

Decision No. 30504

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, con-
tracts, and practices, or any thereof,
of JAMES A. NEVIL, doing business as
Nevil Storage Co.

Case No. 4213

W. B. Hornblower, for Respondent.

WAKEFIELD, COMMISSIONER:

O P I N I O N

After receiving a complaint that James A. Nevil had transported used household furniture by motor vehicle at less than the minimum rates prescribed by Decision No. 28810 in Case 4086,⁽¹⁾ the Commission instituted the above entitled proceeding to investigate Nevil's operations, rates, charges, contracts, and practices.

A public hearing was had on May 25, 1937, and the matter was at that time submitted.

The respondent, who holds Radial Highway Common Carrier Permit No. 38-601 and City Carrier Permit No. 38-579, appeared personally and by counsel.

W. H. Wilterdink, Captain in the Supply Corps of the United States Navy, 12th Naval District, was called as a witness for the Commission and testified that a call for bids was made by the United States Navy for the transportation of the used, uncrated furniture and personal effects of Lieutenant M. E. Eaton, U.S.N., from Vallejo to Long Beach, California. It was stipulated

(1) Decision 28810 has been superseded by Decision 29891, dated June 28, 1937, which became effective September 6, 1937.

that the bids were opened March 25, 1937, and that the low bidder was Nevil Storage Company, the fictitious name under which respondent conducts his business. It was further stipulated that respondent bid \$2.00 per hundred for such transportation and that he was awarded the job. The Government issued its bill of lading No. N. 183628, which was introduced as Commission's Exhibit No. 1. It was stipulated that the weight of the property was 7,490 pounds, that respondent, using a covered van and two men, performed the transportation according to the terms of his bid on April 5, 1937, and that he received compensation therefor in the sum of \$149.80. The Commission's minimum rate for such transportation was \$5.08 per hundred pounds, or a total of \$230.69 for the movement.

The respondent, voluntarily testifying in his own behalf, stated that at the time of making his bid he thought it lawful to accord a reduced rate to the government; that after the bids were opened, a member of the Commission's Division of Investigation communicated with him and requested that he withdraw his low bid, stating that all other low bidders had done so; that he thereupon sent a telegram to the Supply Officer at Mare Island, which telegram was introduced as Exhibit No. 3, withdrawing the bid and submitting a bid of \$3.08 per hundred pounds. Nevil testified that he received no response to his telegram. Subsequently he received a telephone call from the supply officer requesting him to proceed with his original contract. He agreed to do so. He did not recall the name of the officer to whom he talked but did recall that the officer stated that he did not know if State regulations prevailed. From his conversation Nevil testified that he understood that should he withdraw, he might be required to pay the difference between his bid and the next lowest bid, and would also be barred from future bidding.

Captain Wilterdink testified that Nevil was not ordered to perform his original contract but was merely requested to do so; he was at liberty to grant or deny the request, and there was nothing in his contract which would oblige him to pay any differential between his bid and the next lowest bid should he withdraw. It was the witness's opinion that respondent would not have been precluded from future bidding.

The record clearly shows that the articles transported were the household goods and effects and personal belongings of Lieutenant M. E. Eaton. It is true that the contractor was engaged by the Government, but this is due only to the fact that the Navy provides an allowance for the transportation, up to a certain weight, of the household goods of its officers when they are transferred from place to place. Captain Wilterdink testified that if the articles in question had exceeded the weight limitation, the owner thereof would have had to bear the additional cost personally, and that in the movement under investigation, the weight of the property was within the limit allowed.

The following statement taken from the circular of the Federal Traffic Section, Procurement Division, Treasury Department, dated December 28, 1936, addressed to Motor Carrier Associations and Tariff Bureaus, was read into the record by the attorney for the Commission:

"As regards common and contract carriers operating only in intrastate service, the measure of rates to be charged on Government traffic will be governed by the laws of the respective states in which the carriers operate."

Section 11 of the Highway Carriers Act, Chapter 223, Statutes of 1935, as amended, reads as follows:

"If any highway carrier other than a common carrier desires to perform any transportation or accessorial service at a lesser rate than the minimum rates so established, the Railroad Commission shall, upon finding that the proposed rate is reasonable authorize such rates less than the minimum rates established in accordance with the provisions of section 10 hereof."

In Re Carlstrom (40 CRC 52) the Commission authorized rates for the transportation of used household goods for officers of the United States Navy less than the minimum rates prescribed by the Commission under circumstances somewhat analagous to those prevailing in the instant proceeding. Respondent herein did not file a Section 11 application seeking authority to charge rates less than the minimum rates prescribed by the Commission.

It is obvious that respondent on the date in question violated Decision 28810, in case No. 4086, under circumstances rendering a short suspension of his permit appropriate. Respondent holds Radial Highway Common Carrier Permit No. 38-601. Under the provision of Section 14½ 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. 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, 35 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., or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment.

F I N D I N G

I hereby find as a fact that respondent, James A. Nevil, doing business as Nevil Storage Company, did on the 5th day of April, 1937, engage in the transportation of used, uncrated household furniture of Lieutenant M. E. Eaton, U. S. N., for compensation as a business over the public highways of this State, between Vallejo and Long Beach, by means of a motor vehicle at rates less than the minimum rates and charges prescribed therefor by Decision No. 28810, then in effect, in Case 4086, in violation of said decision and of the Highway Carriers' Act.

I recommend the following form of order:

O R D E R

A public hearing having been held and the matter submitted, and the Commission being fully advised,

IT IS HEREBY ORDERED:

(1) That respondent, James A. Nevil, shall immediately cease and desist and thereafter abstain from charging, demanding, collecting, or receiving any rates or charges for the transportation of any of the property described in Decision No. 28981, in case 4086, at minimum rates less than those prescribed in said decision.

(2) That Radial Highway Common Carrier Permit No. 38-601, heretofore issued to respondent James A. Nevil, doing business as

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Nevill Storage Company, shall be and it is hereby suspended for a period of five days, commencing on February 1st and continuing to February 5th, 193⁸, both dates inclusive, if service hereof shall have been made upon respondent more than twenty days prior to February 1st, 193⁸; otherwise, said five-day period of suspension shall commence on the effective date of this order and shall continue for a period of five days.

(3) That during said period of suspension, respondent, James A. Nevill, doing business as Nevill Storage Company, shall desist and abstain from engaging in the 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.

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.

Dated at San Francisco, California, this 10th day of January, 1938
~~December, 1937.~~

Walter H. Hays
Leon A. Hays
Frank B. Hays
Raymond Hays
W. & Hays
Commissioners.