

Decision No. 28836

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on)
the Commission's own motion into rates,)
rules, practices, charges, etc. of)
DOMINGO S. ROSA, operating between San) Case No. 3697
Luis Obispo and Cambria, California.)

H. J. Dubin, for Respondent, appearing specially
and solely to protest jurisdiction of the
Commission.

HARRIS, Commissioner -

ORIGINAL

OPINION

By proceedings duly originated and established herein the Commission ordered an investigation of the operations of Domingo S. Rosa, operating under certificate of public convenience and necessity, or otherwise, automotive passenger and express service between San Luis Obispo and Cambria and intermediate points and, also, citing said Rosa to appear at the hearing set for November 24, 1933, in the City Hall at San Luis Obispo, at 10 A.M., and then and there show cause why any or all of his operating rights should not be revoked.

Respondent, in person, and by his counsel appeared at the time set after service of the order had been duly made on respondent by the Sheriff of San Luis Obispo county, as shown by his return, dated October 24, 1933, (Exhibit No. 1).

Respondent's counsel, at the hearing, verbally entered a special appearance for the sole purpose of asserting that he disputed the jurisdiction of the Commission to make any order of revocation; that applicant's status had been determined by Decision No. 22926; that he possessed prescriptive right between San Luis Obispo and Cambria which the Commission is without power to revoke. He further stated that beyond such appearance neither he nor his client would participate, present testimony

or examine witnesses.

C. E. Cooper, Deputy State Controller, testified that respondent Rosa had not paid state taxes due on his operations and that he now owes \$326.77 as taxes on his gross receipts for 1931; \$158.76 for 1932, and \$116.94 for 1933, making a total delinquency of \$602.47; that when demand was made Rosa stated that he had no money and owned no vehicles; that the Controller had been unable to attach any operative property owned by respondent.

Theodore Stein, an accountant for the Commission, testified that he sought to examine the books and records of respondent on August 22, 1933, to check respondent's annual report for 1932, but was unable to distinguish respondent's public utility business from his grocery business, except for the month of August, for which period grocery slips had been preserved, some of which covered utility business. In few instances, however, were weights or destinations shown, the slips merely showing commodity and money. Mr. Stein, however, as shown in his written report (Exhibit No.2), listed the unmistakable utility transactions shown, among them one sack of coal weighing 100 pounds for which a charge of 40 cents was made. This shipment was in excess of respondent's weight limit of 75 pounds and he has no rate on file of 40 cents (Decision No.22926). There were also several items of milk and cream transported, for which no charge was entered. Some of these shipments were 10-gallon cans, weighing approximately 100 pounds. Mr. Stein ascertained that the consignee of these milk shipments paid upon a basis of butter fat content and not the rate on file, - 25 cents. As an example, he selected the shipment of E. F. Bassi, gross weight 137 pounds, net weight 90 pounds (excluding containers). On this shipment the butter fat was computed at 37 percent of 100 pounds of cream, resulting in 33-1/3 pounds of butter for which respondent was paid 33.3 cents. He has no such rate on file. The only rate is 25 cents for a five gallon

can without qualification as to gross and net weights or butter fat content.

According to this report (Exhibit No.2), respondent possessed no equipment on August 22, 1933. He was using a truck acquired under contract by Mrs. Anna Rosa, respondent's wife, upon which respondent stated to witness he was paying \$30.31 monthly.

N. E. Robotham, bus inspector of the Commission, testified that he made an inspection of respondent's equipment service and commodities on August 22, 1933. He testified he found respondent using a one ton Fargo 6, Serial W 206 EE, Engine No.CKT 3777, registered in the name of Anna Rosa, the legal owner being the Mercantile Acceptance Corporation of California, San Francisco. He also stated he had searched the Commission's records and found no lease on record as required by General Order No.67-A.

