

**ORIGINAL**

Decision No. 29975

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

- |  |   |                       |
|--|---|-----------------------|
| In the Matter of the Application of<br>WILLIAM F. O'BRIEN for authority to<br>charge less than minimum rates   | ) | Application No. 21293 |
| In the Matter of the Application of<br>HAROLD HECKMAN for authority to<br>charge less than minimum rates       | ) | Application No. 21296 |
| In the Matter of the Application of<br>FLOYD L. DAVIS for authority to<br>charge less than minimum rates       | ) | Application No. 21302 |
| In the Matter of the Application of<br>ALFRED COOK for authority to charge<br>less than minimum rates          | ) | Application No. 21303 |
| In the Matter of the Application of<br>CIRCLE TRUCK COMPANY for authority<br>to charge less than minimum rates | ) | Application No. 21313 |
| In the Matter of the Application of<br>WILLIE WILLIAMS for authority to<br>charge less than minimum rates      | ) | Application No. 21316 |
| In the Matter of the Application of<br>FRED E. AMOS for authority to charge<br>less than minimum rates         | ) | Application No. 21317 |

WILLIAM F. O'BRIEN, in Propria Persona.

ALFRED COOK, in Propria Persona.

WILLIE WILLIAMS, in Propria Persona.

W. L. ENGLEHARDT, for Circle Truck Company.

HAROLD W. DILL, for Truck and Warehouse Association of San Diego and Imperial Counties, Protestant.

J. C. BOWDEN, for Dump Truck Association of Southern California, Protestant.

JOSEPH BLASCO, Protestant.

BY THE COMMISSION:

O P I N I O N

The applicant in each of these proceedings seeks authority of the Railroad Commission to transport property, chiefly excavated material, in dump trucks, under contract with the U. S. Treasury Department, on WPA projects in Los Angeles City and Los Angeles County, from July 1, 1937, to September 30, 1937, at rates less than the minimum rates established for such transportation by Decision No. 28836 in Case 4087, as modified. The applicants propose to render such service as needed and called for by the WPA. The work is expected to be principally under hand loading.

The minimum hourly rates for two yard trucks are \$1.70 for hauling under power loading, \$1.35 for hauling under hand loading where the mileage does not exceed 8 Miles per hour per day, and \$1.60 for other hauling. For 4.4 yard trucks the minimum hourly rates are \$2.45 for hauling under power loading, \$1.95 for hauling under hand loading where the mileage does not exceed 8 miles per hour per day, and \$2.20 for other hauling.

The requested authority is necessary before less than minimum rates may be charged, by virtue of Section 10 of the City Carriers' Act and Section 11 of the Highway Carriers' Act; but if the lower rates proposed for service to governmental agencies are found to be reasonable they must be authorized. A less than minimum rate to a governmental agency is to be deemed reasonable within the meaning of the Sections if not unjustly discriminatory against other shippers or traffic. Each of the instant applications, therefore, is to be granted if, under the conditions and circumstances pertaining to the particu-

lar applicant, the transportation in question can be performed by the applicant at the rate proposed without resulting in a loss which would have to be recovered from other shippers or traffic.

Public hearings on the applications were conducted before Examiner Elder at Los Angeles on July 8, 1937, and the matters then submitted on a consolidated record, except that an adjourned hearing was held on Application No. 21313 of Circle Truck Company in Los Angeles on July 16, when the matter was submitted.

No appearance was made by or on behalf of applicant Harold Heckman, in Application No. 21296; nor applicant Floyd L. Davis, in Application No. 21302; nor applicant Fred E. Amos, in Application No. 21317. None of the last mentioned applications states sufficient facts to enable a finding to be made that the rates proposed are reasonable and the applications must, therefore, be denied.

The elements which enter into the cost of operation of any dump truck operated for hire and which must be considered and provided for in fixing any proper rate, were enumerated by witness Charles H. Jacobsen, Senior Engineer, Transportation Department, of the Railroad Commission. Reference to his testimony will supply a helpful background for discussion of the evidence in the other applications.

The following were stated by Mr. Jacobsen to be the elements which go into fixed costs:

a) Management and Overhead. For the larger carriers, this item will include managerial expenses, office salaries and expenses, solicitation and advertising, office rent, stationery, office equipment, and similar costs. A small operator owning a single truck which he drives himself will not incur all such costs but will inevitably sustain some expense of this nature for time expended in applying for work, for

for telephone, bookkeeping, garage, and similar expenses incident to the conduct of the business but not arising directly from the operation of the truck. Management and overhead, therefore, is an element of cost which must be provided for by all carriers.

b) Unemployment and Social Security Taxes. This will constitute an element of cost to all carriers engaging the services of employees, but not to one who owns and himself drives a single truck.

c) Insurance. Public liability and property damage insurance is required of all city and highway carriers. Some will also carry fire, theft and collision insurance for which provision must then be made.

d) Taxes. All carriers are subject to a personal property tax on their trucks and any other equipment they may have. Their trucks are also subject to motor vehicle license weight fees collected by the Department of Motor Vehicles. Board of Equalization, Railroad Commission and city licenses and permits must also be provided for.

e) Interest on Investment. All carriers presumably have some investment in equipment, the interest on which is a very definite cost which must be provided for in the operating costs.

