

Decision No. 30887

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,)
contracts and practices, or any)
thereof, of FRED BELLI, doing business)
as B & R TRANSPORTATION COMPANY.)

Case No. 4313

ORIGINAL

Fred Belli, in propria persona.

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by the Commission on its own motion to determine whether respondent Fred Belli was engaged in the transportation of property over the public highways as a business at less than the minimum highway carrier rates established by the Railroad Commission, and without issuing freight bills as required by the orders of the Commission, and whether the highway contract carrier permit issued to respondent should be revoked or suspended for such violations. Public hearing was held before Examiner Elder at Santa Barbara on May 4th, 1938, at which time respondent appeared in his own behalf and participated in the proceeding.

Evidence was received from shippers served by respondent and from an inspector for the Railroad Commission. Witness Frank S. Shaw, Ventura branch manager for Sauers Wholesale Company, distributors of beer and liquor, testified to the transportation by respondent of the following shipments from Los Angeles to Ventura at the following rates:

On February 12th, 17th, and 22nd, 1938, shipments of wine in glass containers, weighing 540 pounds, 1,530 pounds and 1,441 pounds, respectively, at the rate of 41 cents per hundred pounds;

On March 4th, 1938, a shipment of wine in glass containers, weighing 4,175 pounds, at the rate of 30 cents;

On February 10th, 1938, a shipment of three 25 gallon barrels of wine and sixty-eight cases of wine in glass containers, weighing 3,060 pounds, at the rate of 34 cents.

Witness John E. Hunt, Rate Inspector for the Railroad Commission, testified the minimum rate, established by Decision No. 28761 in effect on and long prior to the date of the shipments, for the transportation of wine in glass containers between Los Angeles and Ventura in quantities of more than 500 pounds and less than 4,000 pounds is 60 cents per hundred pounds, and for minimum quantities of 4,000 pounds the minimum rate is 54 cents;⁽¹⁾ also, that the minimum rate for wine in barrels between the same points and established by the same decision is 52 cents.

(1) Decision No. 29891 established as minimum rates for radial and contract carriers the lowest common carrier rates for the same service. There were no lower common carrier rates for the transportation above described than those published in Pacific Motor Transport Company Local Express Tariff No. 9, C. R. C. No. 13; Western Classification No. 11, C. R. C. No. 611, (L. F. Potter Series) Page 389, Item 9.

Witness L. Shirley Cole of the Ott Hardware Company, Santa Barbara, testified to receiving the following shipments, transported by respondent from Los Angeles to Santa Barbara at the following rates:

On March 4th, 1938, a crated electric range, weighing 576 pounds, at the rate of 49 cents per hundred pounds;

On February 2nd, 1938, a cooling case unit, weighing 233 pounds, at the rate of 54 cents per hundred pounds;

On February 26th, 1938, and March 8th, 1938, shipments of canvas camp cots, weighing 280 pounds and 160 pounds, respectively, at rates of 54 cents and 49 cents, respectively.

Hunt testified the minimum rates on these shipments, established by Decision No. 28761, as amended are as follows: on the range, 56 cents; ⁽²⁾ on the cooling case unit, 60 cents; ⁽³⁾ on the canvas camp cots, 60 cents. ⁽⁴⁾

Witness Charles Rizzonico of Santa Barbara Distributing Company testified respondent had been hauling beer in cases from Santa Barbara to Los Angeles for his company ever since respondent had started in business at a charge of 8 cents a case for bottled beer and 5 cents a case for canned beer, without additional charge for the return transportation of empty bottles, and that no freight

(2) See Pacific Motor Transport Company Local Express Tariff No. 9, C. R. C. No. 13, third revised, Page 22 AAA; Western Classification No. 11, C. R. C. No. 611, (L. F. Potter Series) Page 344, Item 24.

(3) See same tariff references as footnote (2), but Page 241, Item 26 of Western Classification No. 11.

(4) See same tariff references as footnote (2), except Page 175, Item 9 of Western Classification No. 11.

bills had been issued by respondent on such shipments since January, 1938. The minimum rates for this service, established by Decision No. 28761, as modified, are on a weight basis and not by the case. On the shipments transported for the Santa Barbara Distributing Company it is evident that respondent's charges were not assessed in conformity therewith, and it is plain that respondent has failed to comply with the requirement of that order that freight bills be issued on all shipments.

Respondent's operations have already been the subject of the Commission's attention in two proceedings. In Decision No. 30382 in Case No. 4252, dated December 6th, 1937, respondent was ordered to cease and desist operation as a highway common carrier between Los Angeles and Santa Barbara and intermediate points without a certificate of public convenience and necessity. A penalty suit against respondent for highway carrier operations at less than minimum rates is now pending in the Superior Court in Los Angeles County. That proceeding was instituted prior to the movement of any of the shipments referred to herein, yet the evidence here shows respondent to have been operating as a highway contract carrier at rates less than the minimum rates established by the Commission, and without issuing freight bills. No extenuating circumstances have been shown and it appears proper that respondent's permit should be revoked, and respondent be ordered to cease and desist from highway carrier operations.

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), 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 held in the above entitled matter, evidence having been received, the matter duly submitted and the Commission now being fully advised,

IT IS HEREBY FOUND that respondent Fred Belli did on the 2nd, 10th, 12th, 17th and 26th days of February, 1938, and the 4th and 8th days of March, 1938, engage in the transportation, as a highway contract carrier, of the shipments described in the preceding opinion at rates less than the minimum rates established

therefor under and by virtue of Decision No. 28761 in Case No. 4088, Part "A", as modified; and that respondent Fred Belli, subsequent to the month of January, 1938, did engage in the transportation of property as a highway contract carrier without issuing freight bills therefor as required by said Decision No. 28761.

IT IS HEREBY ORDERED that by reason of said offenses highway contract carrier permit, No. 19-7327, issued to respondent Fred Belli be and the same is hereby revoked.

IT IS HEREBY FURTHER ORDERED that respondent Fred Belli immediately cease and desist and hereafter abstain from any and all operation as a highway contract carrier or radial highway common carrier, as those terms are defined by the Highway Carriers' Act (Chapter 223, Statutes of 1935, as amended).

For all other purposes the effective date of this order shall be twenty (20) days from and after the service hereof upon respondent.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Commission cause service of this order to be made upon respondent.

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

Robert M. ...
Leon ...
Frank ...
Ray ...
Ray & ...
COMMISSIONERS