

Decision No. 28810

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Investigation)
on the Commission's own motion into)
the operations, rates, charges, con-)
tracts and practices, or any thereof,)
of A. S. BILLS, doing business as A. S.)
BILLS VAN AND STORAGE.)

Case No. 4260

A. S. Bills, in propria persona.

Robert M. Stiles, interested party.

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by the Commission on its own motion to determine whether or not respondent A. S. Bills
(1)
violated Decision No. 28810, prescribing minimum rates for the transportation of household goods and personal effects by highway carriers and city carriers, in performing such transportation for M. E. Rotchy on August 26th and 27th, 1937. Public hearing was held before Examiner Elder at San Francisco, October 26th, 1937, at which time respondent appeared, participated in the hearing and voluntarily testified in his own behalf. Testimony was

(1) Decision No. 28810 has since been superseded by Decision No. 29891, dated June 28, 1937, which became effective September 8, 1937.

also received from Robert M. Stiles, another highway carrier, who competed with respondent for the job in question, and from Stiles' wife and son, who assisted him in timing performance of the work by respondent.

Stiles testified that sometime prior to August 26th, Rotchy, whom Stiles had moved several times before, called him for an estimate of the cost of moving Rotchy's household furniture and personal effects from 303 Vincente Road, Berkeley, to Belvedere. Stiles estimated the cost of the job at \$90.00, based upon the time he believed would be required to perform the work at the minimum hourly rates prescribed by the Commission, plus boat fare. Subsequently Rotchy told Stiles his estimate was greatly excessive and that the job would go to Bills who had offered to do it at a flat price of \$55.00, and had guaranteed in writing that the cost would not exceed \$60.00. Respondent admitted he offered to do the job for \$57.50 and, at Rotchy's request, signed some kind of a commitment regarding a maximum charge of \$60.00, the exact purport of which he was unable to state, but he testified he actually charged and collected \$84.25.

Bills used two trucks on the job, his own van type truck and a smaller open truck belonging to one Wade Jones, who with respondent's son, assisted him in the work. As the distance between origin and destination of the shipment is not in excess of thirty (30) miles, the minimum charges are controlled by Column A of Item 520, Exhibit A, Decision No. 28810, specifying a rate of

\$3.00 per hour for a truck and one man, and \$3.75 per hour for a truck and two men, and \$4.75 per hour for a truck and three men. The order also calls for certain additional charges for ferry fare and for over-time work when at the customer's request.

According to the testimony of the Stiles, the three men required five and three-quarters hours, from 6:45 A. M. to 12:30 P. M., on August 26th, to load the two trucks, the loading of the van apparently being completed at approximately 11:30, and the truck one hour later. According to respondent, the loading commenced at 7:00 o'clock and was completed at 12:00, but respondent admittedly kept no exact record of the hours, and those he gave are but approximations. Stiles, on the other hand, was timing the job for the purpose of making a complaint, and his testimony was definite. Stiles' testimony of the hours involved, and that of his wife and son, will therefore be accepted as reliable.

After time had been taken for lunch, the two trucks started for Belvedere, followed by Mrs. Stiles and her son in their car. The Stiles and respondent agree that the trip required two hours, but respondent testified the time of arrival at Belvedere was 4:00 o'clock, whereas the Stiles fix it at 3:30. For the reasons above stated we will accept 3:30 as the correct time of arrival. Unloading commenced immediately and took somewhat longer than the loading because the trucks had to be parked some distance from the house and the goods carried down a rather long flight of steps. Also, after the three men

had worked a half-hour, Jones became ill and did no more work. Thereafter, respondent and his son continued unloading from both trucks, completed unloading Jones' truck at 7:00, and at 8:00 P. M. stopped work on the unloading of Bills' van for the night.

The next morning respondent and his son resumed the unloading of the van. Respondent worked alone at the unloading for a half-hour before his son arrived, after which they worked together until the unloading was completed at 12:30. Respondent fixed the time of his son's arrival at around 10:00 A. M., whereas Mrs. Stiles stated that she arrived at the job at Belvedere at 9:00 in the morning and saw Bills' son drive up in his car just ahead of her. Mrs. Stiles' testimony, being positive, will be accepted.

