

Decision No. 71271**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operation, rates,  
charges and practices of ODELL JOINER,  
an individual.

Case No. 8304  
(Filed November 23, 1965)

William H. Kessler and Marshall A. Smith, Jr.,  
for respondent.  
Robert C. Marks and Frank J. O'Leary, for the  
Commission staff.

O P I N I O N

By its order dated November 23, 1965, the Commission instituted an investigation into the operations, rates and practices of Odell Joiner.

A public hearing was held before Examiner Porter on March 2 and 3, 1966, at Fresno, at which time a request for time in which to review the transcript was made and granted. On May 19, 1966, respondent filed an exhibit and the matter was submitted as of that date; it is now ready for decision.

Respondent presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 54-4108. He has a terminal at Wasco. Respondent owns and operates nine tractors and twenty-three trailers. On the average he employs seven drivers, two loaders, one general helper and one bookkeeper. His operating revenues reported to the Commission for the fourth quarter of 1964 and the first three quarters of 1965 amounted to \$110,013. Copies of the appropriate tariffs and distance table were served upon respondent.

A representative of the Commission's License and Compliance Branch visited respondent's place of business and checked his records for the period May 1, 1964 through October 31, 1964.

The staff of the Commission presented evidence that 371 loads of hay, wherein respondent was allegedly buying and selling hay, were analyzed. The Rate Analysis Unit of the Commission staff rated 291 of these transactions on the theory that respondent was performing transportation rather than engaging in buy-and-sell transactions, and a rate expert testified that in each instance the amount respondent received was less than the applicable minimum rates. Further evidence was produced by hay grower witnesses to the effect that, as to the transactions herein involved, they did not sell hay to respondent but sold the hay to Koster Hay Company, and that they looked solely to Koster Hay Company for liability and responsibility for payment therefor.

The staff also presented evidence concerning a shipment of wire, shipped September 14, 1964, that had not been billed as of May 19, 1965. Further, respondent had transported property beyond a 50-mile restriction in his permit without first having obtained from the Commission authorization for such operation. There was also evidence presented that, on the assumption that the alleged buy-and-sell hay transactions were in fact for-hire transportation, respondent had failed to prepare and maintain shipping documents as required by the appropriate tariffs.

Respondent presented evidence that Mr. Henry Koster, a partner in Koster Hay Company, bought hay for respondent and sold it for him, at which time he gave respondent directions as to where the hay was to be delivered. Respondent has a hay dealer's license. Respondent's permit has been amended to include statewide authority. Respondent testified that inadvertently he had failed to bill for the load of wire and when this fact was pointed out during the investigation he billed for the wire; he presented evidence as to its payment.

After consideration, the Commission finds that:

1. The alleged "buy and 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 3501-3812 of the Public Utilities Code.)

2. Said transactions constituted a device whereby respondent, in violation of Section 3668 of the Public Utilities Code, 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 Tariffs Nos. 14 and 14-A, which resulted in undercharges as set forth in Exhibit No. 16 (Parts 1 through 13), totaling \$12,106.54.

4. Respondent violated Section 3571 of the Public Utilities Code by engaging in the transportation of property for compensation by motor vehicle on the public highways of this State beyond a 50-mile restriction in his permit, without first having obtained from this Commission authorization for such operation.

5. Respondent violated Item 250-A of Minimum Rate Tariff No. 2 by failing to collect minimum rates and charges within the prescribed credit period.

6. Respondent violated Item 220 of Minimum Rate Tariff No. 14 and Items 250 and 251 of Minimum Rate Tariff No. 14-A by failing to prepare and maintain shipping documents as required therein.

Based upon the foregoing Findings of Fact 1, 2 and 3, the Commission concludes that respondent violated Sections 3667, 3668 and 3737 of the Public Utilities Code and should pay a fine pursuant

to Section 3800 of the Code in the amount of \$12,106.54, and in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$500.

The Commission expects that respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges. 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 have not been diligent, or have not taken all reasonable measures to collect all undercharges, or have 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 pay a fine of \$12,606.54 to this Commission on or before the fortieth day after the effective date of this order.
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. Prior to the sixth day after the effective date of this decision, respondent shall institute legal action to collect the undercharges set forth in Exhibit 16 (Parts 1 through 13) and shall file with the Commission a verified copy of the complaint in such action.

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 ten days after the completion of such service.

Dated at San Francisco, California, this 13<sup>th</sup> day of SEPTEMBER, 1966.

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President  
*George T. Grover*

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Frederick E. Jakobson

*William W. ...*

*Augustine*  
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Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.