

Decision No. 28341

ORIGINAL

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)
C. B. TRUEBLOOD, doing business as)
INDEPENDENT TRUCK COMPANY.)

Case No. 4247

C. B. Trueblood, *in propria persona*.

Jackson W. Kendall, for Bekins Van Lines
and Bekins Van and Storage Company,
interested parties.

G. W. Hover, for Fidelity Van and Storage
Co., interested party.

BY THE COMMISSION:

OPINION

This proceeding was instituted by the Commission on its own motion to determine whether respondent C. B. Trueblood, as a highway carrier other than a highway common carrier, charged or collected any rates less than the minimum rates prescribed by the Railroad Commission in Decision No. 28810⁽¹⁾ for the transportation of household goods and personal effects, in violation of the Highway Carriers' Act, pursuant to which the above mentioned

(1) Since the shipment herein involved occurred, Decision No. 28810 has been superseded by Decision No. 29891, dated June 28, 1937.

decision was issued. Public hearing was held before Examiner Elder at Whittier on October 27th, 1937, at which time respondent appeared, participated in the hearing and offered evidence.

All the evidence related to service performed June 21st, 1937, in transporting a shipment of used, uncrated household goods and personal effects from storage at the Hickey Warehouse Company at Ontario, to 1276 Center Street, Bellflower, for Thomas J. Stadley. The distance between the points of origin and destination of the shipment, according to a Commission representative who measured the distance by a tested automobile speedometer, is forty-one miles. By a shorter practicable route, however, the actual distance is 36.5 miles. Pursuant to Item 700 of Exhibit A in Decision No. 28810, the rate of charge for the service might not be less than 1-1/4 cents per one hundred pounds per mile, plus 40 cents per one hundred pounds for loading and unloading.

Respondent, however, did not weigh the shipment and in fact at no time even inspected it. He testified that when Stadley asked for an estimate he told respondent he had about 1000 pounds to be moved. Respondent figured that at the minimum rate, and based on a distance of 40 miles, which respondent evidently believed to be the shortest distance, the resulting charge of \$9.00 would be insufficient to meet the cost of the service and he therefore offered to do the job for \$14.00, plus a helper's wages. The agreement was consummated and the work performed at that charge, a total of \$14.75.

Stadley was not experienced nor skilled in estimating the weight of household goods and had no knowledge of the actual weight of the goods. No good reason is apparent why respondent

should have accepted Stadley's statement of the weight as reliable, and the estimate of 1000 pounds appears to have been far less than the actual weight.

William A. Kuhn, warehouse foreman at the Hickey Warehouse Company, estimated the weight of the lot as being 3000 pounds. Kuhn's work for a period of years has required him to estimate the weight of household goods daily and his estimates do not vary from the actual weights by more than 10%. Kuhn saw Stadley's lot in the warehouse, helped load the truck, and had ample opportunity to make a reasonable estimate. Kuhn also stated that the lot occupied about 500 cubic feet of storage space in the warehouse, and required two and one-half man-hours to load the truck.

Witnesses Jackson W. Kendall and G. W. Hover, both long experienced in the household-goods moving business, testified that from their observation and according to the experience of household goods' movers generally, the average lot of household goods weighs seven pounds per cubic foot. Hover stated that from the description of the items making up the lot he believed the lot would weigh slightly higher than the average lot of household goods. According to this test, therefore, Stadley's lot would have weighed about 3500 pounds. Kendall further testified that, on the average, household goods can be loaded on a truck by two men at a rate of 2000 pounds per hour. According to this test, and based upon Kuhn's testimony of the loading time, Stadley's lot would have weighed in the neighborhood of 2500 pounds.

Mathematical computation shows that the largest shipment of household goods which could be transported at the minimum rates a distance of 36.5 miles for the sum of \$14.75, would be one weighing 1725 pounds. The evidence before us strongly indicates that Stadley's shipment weighed far more than that. Kuhn's most conservative estimate is 2700 pounds, and the estimates based upon storage space occupied and loading time required, while but rough approximations, tend to support Kuhn's figure. Whatever the actual weight may have been, it was plainly substantially in excess of 1725 pounds.

We are not disposed to question the sincerity of the respondent's explanation that he did not weigh the shipment because the price he made Stadley was so much in excess of the minimum, based upon the 1000 pound weight given by Stadley, that he believed the charge to be sufficient to cover any weight in excess of 1000 pounds. Nevertheless, respondent's complete reliance upon his customer's statement and his failure to obtain the actual weight was grossly negligent and render him as culpable as though the undercharge had been deliberate. Highway carriers and city carriers are to be held to a high degree of accuracy in determining all the factors entering into minimum charges and are to be considered fully responsible for any undercharges resulting from failure to use proper means to determine such factors correctly. The circumstances of this case make suspension of the respondent's operative permits appropriate.

Respondent holds radial highway common carrier permit, 19-1627, highway contract carrier permit, 19-1628, and city carrier permit, 19-3160. Under the provisions of Section 14-1/2 of the Highway Carriers' Act suspension of both the highway carrier permits is authorized for violation of that act. There appears however to be no authority for the suspension of a city carrier's

permit for violation of the Highway Carriers' Act.

An order of the Commission directing the suspension of an operation 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, as amended), 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.

ORDER

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 FOUND that respondent C. B. Trueblood, doing business as Independent Truck Company, did on the 21st day of June, 1937, engage in the transportation of household goods and personal effects for Thomas J. Stadley for compensation as a business over the public highways in this State between Ontario and Bellflower by means of a motor vehicle, at rates less than the minimum rates prescribed therefor in and by virtue of Decision No. 28810, Case No. 4086, in violation of the provisions of said Decision No. 28810 and of the Highway Carriers' Act.

IT IS HEREBY ORDERED, by reason of said offense,

(1) That respondent C. B. Trueblood 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. 29891, Case No. 4086, less than those prescribed in said decision.

(2) That radial highway common carrier permit No. 19-1627 and highway contract carrier permit No. 19-1628, issued to C. B. Trueblood, doing business as Independent Truck Company, shall be suspended for a period of ten (10) days; that said ten-day period of suspension shall commence on the tenth day of December and continue to the nineteenth day of December, 1937, both dates inclusive, if service of this order shall have been made upon respondent C. B. Trueblood more than twenty (20) days prior to the tenth day of December, 1937; otherwise said ten-day

period of suspension shall commence on the effective date of this order and continue for a period of ten (10) days thereafter.

(3) That during said period of suspension respondent shall desist and abstain from engaging in transportation of property for compensation or hire as a business over any public highway in this State, not exclusively within the limits of any incorporated city or city and county, by means of a motor vehicle or motor vehicles, and from performing any other service as a radial highway common carrier or highway contract carrier, as defined in the Highway Carriers' Act, Chapter 223, Statutes of 1935 as amended.

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

Dated at San Francisco, California, this 15th
day of Nov., 1937.

Walter S. ...
John ...
James ...
Robert ...
Ray L. ...
Commissioners.