

Decision No. 28625

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on)
the Commission's own motion into the)
highway carrier operations, rates,) Case No. 4279
charges, contracts and practices of)
C. V. CLARK, JR.)

PHILIP M. GIRARD, for Respondent.

BY THE COMMISSION:

O P I N I O N

ORIGINAL

This proceeding was instituted by the Railroad Commission, on its own motion, to determine whether respondent C. V. Clark, Jr., 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. 28625, as amended by Decision No. 28836, for the transportation of sand, rock, gravel, road building material, excavated material, building materials, asphaltic concrete, decomposed granite and stabilizing materials, or any of them, in dump trucks in violation of the Highway Carriers' Act pursuant to which the above decisions were issued.

A public hearing was held at San Luis Obispo before Examiner Paul at which respondent appeared and was represented by counsel. Evidence was received and the matter having been duly submitted is now ready for decision. The facts as established by public witnesses are undisputed.

The evidence and record show that on or about December 28, 1937, a contract was entered into by and between respondent and the Division of Highways of the Department of Public Works of the State of California known as service agreement No. 5126-B by which respondent agreed to furnish the services of two 3-1/2 cubic yards water level

measurement capacity G.M.C. dump trucks including drivers, at the agreed hourly rate of \$2.78 for "slide removal work" on that portion of the Roosevelt Highway in Monterey County referred to in said agreement as "road V-Mon-56-A,B,C." In compliance with this agreement it was shown that respondent supplied two dump trucks of the capacities set forth in the agreement which were operated by respondent's employees in the performance of the work contemplated by said agreement.

The record shows that in accordance with the agreement the proposed transportation was performed over a portion of the public highway known as the Roosevelt Highway in Monterey County. The commodity so transported consisted of slide material which had slid onto the highway from the adjoining banks, or which had been excavated from said highway or adjoining banks and hauled to a place for disposal of the material. The trucks were loaded by means of a power shovel or other power loading device and unloaded by tilting the body of the truck by mechanical means.

It was shown that the two trucks and drivers were engaged in this transportation for a combined total of 119½ hours between January 4 and 14, 1938, both dates inclusive, for which respondent received as payment from the Division of Highways the total sum of \$330.55 computed at the hourly rate of \$2.78 less one-half of one per cent for cash payment within ten days.

The minimum hourly rate established by the Railroad Commission's Decision No. 28836, in Case No. 4087, for the transportation of the aforesaid commodities in dump trucks of 3-1/2 cubic yards water level measurement capacity in Monterey County, which is located in that portion of the state of California designated by said Decision No. 28836 as Northern California, and in effect during the period herein involved, was \$2.83, which amount is made up of the sum of \$2.15, the hourly truck rate for dump trucks loaded under

power device and 68 cents, the generally prevailing hourly rate of pay for dump truck drivers for work of a similar character in Monterey County.

It is conclusively shown by the record that respondent C. V. Clark, Jr. has charged and collected a sum computed at a rate less than the minimum hourly rates prescribed by the Railroad Commission in its Decision No. 28836 and in violation of said decision and the Highway Carriers' Act and as a penalty therefor the contract carrier permit No. 19-1117 of respondent, under which said respondent was and is operating, shall be suspended for a period of thirty days.

Respondent moved that this proceeding be stayed, first, until a decision should be rendered by the Commission on respondent's Application No. 21692 filed under Section 11 of the Highway Carriers' Act in which relief was sought from the minimum rates established by Decision No. 28836; second, until a decision is rendered by the Supreme Court of the State of California in the matter of Entremont v. Railroad Commission, (S.F. No. 15772), now pending on review of the Commission's order; third, because the State of California, so it is contended, is equitably estopped from questioning the validity of an illegal contract to which the state itself has been a party, and from the performance of which it has been the chief beneficiary.

The first motion will be denied because subsequent to the submission of this proceeding the Commission issued its order (Decision No. 30741, on Application No. 21692) denying respondent the relief sought in Application No. 21692.

The second motion will also be denied. While it is true that the jurisdiction of the Commission to prescribe rates for such transportation as is hereby involved has been questioned in a proceeding now before the Supreme Court of this state, we are

nevertheless convinced that the Commission would be remiss in its duties if it neglected to enforce all of the provisions of said Act pending a final judicial determination of its authority to do so.

The third motion will likewise be denied, since neither a carrier nor a shipper may, by any understanding or arrangement, become estopped from exacting and paying the lawfully established rate. Pittsburgh CC and St. L. Ry Co. v. Fink 250 U.S. 577; Strawberry Growers Selling Co. Inc. v. Amer Ry Express Co. 31 Fed (2nd) 947.

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 person 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. 371.

It should also be noted that under Section 14 (a) of the Highway Carriers' Act (Chapter 223, Statutes of 1935), as amended, one 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.

O R D E R

A public hearing in this proceeding having been held, evidence having been received, the matter duly submitted and the Commission now being fully advised,

IT IS FOUND AS A FACT that respondent C. V. Clark, Jr. did on the 4th day of January 1938 and continuously thereafter to and including the 14th day of said January 1938 engage in the transportation of slide material over the public highway in Monterey County, state of California, pursuant to and in accordance with the terms of a service agreement No. 5126-B entered into by and between said respondent and the Division of Highways, Department of Public Works of the state of California at a rate less than the minimum rate prescribed by the Railroad Commission in its Decision No. 28836 and in violation of said decision and the Highway Carriers' Act, Chapter 223, Statutes of 1935, as amended.

IT IS ORDERED, by reason of such offense,

1. That respondent C. V. Clark, Jr. shall immediately cease and desist and hereafter abstain from charging, demanding, collecting or receiving any compensation for the transportation of any property described in Decision No. 28625 and/or Decision No. 28836, in Case No. 4087, when the rate for such transportation is computed at a rate less than those prescribed in said decisions unless and until proper relief therefrom has been sought and obtained pursuant to section 11 of the Highway Carriers' Act, Chapter 223, Statutes of 1935, as amended.

2. That contract carrier permit No. 19-1117 heretofore issued to and now held by respondent C. V. Clark, Jr. be and it is hereby suspended for a period of thirty (30) consecutive days beginning on the 20th day of June, 1938, and ending on the 19th day of July, 1938, if service of this order shall have been made upon respondent Clark more than twenty (20) days prior to June 20, 1938, otherwise the said thirty (30) day period of suspension shall begin on the effective date of this order.

3. That during the period of suspension herein set forth respondent C. V. Clark, Jr. shall cease and desist from engaging in the transportation of property for compensation or hire over any public highway in this state, not exclusively within the corporate limits of any incorporated city or city and county, by means of a motor vehicle or motor vehicles as a contract carrier as such term is defined in the Highway Carriers' Act, Chapter 223, Statutes of 1935, as amended.

IT IS FURTHER ORDERED that the Secretary of the Railroad Commission shall cause a certified copy of this decision to be served upon respondent C. V. Clark, Jr.

IT IS FURTHER ORDERED that the motions of respondent to stay this proceeding be and they are, and each of them is hereby, denied.

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

Dated at San Francisco, California, this 23rd day of May, 1938.

Arthur H. Mason
Leon A. Whittell
Frank R. Nelson
Raymond A. Bishop
Carl A. Allen
COMMISSIONERS