The fixed charges generally accrue or are determined annually. To arrive at the fixed cost per hour of operation, the yearly total is divided by the actual or estimated number of hours of operation. If it is desired to ascertain the fixed cost per ton transported or per miles of operation, the annual fixed cost is divided by the total number of tons or miles, as the case may be.

The following, according to Witness Jacobsen, are variable costs of for hire dump truck operation, varying directly with the distance traveled and in proportion to the time the trucks are operated:

f) Gasoline and oil.

g) Tire replacement.

h) Repairs and maintenance. Expense is always incurred for this item. Adequate provision for it must be made. The allowance must make provision both for parts and materials and for labor, as well, even when the labor is not hired but is performed by the owner himself.

i) Depreciation of equipment.

j) Gross revenue charges. These amount to three per cent of the gross revenue from operation over public highways not within incorporated limits, payable to the State Board of Equalization; and one-quarter of one per cent of all gross revenue, payable to the Railroad Commission.

k) Wages. Provision for wages must be made, even though the owner drives himself, and at not less than the prevailing rate for the work involved. In the operation of dump trucks, moreover, studies show that, in addition to productive labor costs, there is usually incurred a non-productive labor expense of from ten to fifteen per cent of the productive labor cost.

As in the case of the fixed costs, the variable costs may be converted to an hourly, tonnage or mileage basis, as may be desired, by dividing the total variable costs for the year (or other period used for the compilation or estimate) by the number of hours or miles operated or tons transported, as the case may be.

The charges above enumerated, with the qualifications noted, must be considered and provided for by all dump truck operators in determining a reasonable and proper preferential rate. They represent the bare cost of service.

Considering now Application No. 21293 of William F. O'Brien, the applicant seeks authority to charge \$1.75 per hour for hauling under hand loading and \$1.95 per hour for hauling under power loading, with a truck of 4.4 cubic yards capacity. Applicant testified, however, that the amount actually bid for the work and which would be charged for any hauling performed is \$2.00 per hour hauling under either hand or power loading. The equipment is a 1926 American LaFrance truck which the applicant recently purchased for \$250. It is fully paid for but no replacement fund has been provided. The applicant drives it himself.

During the first six months of 1937 the applicant performed approximately 259 hours of hauling. In justifying the proposed rates the only managerial expense considered by applicant was \$9.00 for telephone. Having no employees, no expense is incurred for social security nor unemployment insurance. The applicant carries only public liability and property damage insurance, the premium on which is \$60.00, or \$30.00 for the six months' period. Licenses and taxes amounted to \$44.10 or \$22.05 for the six months' period, but the applicant holds no Board of Equalization license. However, as the applicant's bid contained an offer to perform services outside the city, provision for the license should be made. \$12.50, being half of the license fee, should, therefore, be added to his costs. Neither does the applicant hold a city carriers' permit from the Railroad Commission, which would be required, at a cost of \$3.00; nor has he obtained a Los Angeles City permit. His fuel and oil cost for the 259 hours was \$87.00. Repairs and materials, including hired labor and his own labor at \$5.50 per day, amounted to \$57.68. He purchased retreaded tires from his brother-in-law at a cost of \$5.50. He made no allowance for depreciation; but witness Jacobsen testified that three years would be a generous depreciation period for his equipment, producing a depreciation charge for the six months' period of \$41.50.

Considering these charges, plus productive wages at 60 cents per hour, the applicant's hourly cost for the 259 hours would appear to be approximately \$1.71 per hour. This figure, however, is somewhat low. The \$9.00 allowance for management is inadequate, as it makes no allowance for applicant's time in promoting his business and other incidental expenses. The amount of \$57.68 hardly seems enough to cover

repairs and maintenance of an eleven year old truck during an average 6 months. His tire replacement allowance is inadequate for what might reasonably be expected, even considering his opportunities for favorable buying, and additional allowances are necessary for the Los Angeles city license, gross revenue charges and non-productive labor. These additional expenses, however, are relatively small and most of them are determinable. It seems clear that, even making adequate provision for them, the rate of \$1.95 per hour, which is minimum for hauling under hand loading 8 miles per hour per day, and \$2.00 per hour for other hauling, which O'Brien bid, will be sufficient to cover his costs and that he may be authorized to charge those rates. We see no justification for authorizing him to charge any rate lower than that bid. Authority will, therefore, be granted to this applicant to perform the hauling herein involved for not less than those rates.

