse Tariff No. 30, Cal. P.U.C. No. 167, Jack L. Dawson, Agent.

A representative of the Commission's field division visited respondent's place of business and checked his records for the period from August 1962 through December 1962, inclusive. During said period respondent issued 325 invoices for 20 warehouse accounts. The underlying documents relating to 11 transactions were taken from respondent's files and submitted to the License and Compliance Branch of the Commission's Transportation Division. Based upon the data taken from said shipping documents a rate study was prepared and introduced in evidence as Exhibit 3. Said exhibit reflects undercharges in the amount of \$638.53.

Exhibit 3 was divided into eleven parts relating to the eleven transactions considered.

Parts 1, 2 and 8 relate to ice vending machines that were incorrectly measured. Respondent's warehouseman failed to measure a small box attached to the machines and in preparing his report for Mrs. Willhelm, respondent's office manager who does the rating, listed the size of the machine as 59 cubic feet. The staff representative's measurement was 74.86 cubic feet. Mrs. Willhelm testified that a commodity is measured only once and the original measurement is used in rating the same commodity in subsequent transactions. According to Mrs. Willhelm she was unaware of the discrepancy until just prior to the hearing.

Parts 3, 4 and 7 relate to air coolers stored for the account of Mr. Harry Dooley. The staff representative testified that he was told by respondent that respondent had assessed an agreed storage rate of \$45 per month in order to keep the account during the off season. Respondent testified that after the summer

months the account had become inactive and Mr. Dooley was considering returning his stock to Arizona. In order to keep the account respondent testified that he converted the account from a cubic foot basis to a square foot basis, although he admitted his tariff made no provision for such a conversion.

Part 5 relates to the storage of truck frames and various parts for truck frames. Said commodities were stored in a shed near the main building. The shed measured 1,594 square feet and is completely open on one side. With the exception of 94 feet, which respondent devoted to his own use, the balance of the space was used to store the property of Mr. A. J. Bayer. According to the staff representative, respondent told him that Mr. Bayer had requested private storage space. As a result, the staff rated the space according to Rule No. 235 of respondent's tariff which reads as follows:

"Private Room Storage.

Rule No. 235 - When a storer requests the exclusive use of a private room for the storage of his property and when the warehouseman will render such service, the charge for the storage will be computed at the rate of 30 cents per square foot per month or portion thereof on the entire area of the private room. Storage handling performed in connection with merchandise stored hereunder will be at the rate provided in Rule No. 135 series.

In no event shall the storage or handling charges computed under the provisions of this rule be less than those otherwise applicable under the storage and handling rates provided elsewhere in this Tariff."

Respondent assessed a rate of seven cents to the space under Rule 150 of Warehouse Tariff No. 30, which reads as follows:

"Where specific reference is made to this Rule - and only in such event - the rates for rental of space in Domestic warehouse, without labor or other services, will be as follows:"

The only reference to Rule 150 is contained in Item 370 of Warehouse Tariff No. 30, which governs the storage of machinery, not otherwise specified, loose.

Respondent charged \$105 for rental of the space. The staff, relying upon the provision for private storage, believes that the proper charge should have been \$478.20.

Parts 6 and 9 relate to the storage of crated commercial clothes driers. Respondent failed to indicate on the invoice the dimensions of the driers. The staff's measurement indicated 109.47 cubic feet. The Commission rate expert therefore applied Item 350 of the tariff, which covers Machines, Vending or Coin-operated. Respondent testified that the coin devices are not attached to the driers when placed in storage. He therefore concluded that since the driers were not vending machines and were without the coin mechanism they did not fall within the provisions of Item 350. The driers were therefore rated by Mrs. Willhelm under "Item 390 - Merchandise, not otherwise specified". Respondent, however, admitted on cross-examination that even without the coin mechanism the more reasonable interpretation would have been "Item 360 - Machinery, not otherwise specified, boxed or crated". Item 360 specifies the same rate as Item 350.

Part 10 relates to the storage of crated air compressors and parts, as well as the preparation of four bills of lading for the Burch Equipment Company. The crates were stored in the general warehouse area, but the parts were kept in a private room, which was kept locked at all times. The staff applied the 30-cent rate specified in "Item 235 - Private Room Storage". Respondent

testified that the Burch Equipment Company never requested private storage and that the smaller compressor parts were kept in the private room to prevent possible pilferage and to facilitate the keeping of records. With respect to the four bills of lading Mrs. Willhelm testified that they were prepared by the Burch Equipment Company.

Part 11 relates to the storage of chemical fertilizer for E. I. Du Pont De Nemours & Company. Respondent applied Item 210, which specifies a rate of 2.7 cents per bag for chemical fertilizer when stored in a minimum amount of 1,000 tons per calendar year. The staff representative testified that Mrs. Willhelm had told him that the account was less than 1,000 tons per calendar year and therefore the staff rate expert applied Item 200, which specifies a rate of three cents per bag. According to the staff the under-charge amounts to \$10.27. Mrs. Willhelm testified that her records indicated that the Du Pont company stored approximately 1,300 tons for the year 1962. Respondent testified that the Du Pont company had assured him that the account would exceed 1,000 tons annually and it was agreed that a balance due bill would be presented at the end of the year in the event the total tonnage fell below 1,000 tons.

Also covered by Part 11 were three withdrawals at 46 cents each and three bills of lading at 23 cents each for which respondent made no charge.

After consideration the Commission finds that:

1. In Part 5 the open shed does not constitute a private room and Mr. Bayer did not have exclusive use of the area. Said

storage should have been rated under "Item 390 - Merchandise, not otherwise specified", at a rate of 11½ cents per square foot per month. The undercharge is \$67.50 rather than \$373.20.

2. In Part 11 the Du Pont company stored in excess of 1,000 tons of chemical fertilizer during the year 1962 and respondent properly applied the provisions of Item 210. The undercharge is \$2.07 for failing to charge for the withdrawals and the preparation of bills of lading.

3. In all other respects respondent charged less than his tariff rates in the instances set forth in Exhibit 3. The total undercharges amount to \$322.56.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Section 532 of the Public Utilities Code.

The order which follows will direct respondent to review his records to ascertain all undercharges and overcharges that have occurred since January 1, 1962 in addition to those set forth herein. The Commission expects that when undercharges or overcharges have been ascertained, respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges and refund the overcharges. 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 and refund all overcharges, 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. Respondent shall examine his records for the period from January 1, 1962 to the present time, for the purpose of ascertaining all undercharges and overcharges that have occurred.

2. Within ninety days after the effective date of this order, respondent shall complete the examination of his records required by paragraph 1 of this order and shall file with the Commission a report setting forth all undercharges and overcharges found pursuant to that examination.

3. 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 1 of this order, and shall notify the Commission in writing upon the consummation of such collections.

4. In the event undercharges ordered to be collected by paragraph 3 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.

5. Respondent shall cease and desist from charging and receiving a different compensation for warehousing services rendered than the rates and charges applicable thereto as specified in his schedule on file.

6. Respondent shall refund promptly all overcharges found after the examination required by paragraph 1 of this order, and shall notify the Commission in writing upon the consummation of such remunerations.

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 31<sup>st</sup>  
day of MARCH, 1964.

Robert E. Quinn President  
Walter H. Ray  
George E. Crow  
Frederick B. Holhoff Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.