

ORIGINAL

Decision No. 28992

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
C & R Transfer Company for authority  
to charge less than minimum rates.     }     Application No. 21309

In the Matter of the Application of  
C & R Transfer Company for authority  
to charge less than minimum rates.     }     Application No. 21310

L. H. DUNBAR, for Applicant.

C. P. VONHERZEN, for Bekins Van & Storage  
Company, Protestant.

D. G. SHEARER, for Council of Trucking  
Associations, Protestant.

HAROLD W. DILL, for Truck & Warehouse Asso-  
ciation for San Diego and Imperial Counties,  
Interested Party.

ELLIS BROWN, for Triangle Transfer and Storage  
Company, Interested Party.

C. W. CARLSTROM, for Ace Van and Storage Company,  
Interested Party.

BY THE COMMISSION:

O P I N I O N

These proceedings are applications filed pursuant  
to Section 10 of the City Carriers' Act and Section 11 of the  
Highway Carriers' Act for authority to perform transportation  
service for less than minimum rates established by the Com-  
mission.

Public hearings were held before Examiner Elder at San Diego on July 9, 1937, and the matters than submitted on a consolidated record.

Application No. 21309 seeks authority to charge \$1.85 per hundred "For packing and hauling household and personal effects of property of Lieutenant Commander Byrd from Narcissus Street to Santa Fe Railroad, San Diego, California, for the account of U.S.C.G. Persus." Presumably, although it is not so stated, the service was to be performed for and under contract with the United States Government. The evidence shows, however, that the proposed rate was bid by applicant on April 3, 1937, and the service actually performed on April 30, 1937. The application is dated June 30, 1937, and was filed with the Railroad Commission July 2, 1937. It seems clear that Section 10 of the City Carriers' Act and Section 11 of the Highway Carriers' Act contemplate that authority to charge less than minimum rates should be sought and obtained before the service is performed at reduced rates. A preferential or less than minimum rate will not be authorized when application is filed only in fear of prosecution after the service has illegally been completely performed at the reduced rate. It seems proper to state, however, although it is not formally of record in this proceeding, that the informal files of the Commission disclose that investigation was made of this transaction and that according to information obtained relative to the weight, distances and time involved, the minimum rate was not violated. The application should be denied.

In application No. 21310, the applicant proposes a rate of fifty cents per consumer per month for the hauling of groceries from the commissary stores of the Federal Government in San Diego to Federal employees in the vicinity of San Diego, Coronado, Ocean Beach, Mission Beach and Pacific Beach to

Turquoise Street. Approximately 500 consumers per month are to be served and applicant's witness testified that 60 pounds was the maximum sized shipment.

Insofar as this hauling is to be performed within the city limits of San Diego, it is subject to no minimum rates, there being none established, at the present time, for city carrier service in that city. Insofar as this service is to be performed between points not wholly within the city of San Diego, it is excepted from the application of minimum highway carrier rates by Decision No. 29662 in Case 4088 Part M, since none of the shipments will exceed 100 pounds in weight.

There being no minimum rates in effect applying to any of the transportation proposed in Application No. 21310, that application must also be dismissed.

#### O R D E R

The above mentioned applications, Number 21309 and 21310, having been duly heard and submitted for decision, and the Commission now being fully advised in the premises,

IT IS HEREBY ORDERED that said applications be and they are hereby dismissed.

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

*Walter H. ...*  
*Frank P. ...*  
*R. ...*