

Decision No. 23454

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application
of D. S. ROSA, doing business
under the name and style of
CAMBRIA STAGE LINE, for authority
to change rates and weight limits on
express service and fares on passenger
service.

)
) Application No. 13475

VALLEY & COAST TRANSIT COMPANY,
Complainant,

vs.

) Case No. 2328

D. S. ROSA,

Defendant.

In the Matter of the Investigation on
the Commission's own motion into the
practices and operations of D.S. ROSA,
operating a public utility stage ser-
vice for the transportation of persons
and property between San Luis Obispo
and Cambria, California.

)
) Case No. 2412

In the Matter of the Application of
D. S. ROSA (Cambria Stage Line) for
authority to change rates and weight
limits on freight and express service
and fares on passenger service.

)
) Application No. 16192

Cooper and White, by Charles T. White,
for Valley and Coast Transit Company
H. J. Dubin, for D. S. Rosa.

HARRIS, Commissioner:

OPINION, FINDINGS AND JUDGMENT

Decision No. 16782 determined eight proceedings before the Commission and found in part that D. S. Rosa, operating auto stage and freight service between San Luis Obispo and Cambria, had been operating illegally in the matter of exceeding the weight limits adopted by him. The four above proceedings were initiated subsequent to Decision No. 16782.

Hearings were had in these four matters and on September 30, 1930, the Commission duly made its decision and order No. 22926, in which it was found as a fact that Rosa's operative rights "are limited to transportation of persons and property only between San Luis Obispo and Cambria, under a restriction of 75 pounds maximum as to property". It was also found as a fact therein that Rosa possessed a prescriptive right between the points named, " * * * said right as to property being restricted to packages weighing not more than 75 pounds; also a certificated right, similarly restricted, granted by Decision No. 5476 on his Application No. 3673; * * *". Based upon the findings made, it was ordered that the said D. S. Rosa "is required to conduct automobile service for the transportation of persons and property, as set forth in the foregoing paragraph, between San Luis Obispo and Cambria and intermediate points, and no other service; * * *". (Re D. S. Rosa, 35 C.R.C. (Adv. Op.) 242)

Though defendant D. S. Rosa and his counsel had actual notice of said Decision No. 22926, no application for rehearing was filed, and the order became final. It has not been revoked and is still in full force and effect.

On January 5, 1931, there was filed with the Commission in these matters the application for order to show cause and affidavit of service of P. W. McConnel. It was alleged therein that said D. S. Rosa "has refused and failed, and now refuses and fails" to comply with the terms of Decision No. 22926 in that he "is transporting packages exceeding said 75 pound weight restriction * * *". Paragraph VI of the application and affidavit sets forth in detail five alleged instances on December 1 and 3, 1930, where packages in excess of 75 pounds were transported. Said paragraph VI is hereby made a part of this opinion by reference as though set out herein in full. It was further alleged that Decision No. 22926 had been violated on many occasions subsequent to December 3, 1930. It was asked that an order be issued requiring said D. S. Rosa to appear and show cause why he should not be punished for contempt.

Thereafter, and on January 15, 1931, the Commission duly made and issued its order to show cause directing the said D. S. Rosa to appear before Commissioner Harris on February 5, 1931, at the city hall in San Luis Obispo, to show cause why he should not be punished for contempt, which said order and a certified copy of said

affidavit were duly served on said D. S. Rosa on January 19, 1931. On the return date the said Rosa appeared in person and was represented by counsel.

It was stipulated that the specific instances of alleged violations contained in Paragraph VI of the affidavit were true and that the shipments therein described had actually been transported. While eight witnesses testified, no useful purpose would be served by reviewing their testimony in detail. Calves weighing in excess of 75 pounds have been transported (Witness Kiger, driver for Rosa), and one witness testified to the carrying of a considerable quantity of beet pulp in sacks weighing over 75 pounds each (Witness Atkinson). It was further stipulated that milk in cans is regularly transported, and that in practically each day's shipment certain cans are carried weighing over 75 pounds.

From the record it is clear that Rosa has disregarded the terms of Decision No. 22925 and it is found as a fact that subsequent to its issuance packages weighing in excess of 75 pounds have been transported, in violation of said decision and of Rosa's operative rights.

J U D G M E N T

An order to show cause having been duly made and issued herein on the fifteenth day of January, 1931, wherein D. S. Rosa was directed to appear and show cause before the Railroad Commission why he should not be punished for contempt for his disobedience of the order of the

said Commission made in its Decision No. 22926, and the said D. S. Rosa having appeared in person and by counsel and having been given full opportunity to answer said order and to purge himself of his alleged contempt, based upon the foregoing findings;

IT IS HEREBY ORDERED AND ADJUDGED, that the said D. S. Rosa has been guilty of contempt of the Railroad Commission of the State of California in disobeying its order made on the thirtieth day of September, 1930, in its Decision No. 22926, by failing and refusing to desist from the transporting of packages weighing in excess of 75 pounds; and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED, that for said contempt of the Railroad Commission as aforesaid the said D. S. Rosa shall be punished by a fine of \$100.00, to be paid to the secretary of the Railroad Commission of the State of California within ten (10) days from the date of service of this judgment, and in default of the payment thereof that he be committed to the county jail of the county of San Luis Obispo, State of California, until such fine be paid or satisfied in the proportion of one day's imprisonment for each \$5 of said fine that shall so remain unpaid.

IT IS HEREBY FURTHER ORDERED, that the secretary of the Railroad Commission, if such fine is not paid within the time above specified, prepare appropriate order of arrest and commitment in the name of the Railroad Commission of the State of California directed to the

sheriff of the county of San Luis Obispo, to which shall be attached and made a part thereof a certified copy of this opinion, findings and judgment.

The foregoing opinion, findings and judgment are hereby approved and ordered filed as the opinion, findings and judgment of the Railroad Commission of the State of California.

Dated at San Francisco, California, this

7th day of March, 1931.

W. J. ...
John ...
W. J. ...
M. B. Harris
Jos. G. Stewart
Commissioners