In Application No. 21303, Alfred Cook seeks authority to perform the hauling under either hand or power loading for \$1.50 per hour with a 4.4 cubic yard 1929 Reo truck which applicant drives himself. During 1936 the applicant had 465 hours of productive operation for which he computed his costs, exclusive of wages, as follows: licenses and taxes, \$47.76; public liability and property damage insurance, \$66.00; gas and oil, \$78.08; repairs, \$72.50; a total of \$264.34, or an hourly cost, exclusive of wages, of 56.8 cents. Applicant testified the least he would work for is 75 cents per hour, bringing the total hourly cost shown by applicant to \$1.318. But this figure is far below applicant's actual cost, for it has allowed nothing for managerial and overhead expense or interest on investment,

nothing for tire replacement, nothing for depreciation or replacement of equipment, nothing for the Board of Equalization and Railroad Commission permits and gross operating charges, and nothing for the Los Angeles city license fee. Neither has he made any allowance for maintenance and repair labor as his figure includes only the cost of parts. With these essential charges left wholly out of consideration, it is impossible to find, from the facts before us, that this applicant's proposed rate is reasonable. The application, therefore, must be denied.

It is appropriate to remark also that the applicant testified that he is a printer by trade and entered into the trucking business as a side line during the depression. He expects to continue in it only so long as his truck "holds out". In proposing to haul for \$1.50 per hour, the applicant was admittedly bidding against competition and left out of consideration the many essential items of cost referred to. In other words, if the applicant was not deliberately destroying his capital, he was at least making no attempt whatever to preserve it. This instance offers a practical insight into the destructive effects of unregulated competition in a highly competitive industry such as transportation, and the manner in which it invites to the highways additional and unnecessary trucking at unjustly discriminatory rates. It is typical of the kind of competition to which truck operators and other carriers who are seriously endeavoring to maintain sound and permanent businesses have been subjected, and which it is the intent and purpose of the Highway Carriers' and City Carriers' Act to eliminate. The public interest is more harmed than helped by accepting service at rates which create such conditions.



In Application Number 21313, Circle Truck Company, a corporation, seeks authority to perform the hauling with thirteen dump trucks of not over 2 cubic yards capacity at the rate for each truck of \$1.55 per hour less 12½% for payment within 30 days. Attached to the application is a statement of the applicant's hourly costs for driver, repairs, overhead, gas & oil, compensation insurance and depreciation, totaling \$1.01. No account was taken of interest on investment in the applicant's 47 pieces of equipment. At the hearing this statement was modified by the addition of items for "general insurance" and taxes and by changing the amount of each of the original items, producing a total hourly cost of \$0.99. No supporting data worthy of notice was submitted for any of the items. All were computed on the assumption that all 47 pieces of equipment were operated eight hours a day, six days a week, every week in the year, but the actual number of hours of operation of each truck, or of all of them together, was not shown. The assumption is so unreasonable as to be unacceptable. The inconclusive character of the showing is emphasized by the radical differences in the applicant's two cost statements, for which no explanation was offered. We are unable to find that the proposed rate is reasonable.

In Application No. 21316 of Willie Williams, authority is sought to perform the service at 97 3/4 cents per hour. This applicant offered no testimony but merely submitted a written statement in which certain estimated monthly costs are set forth. These costs include a monthly payment, presumably on the truck, insurance of a kind not shown, a license of a kind

not stated, and gas and oil. The total of these costs is converted to a daily basis, "figuring on a thirty-day month", and the result, in turn, is converted to an hourly cost on the basis of an eight-hour day. It is manifestly impossible to approve the proposed rate on the showing thus made, as only a few of the essential elements of cost are considered and because a productive use-factor of thirty eight-hour days a month will not be experienced in actual operation. This application must, therefore, be denied.

O R D E R

The above mentioned applications having been duly heard and submitted for decision, and the Commission now being fully advised in the premises; on the basis of the conclusions and findings in the preceding Opinion,

IT IS HEREBY ORDERED that applicant William F. O'Brien, applicant in Application No. 21293, be and he is hereby authorized to transport sand, rock, gravel, excavated material, rubbish, etc. in dump trucks of 4.4 cubic yards water-level capacity under contract with the U. S. Treasury Department on WPA projects in the city of Los Angeles and the county of Los Angeles between July 1, 1937, and September 30, 1937, at the rate of not less than \$2.00 per hour; provided that such transportation may be performed by applicant under hand loading mileages not exceeding 8 miles per hour per day, at the rate of not less than \$1.95 per hour.

IT IS HEREBY FURTHER ORDERED that Application No. 21296 of Harold Heckman be and it is hereby denied.

IT IS HEREBY FURTHER ORDERED that Application No. 21302 of Floyd L. Davis be and it is hereby denied.

IT IS HEREBY FURTHER ORDERED that Application  
No. 21303 of Alfred Cook be and it is hereby denied.

IT IS HEREBY FURTHER ORDERED that Application  
No. 21313 of Circle Truck Company be and it is hereby denied.

IT IS HEREBY FURTHER ORDERED that Application No.  
21316 of Willie Williams be and it is hereby denied.

IT IS HEREBY FURTHER ORDERED that Application No.  
21317 of Fred E. Amos be and it is hereby denied.

Dated at San Francisco, California, this 27<sup>th</sup> day  
of July, 1937.

*William M. Merri*  
*Charles R. Blum*  
*Ray W. W. W. W.*

Commissioners.