

Decision No. 29162

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Investigation on the Commission's own motion into the operations, rates, charges, classifications, rules, regulations, contracts, and practices, or any thereof, of VICTOR MOREL, doing business under the fictitious name and style of OLD PLAZA TRANSFER COMPANY, respondent, for the purpose of determining whether said respondent is engaged in conducting any service as a City Carrier, as defined in Chapter 312, Statutes of 1935, without first having secured from the Commission a permit to operate as such carrier.

ORIGINAL

Case No. 4165.

Dario E. Nelson, for respondent.

BY THE COMMISSION:

O P I N I O N

In this matter the Commission instituted on its own motion an investigation into the operations and practices of the respondent Victor Morel, doing business under the name and style of Old Plaza Transfer Company,<sup>(1)</sup> in order to determine whether or not he was operating within the City of Los Angeles as a City carrier, as defined by Chapter 312, Statutes 1935, without first having secured from the Commission the permit required by that Act.

(1)

At the hearing it was stipulated that respondent was doing business as Victor Morel and also as Old Plaza Transfer Service. The Order Instituting Investigation will therefore be amended accordingly.

A public hearing was had before Examiner Austin at Los Angeles on September 14th, 1936, when evidence was adduced, the matter was submitted, and it is now ready for decision.

At the hearing the Commission was represented by its counsel, and respondent appeared personally and by counsel. The operations of respondent were described by five of the Commission's inspectors who were called on its behalf, and also by respondent himself who, following the Commission's showing, voluntarily testified on his own behalf.

From the record it appears that for the past eighteen years respondent has been engaged in the truck and transfer business in the City of Los Angeles, operating in his own name and also under the fictitious name of Old Plaza Transfer Service. At 409 Sanchez Street, adjacent to the Old Plaza in Los Angeles, he maintains an office where he makes his headquarters. A sign appears upon this office showing the name, "Old Plaza Transfer Service", together with respondent's telephone number.

In this business respondent operates his own truck, a 1930 Stewart with stake body which he has recently acquired. With this vehicle, and with other trucks he has previously owned, respondent has been and now is engaged regularly in the business of a local drayman, transporting property for compensation over the public streets within the City of Los Angeles, for all those offering to utilize his services. It is admitted that he has secured no permit from the Commission under the City Carriers' Act.

Associated with respondent in this business are some eleven other persons, all of whom make their headquarters at respondent's office. Respondent testified that though all of them were at liberty to use the name of Old Plaza Transfer Service and

in fact conducted business under that name, nevertheless each of these operators was engaged individually with his own truck in the general trucking business in Los Angeles, retaining the proceeds of the business he so conducted, and paying respondent office rent and for stationery and use of the telephone. None of them, respondent stated, has reimbursed him for keeping the books, a service which he performs for the entire group. There was some further testimony regarding the relations between respondent and these operators, but since we are here concerned with the operations of respondent alone, it is unnecessary to discuss further the details of this arrangement.

From the testimony of the Commission's inspectors it appears that on two separate occasions, viz: April 15th and July 31st, 1936, they observed respondent transport property for hire within the City of Los Angeles. On the date first mentioned, respondent transported a load of dirt from 1015 Aragon Street to Lacy Street and Avenue 26, where it was dumped. (2) On the latter occasion, respondent hauled a load of furniture from 828 Fourth Street to 2249 South Sycamore Street, where it was delivered. For this service respondent exacted a charge of \$4.00 which was paid him by inspector Young in the presence of inspector Colliver. On each of these trips the city streets of Los Angeles were used exclusively.

Inspectors Hynes and Rosenthal related various conversations which they, respectively, had had with respondent from time

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(2) This was observed by inspectors Hughes and Rosenthal, who described the movement in their testimony.

to time, in the course of which they emphasized the unlawful character of his operations, and warned him to cease operating until a permit had been secured. During one of these conversations, which occurred March 15th between respondent and inspector Rosenthal, respondent stated that he had intended to apply to the Commission for a permit, but had not done so because of his inability to secure insurance for himself and his associates. During subsequent conversations, the record shows, respondent answered the repeated admonitions of the inspectors with the statement that he had no money and he intended to continue operations without securing a permit. At all times respondent has freely admitted the character of his operations. He conceded that on the occasion of his trial before the Municipal Court of the City of Los Angeles, following his arrest upon a misdemeanor charge of having operated in violation of the City Carriers' Act, he had there entered into a stipulation to the effect that on July 31st, 1936, he had transported property for compensation as a business, by motor vehicle, over certain streets in the City of Los Angeles, without first having obtained from this Commission a permit so to do. It does not appear that respondent has engaged in the transportation of property for compensation outside the boundaries of the City of Los Angeles.

