

ORIGINAL

Decision No. 29796

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,
contracts, and practices, or any
thereof, of OSCAR W. WILDE, doing
business as Wilde's Express &
Transfer Co.

Case No. 4207

Harry Encell, for Respondent;

J. W. Barker, for San Francisco Movers Assoc'n.

WEITSELL, COMMISSIONER:

O P I N I O N

The Commission, after receiving several complaints to the effect that respondent had not charged or collected the minimum rates prescribed by Decision 28810 in Case 4086 for the transportation of household goods, furniture, and personal effects, instituted this action for the purpose of investigating respondent's rates and practices, and directed that respondent show cause why his permits should not be cancelled, revoked, or suspended for such violations.

A public hearing was held at San Francisco on April 15, 1937, and the case was at that time submitted.

The respondent, who holds radial highway common carrier and city carrier permits from this Commission, appeared personally and was represented by his attorney.

Mrs. G. D. Clark, a witness called on behalf of the Commission, testified that respondent had moved her used uncrated household furniture from Palo Alto to Los Altos on July 25, 1936, using two men and a van, and that she paid him \$21.00 therefor. Wilde gave her a receipt for that sum, dated July 28, 1936, showing that he figured the rate for two men at \$3.50 per hour for six hours, which receipt was received in evidence.

This charge was in violation of Section 1, Item 520, of Decision No. 28810 in Case 4086, effective July 1, 1936, which prescribed that the minimum charge per hour for vehicle, driver, and helper shall be \$3.75 in the territory in which the services were performed.

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Inspector Jackson testified that he had interviewed a Mrs. W. H. Mesler, whose used household furniture had been moved by respondent from 525 Center Street, Palo Alto, to 2149 Beach Street, San Francisco, on September 24, 1936. Mrs. Mesler informed Inspector Jackson that the movers arrived at her home at 8 A.M., finished loading at 11 A.M., arrived at San Francisco at 6 P.M., and finished unloading at 8 P.M.

Respondent testified that he had received \$50. for his services in that connection, and used a van and three men for 10½ hours at \$4.75 per hour. He stated that the furniture was not weighed.

Assistant Engineer Jackson W. Kendall testified that he had made a physical check of the distance between the two points mentioned and had also measured it by California Automobile Association maps, and that the distance over the shortest possible

route between such points was 32.6 miles.

In Item 20, page 16, of Decision No. 28810 in Case 4086, the Commission defines rates provided in Section 1, as follows:

"Rates named in Item 520, Territory A, apply to all transportation for distances of not more than 30 miles *** where the point of origin is within the City and County of San Francisco, the Counties of Alameda or San Mateo, or the cities of Palo Alto or Richmond." (Emphasis supplied).

Respondent should have applied the weight rather than the hourly rate basis to this particular movement since the distance was over 30 miles. Even if respondent had properly charged hourly rates, the time consumed in the movement, computed from Mrs. Mesler's figures and in accordance with Item 50, page 17, of said decision, was in excess of 10½ hours, and the discrepancy was not explained by respondent.

Inspector Jackson testified that he had examined respondent's books with relation to the transportation of used household furniture from the warehouse of Palo Alto Transfer & Storage Co. to Palm Springs for one Harry Plymire. The weight certificate of the Public Weighmaster, read into the record, shows the net weight of the furniture to be 2490 pounds.

Inspector Jackson further testified, and on cross-examination respondent admitted, that his books showed that he received \$88.99 for such hauling. Respondent testified that he computed his rate in accordance with the rates for long distance moving specified in Section 2, page 20, of Decision No. 28810, by applying Class "B" rates between San Francisco and San Diego, or \$4.23 per hundred pounds, which would amount to a total of \$105.33, instead of the

rate to Indio (which is the next most distant point) or \$4.14 per hundred pounds, a total of \$103.08.

Respondent asserted that he had received \$105.33 from Plymire but had no copy of receipt therefor. In explaining the reason why his books did not show that he had collected \$105.33, he stated that he had deducted the difference for gasoline. He had not, however, deducted for oil and labor, or for any other operating expense. He admitted that he reported his 1/4 of 1% gross operating revenue payable to the Commission by virtue of Chapter 683, Stats. 1935, on \$88.99 rather than on his correct gross of \$105.33, in violation of said Chapter. He stated that he did not always deduct gasoline, bridge, or ferry tolls from the gross amounts in his books; that sometimes the amounts were gross and sometimes net, and that he always paid his 1/4 of 1% fee on the amount shown in his books, whether it was gross or net.

His statements with respect to this particular job are inconsistent with his general practice, as shown by entries of other transportation charges.

Inspector Jackson investigated the fourth complaint against the defendant, which involved moving of used uncrated household furniture for one Mrs. Carl Johnson from 2380 Ramona Street to 1065 High Street, both in Palo Alto. Mrs. Johnson testified that respondent had moved her furniture on February 22, 1937, using a van and three men. The transportation service was performed on Mrs. Johnson's instructions on that date, Washington's Birthday, at the rate of \$4.75 per hour. This is clearly a violation of Item 60, page 17, Decision No. 28810 in Case 4086, which provides:

"Service performed on customer's instructions *** on the following holidays shall be considered overtime and a penalty of 25% shall be added to the rates provided herein for such service; *** Washington's Birthday ***."

Respondent, testifying in his own defense, stated that he had received a copy of the Order Instituting Investigation in Case 4086, and a copy of the decision containing the Commission's minimum rate order in said proceeding; that he was thoroughly familiar with the rates, and would in future abide by them.

I believe that there is no need for a penalty suit in this matter, but consider that the suspension of respondent's radial highway common carrier permit No. 43-109, and his city carrier permit No. 43-110 is required.

An order of this Commission directing that an operation be discontinued is in its effect not unlike an injunction by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities 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 (5) days, or both. C.C.P. Sec. 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 14 of the Highway Carriers' Act (Chapter 223), and Section 13 of the City Carriers' Act (Chapter 312) a person who violates an order 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 not exceeding three months, or by both such fine and imprisonment.

O R D E R

IT IS HEREBY ORDERED:

(1) That respondent shall immediately cease and desist and thereafter abstain from charging, demanding, collecting, or receiving any charges for the transportation of any of the property described in Decision No. 28810, Case No. 4086, less than the rate prescribed in said decision.

(2) That Radial Highway Common Carrier Permit No. 43-109 and City Carrier Permit No. 43-110, issued to Oscar W. Wilde, doing business as Wilde's Transfer Company, be and the same are, and each of them is, hereby suspended for a period of ten (10) days from the 17th to the 26th day of June, 1937, both dates inclusive, if service hereof shall have been made more than twenty days prior to said 17th day of June, 1937; otherwise said ten-day period of suspension shall commence on the effective date of this order. During said period of suspension respondent shall not engage in and shall abstain and cease and desist from the transportation of property for compensation or hire as a business over any public highway in this State by means of a motor vehicle or motor vehicles, or perform any other service as a radial highway common carrier, as defined in the Highway Carriers' Act, Chapter 223, Statutes of 1935, or as a city carrier, as defined in the City Carriers' Act, Chapter 312, Statutes of 1935.

The effective date of this order shall be twenty (20) days after the date of service thereof upon respondent.

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, and the Secretary of the Commission is hereby ordered to cause a certified copy of this decision to be served upon respondent Oscar W. Wilde.

Dated at San Francisco, California, this 24th day of May, 1937.

Leon Quirkell
Francis P. Blum
Robert W. ...
Ray L. ...
Commissioners.