

Decision No. 38761

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, of FRANK E.
WHITE.

Case No. 4297

ORIGINAL

Martin Frinke, for respondent.

Henry M. Burgeson, for Bekins Van and
Storage Company; Bekins Van
Lines; and Coordinating Com-
mittee of California Storage
Association and United Inde-
pendent Van and Warehouse
Association, interested parties.

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by the Commission on its own motion for the purpose of determining whether or not respondent Frank E. White, who holds permit, No. 19-2923, as radial highway common carrier and permit, No. 19-2924, as city carrier, engaged in the transportation of household goods and personal effects at rates less than the minimum rates therefor established by the Commission

in Decision No. 29891, in violation of the Highway Carriers' Act.

Public hearing was held before Examiner Elder at Los Angeles, March 23rd, 1938. Respondent appeared and was represented by counsel. Evidence was received and the matter submitted and it is now ready for decision. Testimony was received from public witnesses, from an inspector from the Railroad Commission and from respondent. The facts are virtually undisputed.

Mrs. Carmelita Eskew testified that on November 28th, 1937, respondent transported used uncrated household goods and personal effects for her from 122 North Palm Drive, Los Angeles, to 310 South Kingley Drive, Los Angeles, at a charge of \$10.00. Respondent admits that this charge was computed at the rate of \$3.00 per hour, although a van of over ninety square feet capacity and services of two men were used. The minimum rate for this service, under Decision No. 29891, is \$3.50 per hour.

Mrs. Catherine E. McKenzie testified that on the same day respondent transported other goods of the same character for her from 122 North Palm Drive, Los Angeles, to 309 - 16th Place, Costa Mesa. The same van was used. Two men were used in loading, but only one was supplied by respondent for the driving and unloading. The charge for the service was \$12.00, that amount being proposed by the shipper and agreed to by respondent over the telephone. The charge bore no relation either to the time the work required, the weight of the shipment or the distance moved, and was agreed to without any regard to the rates proscribed by the Commission.

George G. Wyatt testified that on November 30th, 1937, respondent moved his household goods and personal effects from 5015 Edgewood Place, Los Angeles, to 1345 Longwood Avenue, Los Angeles. A van of over ninety square feet capacity and two men were used. Although no prior agreement was made as to the rate or charge to be assessed, respondent admitted, and his records show, that the charge was based on a rate of \$3.00 per hour with an additional charge of \$.75 per hour for a third man who helped with the piano and a further extra charge for moving the piano upstairs. Under Decision No. 29891 the minimum lawful basic charge for the moving with a van and two men is \$3.50 per hour.

Fred P. Hughes, an inspector for the Commission, testified that he examined respondent's records which showed that respondent failed to make out and keep the freight bills required by the provisions of Decision No. 29891, or any other adequate data concerning his traffic, but only a journal entry of the date, the name of the shipper and the amount of the charge.

Respondent, testifying voluntarily, admitted that he had knowledge of the minimum rates at the time of the shipments in question but had not observed them, nor had he made or kept the required records. He claimed that the violations were not the result of a willful attempt to evade the law, but offered no further explanation for his actions. It is plain from the evidence that respondent simply ignored and disregarded the rate orders.

On respondent's behalf it was urged that his age, personal circumstances and the difficulty of changing the business habits of a life time justify leniency. We cannot, however, ignore the fact that respondent's competitors who have been complying with the rate orders are subject to the same conditions and difficulties as respondent, with the added hardship of competing with respondent's practices. It will be ordered that respondent's permits be suspended for a period of fifteen (15) days, and that he desist from operations during that period.

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. 371.

It should also be noted that under Section 12 of the Highway Carriers' Act (Chapter 223, Statutes of 1935, as amended) and Section 13 of the City Carriers' Act (Chapter 312, Statutes of 1935), one 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 Frank H. White did on the 28th and 30th days of November, 1937, engage in the transportation of household goods and personal effects for compensation as a business over the public highways within the city limits of Los Angeles by means of a motor vehicle as a city carrier at rates less than the minimum rates prescribed therefor in and by virtue of Decision No. 29891, Case No. 4086, in violation of the provisions of said decision and the Highway Carriers' Act.

IT IS HEREBY FURTHER FOUND that respondent Frank H. White did on the 28th day of November, 1937, engage in the transportation of household goods and personal effects for compensation as a business over the public highways in this state between Los Angeles and Costa Mesa, by means of a motor vehicle as a highway carrier other than a highway common carrier at rates less than the minimum rates prescribed therefor in and by virtue of Decision No. 29891, Case No. 4086, in violation of the provisions of said decision and of the Highway Carriers' Act.

IT IS HEREBY FURTHER FOUND that respondent Frank H. White, as a radial highway common carrier and city carrier, has failed to issue to the shipper for each shipment received for transportation a freight bill in substantially the form set forth in Appendix "B" attached to and made a part of Decision No. 29891, or any freight bill whatever, or to retain or preserve a copy of any freight bill for a period of three years or at all, in violation of said Decision No. 29891 and of the Highway Carriers' Act.

IT IS HEREBY ORDERED, by reason of said offenses, that

(1) Respondent Frank H. White shall immediately cease and desist and thereafter abstain from charging, demanding, collecting or receiving any charge 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 or in subsequent decisions of the Railroad Commission.

(2) Radial highway common carrier permit 19-2923, and city carrier permit 19-2924, issued to Frank H. White shall be and each of them is hereby suspended for a period of fifteen (15) days; that said fifteen-day period of suspension shall commence on the 9th day of May, 1938, and continue to the 23rd day of May, 1938, both dates inclusive, if service of this order shall have been made upon respondent more than twenty (20) days prior to said 9th day of May, 1938; otherwise said fifteen-day period of suspension shall commence on the effective date of the order and continue for a period of fifteen days thereafter.

(3) During said period of suspension respondent shall desist and abstain from engaging in the transportation of property for hire as a business over any public highway in this state and from performing any other service as a radial highway common carrier, as defined in the Highway Carriers' Act, or as a carrier as defined in the City Carriers' Act.

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 11th day of April, 1938.

Walter Brown
Leon A. Hall
Stanley R. Nelson
Rafaela R. Nelson
W. L. Ciley
COMMISSIONERS.