

ORIGINALDecision No. 67685

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
 own motion into the operations and
 practices of NEIL BROUWER, HENRY
 KUIPER, ALVIN KUIPER, JAMES E.
 VAN BINSBERGEN, GEORGE CISELL,
 D. D. STREET, and RICHARD C. RIETSMA,
 relating to the transportation of
 property by motor vehicle over the
 highways of the State of California.

Case No. 7242

Karl K. Roos, for Alvin L. Kuiper,
Henry Kuiper, D. D. Street,
interested parties.
Neil Brouwer, respondent.
Timothy E. Treacy, for the
Commission staff.

O P I N I O N

On March 24, 1964, the Commission issued its order
 reopening the above-entitled proceeding.

Decision No. 64316, issued on September 25, 1962, in
 this proceeding found that Neil Brouwer violated Section 3668 of
 the Public Utilities Code, by means of a device whereby shippers
 obtained transportation of property between points within this
 State at rates less than the minimum rates established by the
 Commission. This was accomplished through Neil Brouwer's purported
 buying and selling of hay. The Commission found that Neil Brouwer
 was not in fact a purchaser of the hay in question but was engaged
 in the transportation of property over the public highways for
 compensation.

The Commission ordered Radial Highway Common Carrier
 Permit No. 19-40347 issued to Neil Brouwer revoked "provided,
 however, that said revocation is hereby deferred pending further
 order of this Commission. If no further order of this Commission

is issued affecting said revocation within one year from the date of issuance of this decision, the revocation shall be vacated by further order of the Commission."

The present proceeding is for the purpose of determining whether Neil Brouwer thereafter engaged in transactions similar to those found to be violations by Decision No. 64316.

Public hearing was held before Examiner Porter on May 13, 1964, at Los Angeles, on which date the matter was submitted.

The Commission staff presented evidence that a copy of said decision was served upon the respondent. Subsequent to the service of Decision No. 64316, respondent engaged in purported buy and sell transactions of hay similar to those discussed in Decision No. 64316, the only difference being that now respondent pays Alvin Kuiper the purchase price of the hay while formerly, in some instances, the respondent had paid the grower the purchase price.

Exhibit 6 shows that treating the purported buy and sell transactions as in fact transportation of property, would result in undercharges for the transportation performed in the total amount of \$467.03.

Exhibit 6 consists of 16 parts, which were representative of 109 hay shipments performed by respondent during the period of review January 1, 1963, through August 1963. Respondent, Neil Brouwer, has been issued Radial Highway Common Carrier Permit No. 19-40347.

After consideration the Commission finds that:

1. Neil Brouwer, as stated in Decision No. 64316, is not in fact a purchaser of the hay in question but is engaged in the transportation of property over the public highways for compensation.
2. The transportation as set forth in Exhibit 6 was performed at less than the minimum rates prescribed by the Commission.
3. No further order affecting the revocation of respondent's permit has been issued.

Based upon the foregoing findings of fact, the Commission concludes that respondent, Neil Brouwer, violated Section 3668 of the Public Utilities Code by means of a device whereby shippers obtained transportation of property between points within this State at rates less than the minimum established by the Commission, and that the revocation of the permit issued to Neil Brouwer should be vacated nunc pro tunc.

The order which follows will direct respondent to review his records to ascertain all undercharges that have occurred since January 1, 1963, in addition to those set forth in Exhibit 6. 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 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 Neil Brouwer shall pay to this Commission a fine of \$1,000.00.

2. Respondent shall cease and desist from any further violations of the Public Utilities Code or the orders of this Commission.

3. Respondent shall examine his records for the period from January 1, 1963, 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.

7. The revocation of Neil Brouwer's Radial Highway Common Carrier Permit No. 19-40347 is vacated effective September 26, 1963.

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 22nd day of SEPTEMBER, 1964.

Fredrick B. Halobloff
President

Ed. J. Ditcher

George H. Crover

Commissioners

*I dissent.
Respondent's
operating
authority should
be ~~renewed~~
~~renewed~~
Commissioners*

*I would revoke the
authority.*

William L. Sturges