

Decision No. 20574

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,) Case No. 4254.
contracts, and practices, or any)
thereof, of DAVID KAUFMAN.)

David Kaufman, in propria persona;

Harold A. Kern, for Bekins Van & Storage Co.,
interested party;

J. W. Barker, for San Francisco Movers, Inc.,
interested party.

RILEY, COMMISSIONER:

O P I N I O N

This proceeding was instituted by the Commission, on its own motion, to determine whether or not respondent David Kaufman violated Decision No. 28810, ⁽¹⁾ in Case 4086, prescribing minimum rates for the transportation of household goods and personal effects by highway carriers and city carriers.

A public hearing was held at San Francisco on November 10, 1937, at which time evidence was adduced and the matter submitted.

Charles W. Lindquist was called and testified that he was, on August 10, 1937, the receiving clerk for L. Hart & Son

(1)

Decision No. 28810 has been superseded by Decision No. 29891, dated June 28, 1937, which became effective September 6, 1937.

Company, San Jose, California; that on that date the respondent David Kaufman transported from Harband's Auction House, in San Francisco, to the store of L. Hart & Son Company, San Jose, the used uncrated household furniture set forth at length on the list which was introduced in evidence as "Exhibit No. 1." He testified that he personally checked every item appearing on the list as it was unloaded, and that he required the respondent David Kaufman to subscribe his name and the word "paid" at the foot of said list. The witness further testified that respondent was paid by L. Hart & Son Company the sum of \$25.00 for the transportation of said property, and identified the check given in payment thereof, which was thereupon introduced in evidence as Commission's Exhibit No. 2.

Mr. Harold A. Kern was called as a witness by the Commission and, after qualifying as an expert on estimating weights of household furniture, testified that he had examined Exhibit No. 1, and that he estimated the weight thereof according to an estimating and checking sheet used by his employer, Bekins Van & Storage Company (Exhibit No. 3). This checking sheet contains a list of average weights of items of household furniture commonly handled in the moving industry, and is used by the company to give estimates to customers who ask for prices on intrastate movements. He further testified that after the estimated weight is figured in order to give an estimated price to a customer, if his company secures the business the furniture is weighed in order to determine the actual transportation charge. He stated that the actual weight of a shipment tallies very closely with the estimated weight, and while one article on the list may be estimated at slightly over its actual weight, another may be slightly under, thus making the estimating and checking sheet a fairly reliable means of obtaining the average weight of a shipment.

He testified that he had deducted from the total estimated weight an allowance of 900 pounds to compensate for the fact that since the furniture had been sold from an auction house, no personal effects or wearing apparel were contained in articles of furniture commonly used for their storage. The deduction was necessary because his table of estimated weights was based upon movement of household goods from one dwelling to another, and the estimated weights included the weight of personal effects and wearing apparel usually stored in bureaus, dressers, etc. From the estimate, he arrived at a total weight of not less than 6500 pounds and not more than 7000 pounds.

In addition to the sheet used by his own company, the witness checked the same shipment of furniture on a similar sheet used by Allied Van Lines (Exhibit No. 4) for interstate shipments. The furniture is estimated thereon in terms of cubic feet, and in computing charges the witness testified that he computed the weight by figuring six pounds per cubic foot, and that the weight of the particular shipment, according to the second check, was comparable to the weight arrived at by the first method.

Mr. Max Kaplan was called as a witness and testified that Kaufman had moved the witness's household furniture from 547 Dolores Street, San Francisco, to 740 Homer Avenue, Palo Alto, on Sunday, August 22, 1937; that the movement was made on Sunday at the shipper's request; that the furniture consisted of the following articles: davenport and two overstuffed chairs, a studio couch, drapes, radio, lamps, coffee table, three large rugs, a double bed with mattress and springs, linen, boudoir chair, chifferobe, dresser, vanity, breakfast table and four chairs, carpet sweeper, and four boxes (previously delivered by Kaufman) containing china and other small articles.

He testified that his brother, B. Kaplan, had paid the respondent \$20.00 for the movement, and produced and identified the check given therefor, which was thereupon read into the record.