At the conclusion of the Commission's showing and again upon the submission of the case, respondent moved to dismiss the proceeding upon the ground that the City Carriers' Act was unconstitutional, in that: (a) this Commission may regulate common carriers only; and (b) the State has no authority, through the

Railroad Commission or any other body, to regulate the operations of motor carriers over the city streets of Los Angeles, such regulation having been provided by the City Charter and the ordinances of that city.

The record abundantly shows that respondent, in the conduct of his operations within the City of Los Angeles, is acting as a common carrier and not as a contract or private carrier. This appears from his own admission that he is willing to serve anyone tendering him property to carry for compensation. Moreover, this Commission will not undertake to pass upon the validity of a statute duly enacted by the Legislature, this being primarily a judicial question which the courts alone should determine. Therefore, the motion to dismiss will be denied.

Since the record establishes beyond a doubt the fact that respondent has been operating as a City Carrier within the City of Los Angeles, for compensation, without having secured from this Commission the required permit, a cease and desist order will be entered.

An order of this Commission finding an operation to be unlawful and directing that it be discontinued is, in its effect, not unlike an injunction issued by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution, the Public Utilities Act, the Highway Carriers' Act and the City Carriers' Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a party is adjudged guilty of contempt, a fine may be imposed in the amount of \$500.00,

or he may be imprisoned for five days, or both. C.C.P. Sec. 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; In re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 438; Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 79 of the Public Utilities Act, a person who violates an order of the Commission is guilty of a misdemeanor, and is punishable by a fine not exceeding \$1,000.00 or by imprisonment in the County Jail not exceeding one year, or by both fine and imprisonment. Also under Section 14 of the Highway Carriers' Act and Section 13 of the City Carriers' Act, any person, or any director, officer, agent or employee of a corporation who violates any of the provisions of these acts, respectively, or of any operating permit issued thereunder to any highway carrier or city carrier, respectively, or any order, rule or regulation of the Commission, is guilty of a misdemeanor, and is punishable by a fine not exceeding \$500.00, or by imprisonment in the County Jail for not exceeding three months, or by both fine and imprisonment.

Based upon the evidence herein, the Railroad Commission of the State of California hereby finds as a fact that the respondent Victor Morel, individually, and doing business under the name and style of Old Plaza Transfer Service is now and was at the time of the institution of this proceeding engaged in the transportation of property for compensation or hire as a business over the public highways in the City of Los Angeles, County of Los Angeles, State of California, by means of a motor vehicle or motor vehicles, without first having secured from this Commission the proper permit authorizing him to do so.

## O R D E R

A public hearing having been had in the above entitled proceeding, evidence having been received, the matter having been duly submitted, and the Commission being now fully advised;

IT IS HEREBY ORDERED that the respondent Victor Morel, individually, and doing business under the name and style of Old Plaza Transfer Service, be and he is hereby required and directed to cease and desist, directly or indirectly, or by any subterfuge or device, and thereafter refrain, from conducting or continuing any and all operations for the transportation of property, for compensation or hire, as a business over any and all public highways in the City of Los Angeles, County of Los Angeles, State of California, by means of any motor vehicle or motor vehicles, unless and until he shall first have secured from the Railroad Commission a proper permit authorizing him to operate as such.

IT IS HEREBY FURTHER ORDERED that the true name under which respondent has been engaged in business, as well as under his individual name, viz: Old Plaza Transfer Service, be and it is hereby substituted for the name erroneously set forth in the Order Instituting Investigation, viz: Old Plaza Transfer Company, and that, in order to conform to the proof herein, the said Order Instituting Investigation be and it is hereby amended accordingly.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall immediately cause a certified copy of this

decision to be personally served upon said respondent.

IT IS HEREBY FURTHER ORDERED that copies of this decision be mailed to the District Attorney of the County of Los Angeles, and to the City Attorney of the City of Los Angeles.

IT IS HEREBY FURTHER ORDERED that for all other purposes this order shall become effective twenty (20) days from and after service thereof upon said respondent.

Dated at San Francisco, California, this 5<sup>th</sup> day of October, 1936.

M. B. Harris

M. J. Cunniff

Orall R. Davis

Commissioners.