Although respondent is certificated to transport passengers and express, no other equipment was found in use or available for use by respondent. Passengers, if any, could be transported only on the truck. Mr. Robotham testified that though separate passenger and express schedules are on file and effective, the passenger schedule was not observed. Mr. Robotham's full report (Exhibit No.3) shows ten violations of General Order No.83, governing safety of operations, including absence of fire extinguisher (Rule 1), uncleanness, unlicensed chauffeur (driver), transporting explosives, smoking while driving, absence of skid chains, etc. He testified that the driver was smoking in the truck cab seated over the gasoline tank, while 250 pounds of explosives were behind him. (Rule 3, General Order No.83, requires the gasoline tank located outside that part of the body used for passengers). Rule 8 forbids transportation of explosives except by legal permit.)

He also testified that he examined the truck and contents at Morro Bay and found five shipments in excess of the 75 pounds limitation placed on such carriage, including bread, potatoes,

Hercules powder, and an automobile motor weighing 289 pounds. The motor was shipped by G. V. Bettencourt, San Luis Obispo, who said he thought it weighed only 65 pounds, though it took two men to place it on the vehicle.

Fred Witcosky, San Luis Obispo, testified he shipped C.O.D. fresh meat to Jack Soto, at Cambria, for which respondent had made no remittance. Beyond being in excess of 75 pounds weight, the C.O.D. charges amounted to \$63.51. Witcosky had brought the matter before the Justice of the Peace at Cambria and he had collected \$15.00 from respondent, leaving a balance of \$48.51 still unpaid. The shipments were made in January, 1933. General Order No. 84 requires the remittance of C.O.D. amounts within ten days after delivery. Jack Soto, the consignee, testified that he had paid the amounts due when delivery was made by respondent.

The facts established by the testimony narrated appear convincing that respondent is not a fit and proper person to be trusted longer with authority to conduct a public utility business. They are sufficient to justify revocation of respondent's rights, whether prescriptive or certificated. Ample authority for such action is found in the Public Utilities Act, to which respondent's operations are amenable. (P.U. Act, Sections 2 $\frac{1}{2}$, 30, 50 $\frac{1}{2}$ and 64). Respondent has been cited before the Commission several times and has met discipline, including a fine of \$100. for violations. He appears not tractable to either reason or punishment or the past condonation of error by the Commission because of his professed illiteracy. Whatever his usefulness as a public utility may be, has been defeated by his continued defiance of the Commission's authority.

I therefore recommend that all orders made by the Commission, by which authority to conduct passenger or express transportation was granted, be revoked and rescinded and that any other right claimed by respondent as prescriptive be revoked and annulled. A form of order is proposed as appended hereto.

O R D E R

The Commission having instituted an investigation on its own motion into the operations, rates, rules and regulations of Domingo S. Rosa, and the Commission having cited respondent Rosa to appear and show cause why any or all operative rights now possessed by him should not be revoked and annulled, a public hearing having been held, and the matter now being duly under submission;

IT IS HEREBY ORDERED that the certificates heretofore granted said Domingo S. Rosa, respondent herein, by Decisions No.5476, dated June 11, 1918, on Application No.3673, and No.22926, dated September 30, 1930, on Application No.16192, or any right claimed by prescriptive right created by operations prior to May 1, 1917, between San Luis Obispo and Cambria and intermediate points by said Domingo S. Rosa or prescriptive right acquired before July 22, 1919, from Orle N. Mayfield, for the transportation of persons or property, be and the same, and each of them, are hereby revoked and annulled, and said Domingo S. Rosa is hereby ordered to cease and desist all common carrier operations thereunder within twenty (20) days from date hereof.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission serve or cause to be served a certified copy of this opinion and order upon said Domingo S. Rosa.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

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

Dated at San Francisco, California, this 11 day of December, 1933.

C. E. Seaver
Leon C. Sullivan
M. B. Lavin
M. B. Lavin
5. M. B. Lavin
COMMISSIONERS.