F. R. Smalley, employed by the Railroad Commission as a transportation inspector, was called as a witness and testified that he had driven his automobile over different routes from 547 Dolores Street, San Francisco, to 740 Homer Avenue, Palo Alto, for the purpose of checking the mileage between the two points, and that the minimum was 31.4 miles and the maximum 31.9 miles. He testified further that he had in like manner checked the mileage between Harband's Auction House, at 724 McAllister Street, San Francisco, and the place of business of L. Hart & Son Company, San Jose, and that the mileage was 48.5 miles. He further testified that he saw Kaufman load the shipment of household furniture which was delivered to L. Hart & Son Company, and that Kaufman's truck was piled unusually high with furniture.

At the close of evidence adduced by the Commission, respondent voluntarily took the stand in his own behalf. He did not deny either transaction or the amount of compensation received by him, but did deny that the load of furniture delivered to L. Hart & Son Company weighed 6500 pounds. He stated that his flat rack truck was not a large one, the body being only 11 by 5 feet, the tare 1½ tons, and that it would be impossible for him to load 6500 pounds of furniture on his truck. Kaufman admitted that he had not weighed the load but believed that it did not exceed 3500 pounds. He testified that he calculated both shipments on an hourly basis at the rate of \$4.00 per hour; that the time consumed in moving Mr. Kaplan was not over five hours; that he had made no additional charge for transporting Kaplan's goods on Sunday or for the prior delivery of empty boxes.

The minimum rate prescribed by Decision No. 28810, in Case 4086, then in effect, for the transportation of uncrated furniture from San Francisco to San Jose was \$1.00 per 100 pounds. Had Kaufman charged the minimum rate for that movement, even taking the weight of the furniture at his own estimate of 3500 pounds, he would have charged \$35.00. From the testimony of Mr. Kern and that of Inspector Smalley, it appears that the actual weight far exceeded respondent's estimate.

The charge of \$20.00 to Mr. Kaplan also should have been on a weight rather than on an hourly basis, being in excess of 30 miles. Figuring it at the mileage of 31.4 miles, and using, for purposes of estimating the weight, the check list introduced into evidence as Exhibit No. 3, producing a total of 2185 pounds, the minimum rate should have been 79 cents per 100 pounds plus 25% for service performed on Sunday at the customer's request, and \$1.00 for the prior delivery of four shipping containers, or a total of \$22.57.

Kaufman admitted he knew that other carriers had competed for and lost the two movements in question.

The evidence shows two distinct violations of Decision No. 28810, in Case 4086, and of the Highway Carriers' Act, under circumstances rendering suspension of respondent's permit appropriate. Respondent holds radial highway common carrier permit No. 38-1211, and city carrier permit No. 38-494. Under the provisions of Section 14 $\frac{1}{2}$ 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., 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., 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 S

I hereby find as a fact that respondent David Kaufman did, on the 10th day of August, 1937, engage in the transportation of used uncrated household furniture for L. Hart & Son Company for compensation as a business, over the public highways of this State between San Francisco and San Jose, and did, on August 22, 1937, engage in the transportation of household furniture and personal effects of Max Kaplan for compensation, as a business, over the public highways in this State between San Francisco and Palo Alto, both movements by means of a motor vehicle, at rates less than the minimum rates and charges prescribed therefor in and by virtue of Decision No. 28810, Case 4086, in violation of the provisions of said Decision No. 28810 and of the Highway Carriers' Act.

I recommend the following form of order:

O R D E R

A public hearing having been had in the above entitled proceeding, evidence having been received, the matter submitted, and the Commission being now fully advised in the premises:

IT IS HEREBY ORDERED,

(1) That respondent David Kaufman 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. 29291, in Case 4086, at rates less than those prescribed in said decision.

(2) That radial highway common carrier permit No. 38-1211 issued to David Kaufman shall be and it is hereby suspended for a period of thirty (30) days. That said thirty-day suspension period shall commence on the 3rd day of February, 1938, and continue to the 4th day of March, 1938, inclusive, if service of this order shall have been made upon respondent David Kaufman more than twenty (20) days prior to said 3rd day of February, 1938; 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.

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 31st day of

January, 1938.

Walter H. Hays
Leon A. Hays
Bruno R. Hays

W. H. Hays
W. H. Hays
Commissioners.