According to the foregoing evidence, the minimum charge for the job should properly have been computed as follows:

August 26.

Loading of the Van, 6:45 A. M. to 11:30 A. M., three men, 4-3/4 hours	at \$4.75	\$22.56
Loading of the Truck, 11:30 A. M. to 12:30 P. M., three men, 1 hour	at \$4.75	4.75
Driving Time, 1:30 P. M. to 3:30 P. M., Van and two men, 2 hours doubled	at \$3.75	15.00
Driving Time, 1:30 P. M. to 3:30 P. M., Truck and one man, 2 hours doubled	at \$3.00	12.00
Unloading Van, 3:30 P. M. to 4:00 P. M., three men, 1/2 hour	at \$4.75	2.37
Unloading Van, 4:00 P. M. to 7:00 P. M., one man, 3 hours	at \$3.00	9.00

Unloading Van, 7:00 P. M. to 8:00 P. M., two men, 1 hour	at \$3.75	\$ 3.75
Unloading Truck, 4:00 P. M. to 7:00 P. M. one man, 3 hours	at \$3.00	9.00

August 27.

Unloading Van, 8:30 A. M. to 9:00 A. M., one man, 1/2 hour	at \$3.00	1.50
Unloading Van, 9:00 A. M. to 12:30 P. M., two men, 3-1/2 hours	at \$3.75	13.12
Ferry Toll (Taken from ferry company's tariff on file with the Commission and computed according to David Stiles' testimony of his conversation with the toll-keeper)		<u>7.55</u>
Total		\$100.60

In addition, the minimum charges properly computed should include an allowance for driving time from the trucks' stand to the point of origin, and an over-time allowance of 25% of the minimum rates for work performed between 5:30 P. M. and 7:30 A. M., if at the customer's request.

Respondent claims he intended to charge the minimum rates for the job, but if he actually had such an intention it is difficult to understand how he could have failed to make an accurate record of the time consumed in the various phases of the work. Moreover, respondent appeared to be wholly ignorant of the requirements of the rate order respecting the addition of ferry tolls, over-time, and driving time from truck stand to point of origin. With any conscientious attempt to comply with the minimum rates, respondent must surely have become familiar with these charges and with the necessity for keeping accurate account of all

the time factors involved. The absurdly low estimate of \$57.50 which respondent quoted for the work, followed by the actual collection of a charge of \$84.25, carries a resemblance to the familiar practice resorted to by some carriers of making deliberately low bids in order to take jobs from competitors and upon completion of the hauling demanding higher charges on the ground the work took longer than expected.

The evidence shows a distinct violation of Decision No. 28810 and the Highway Carriers' Act under circumstances rendering suspension of respondent's permit appropriate.

Respondent holds radial highway common carrier permit, 1-319, and city carrier permit, 1-320. Under the provisions of Section 14-1/2 of the Highway Carriers' Act, suspension of the highway carrier permit is authorized for violation of that act. There appears however to be no authority for the suspension of a city carrier's permit for a 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.

O R D E R

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 A. S. Bills, doing business as A. S. Bills Van and Storage, did on the 26th and 27th days of August, 1937, engage in the transportation of household goods and personal effects for M. E. Rotchy for compensation as a business over the public highway in this state between Berkeley and Belvedere 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 A. S. Bills 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, in Case No. 4086 at rates less than those prescribed in said decision.

(2) That radial highway common carrier permit, 1-319, issued to A. S. Bills, doing business as A. S. Bills Van and Storage, shall be and it is hereby suspended for a period of thirty (30) days; that said thirty-day period of suspension shall commence the 27th day of December, 1937, and continue to the 25th day of January, 1938, both dates inclusive, if service of this order shall have been made upon respondent A. S. Bills more than twenty (20) days prior to said 27th day of December, 1937; otherwise said thirty-day period of suspension shall commence on the effective date of this order and continue for a period of thirty (30) 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, 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 29th
day of November, 1937.

Walter H. Mason
Leon A. Whelan

Ray L. Rice
Commissioners.