

ORIGINALDecision No. 68808

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates and practices of WILLIAM F.)
 BOWLIN, doing business as BOWLIN)
 TRUCKING LINE.)

Case No. 7912
 (Filed June 4, 1964)

George A. Schroeder and Truman F. Campbell,
 for respondent.
William C. Bricca, for the Commission staff.

O P I N I O N

By its order dated May 26, 1964, the Commission instituted an investigation into the operations, rates and practices of William F. Bowlin, doing business as Bowlin Trucking Line.

A public hearing was held before Examiner Gravelle on December 1, 1964, at Fresno. The matter was submitted on briefs, the last of which was due January 15, 1965.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 10-4756 and Highway Contract Carrier Permit No. 10-8261. Respondent has a terminal in Selma, California; he owns and operates twelve tractors, twelve full trailers and twenty-four semitrailers. He employs twelve drivers, two shopmen, and one accountant. His gross operating revenue for the year ending September 30, 1964 was \$195,533.00.

On August 27, 1963, and again in October, November and December of 1963 a representative of the Commission's Field Section visited respondent's place of business and checked his

records for the period April through October 1963. The representative checked documents relating to 800 "shipments" during the period. Four hundred of these "shipments" related to hay dealings and the balance were for-hire transportation. Copies of the underlying documents relating to 21 movements of hay were prepared by the representative. They comprise Exhibit No. 1. These copies were then submitted to the License and Compliance Branch of the Commission's Transportation Division. Based upon the data taken from said documents a rate study was prepared, on the assumption that each such movement was for-hire transportation, and introduced in evidence as Exhibit No. 2. Said exhibit reflects what purport to be undercharges in the amount of \$832.97.

This is another of what is commonly known as a "buy and sell" case. In such a case the first question to be answered is whether or not the movements in question were for-hire transportation. If the answer is negative, then the case is completed. If the answer is affirmative, then we proceed to determine the precise violations, if any, and their extent.

The staff witness in this proceeding selected movements for a one-week period, June 9, 1963 through June 15, 1963, from various farmers in the Fresno area and one in the Tulare area which went to Miller Hay Company in Bellflower. Of the 21 movements selected, 19 showed a differential between purchase price and sales price of \$8.00 per ton. The witness considered the consistency of this differential as the most significant factor in forming his opinion that the only service performed by respondent was transportation. The witness also testified that his investigation disclosed no stockpiling of hay by respondent, nor any

advertising as a hay dealer. He testified that John Fraley, who is the accountant employed by respondent to keep his books, told him that payment to the farmer was based on the price respondent received from Miller Hay Company, less \$8.00 a ton. He stated that payment to the grower was made by respondent after receipt of the payment from Miller Hay Company by respondent and that though respondent had claimed to have suffered losses in his hay transportation, he could produce no records to substantiate such losses.

On cross-examination, the witness testified that respondent had a hay dealer's license. Respondent's status as such a licensee was certified by a written statement from the Bureau of Market Enforcement of the Department of Agriculture of the State of California (Exhibit No. 3). He also testified, and it is evident from the documents in Exhibit No. 1, that there was no reference to transportation on any of the sales documents in respondent's records. The documents in Exhibit No. 1, covering the sale of the hay, bear the heading:

"SALES INVOICE
WILLIAM (BILL) BOWLIN
HAY AND FEEDS."

Similarly, there is no reference to transportation on the Miller Hay Company sales invoices contained in Exhibit No. 1. He further testified that his investigation disclosed that respondent sold hay to five or six dealers other than Miller Hay Company and to at least one consumer in Ventura, and that respondent never let his trucks remain at the Miller Hay Company longer than 24 hours. If Miller Hay Company could not find a consumer within that time, respondent would remove his trucks and make a sale on his own.

Respondent's accountant, John Fraley, testified on behalf of respondent. He stated that he had been so employed since

1956 and that during that entire time respondent had been engaged in two business enterprises. One was for-hire transportation and the other was the purchase and sale of hay and feeds. The two enterprises were separated in respondent's books of account and separate profit and loss statements were prepared for each, although respondent maintained only one bank account. He stated that respondent made purchases from about twenty growers and that the price paid for such purchases fluctuated with the market as did the price for which respondent sold the hay. He disagreed with the staff witness's account of payment to the grower, stating that he made such payment on advice from respondent and that such information was given him by respondent anytime from the day of the purchase to two weeks thereafter. He said there were occasions in 1963 in which the difference between purchase and sales price was only \$2.00 to \$3.00 a ton due to poor quality of the hay and in these instances respondent had suffered a loss. He also testified that respondent grew hay on his own farm and sold it as well as the hay he purchased from other growers and that respondent had advertised his hay dealings in the past through the use of match-books.

Through Mr. Fraley, respondent introduced Exhibits Nos. 4 through 12. Each of these exhibits, except Exhibit No. 11, were sales invoices indicating sales to persons other than Miller Hay Company and on which there was a differential between purchase and sales price other than \$8.00 a ton. Five of these exhibits reflect sales in the month of June 1963. Exhibit No. 11 is a copy of a page from the "Cash Receipt Journal" of respondent for a portion of the month of June 1963. It indicates four separate

accounts under the headings of "Hauling", "Hay", "Sub-Haul", and "Misc." The payors shown under "Hay" for the period involved include Miller Hay Company, but also include nine other persons from whom respondent received payment for the sales of hay.

William F. Bowlin testified in his own behalf. He stated his business to be that of a trucker, hay buyer, and farmer. With regard to his hay dealings, he stated that he finds his own suppliers through direct contact with farmers and negotiates the purchase price with them. On occasion he has purchase orders from persons to whom he sells prior to the time of actual purchase by him when specific quality of hay, such as oat hay, dry stock, horse feed, or alfalfa hay is demanded. Sales to Thatcher School in Santa Barbara was one example of such a customer. He sold about 50 percent of all the hay he grew or purchased in 1963 direct to consumers as opposed to hay brokers.

On cross-examination, respondent admitted that the price differential of \$8.00 a ton occurred about 75 percent of the time and he could not explain why, but neither could he explain why the differential was sometimes \$6.00 and sometimes \$12.00. He did explain a difference between Parts 1 and 2 of Exhibit No. 1 as compared to Part 3 in which there was a variance of .50 per ton in both his purchase and sales price, as due to the fact that Part 3 involved one "patch" of hay that was older than others.

The Commission staff called under subpoena one Roland Nelson who is a farmer and a grower of hay. Mr. Nelson appears as the person from whom respondent purchased hay in six of the twenty-one parts of Exhibits Nos. 1 and 2. He testified that the sale of his hay to respondent concerns only themselves, that it is

negotiated in the field between them and that he did not know or care where the hay went after respondent bought it, or what respondent did with it.

After consideration, the Commission finds that the evidence fails to establish that respondent has violated Sections 3664 and 3668 of the Public Utilities Code.

Based on the foregoing finding of fact, the Commission concludes that this investigation should be discontinued.

O R D E R

IT IS ORDERED that this investigation is discontinued.

Dated at San Francisco, California, this

50th day of MARCH, 1965.

Fredrick B. Holdhoff
President

George G. Grover
Commissioners

William B. Bennett
Commissioners