

Decision No. 28041.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Suspension by)
the Commission on its own Motion of)
Rule 4½ of Supplement No. 12 to REX)
TRANSFER COMPANY'S Local Freight)
Tariff C.R.C. No. 9.)

Case No. 3958.

Phil Jacobson, for Rex Transfer Company.

Libby & Sherwin, by Warren E. Libby, for
Keystone Express System and Keystone
Express Company, Interested Parties.

Edward Stern, for Railway Express Agency,
Inc., Interested Party.

C. W. Cornell, for Southern Pacific Company
and Pacific Motor Transport Company, In-
terested Party.

BY THE COMMISSION:

O P I N I O N

Upon protest of competing carriers, the Commission, by order dated January 16th, 1935, suspended Rule 4½ of Supplement No. 12 to Rex Transfer Company's Local Freight Tariff C.R.C. No. 9, pending a hearing to determine its lawfulness. This rule, which was filed to become effective January 28th, 1935, reads as follows:

"SERVICE; To expedite service, orders for merchandise placed with agents of this company will be transmitted to shippers with least possible delay. A charge of 10¢ will be assessed for each order so handled."

Public hearings were conducted before Examiner Gorman at Los Angeles on April 24th and June 7th, 1935.

Respondent testified that for a number of years it has been accepting orders from its patrons, particularly at San Bernardino and Redlands, which it has communicated to shippers in Los Angeles either by telephone or by written memoranda. In the course of its business it ordinarily makes calls from its San Bernardino to its Los Angeles office at 9:30 A.M. and 1:30 P.M., for the purpose of discussing company business. It is during these calls that orders placed by telephone are ordinarily transmitted. Any orders to be transmitted by phone after these company calls have been made are either held until the next regular call or transmitted by special call at the expense of the patron. Written memoranda were carried by the truck drivers without postage until respondent was notified that the Postal Statutes prohibited such a transmission of written messages. They are now being carried in stamped envelopes, duly cancelled before delivery.

An offer to amend the suspended rule was made prior to the second hearing and again at that hearing. In neither case, however, did the proposed rule remove the objections of the protestants and respondent thereupon asked permission to withdraw it. Under these circumstances a detailed discussion of the rule or of the objections made thereto is unnecessary.

The Commission is of the opinion, however, that carriers may not properly transmit merchandise orders, either with or without charge, unless the practice is provided for by clear, complete and lawful tariff provision. As heretofore stated, respondent has indulged in this practice for a number of years; during the hearing it moreover expressed its intention to continue to do so. Respondent is therefore placed upon notice that the continuation of this practice, without tariff provision therefor, will be deemed to be a deviation from its lawfully

filed tariffs and will subject it to the penalties provided for by the statutes. Respondent also represented that other carriers with which it competes were engaged in like practices. While these carriers are not before the Commission in this proceeding, it naturally follows that under similar circumstances the principle here expressed applies to all alike.

O R D E R

This matter having been duly heard and submitted;

IT IS HEREBY ORDERED that respondent, Rex Transfer Company, on or before July 1st, 1935, cancel Rule 4½ of Supplement No. 12 to its Local Freight Tariff C.R.C. No. 9, without prejudice to the filing of another rule clearly providing for whatever lawful service respondent proposes to perform.

IT IS HEREBY FURTHER ORDERED that, upon the cancellation of said Rule 4½ of Supplement No. 12 to Rex Transfer Company's Local Freight Tariff C.R.C. No. 9, the Commission's order of January 16th, 1935, in the above entitled proceeding, be and it is hereby vacated and the proceeding discontinued.

Dated at San Francisco, California, this 17th day of

June, 1935.

Leon A. Cunn
M. B. Harris
J. W. [unclear]
J. W. [unclear]
Commissioners.