

Decision No. 38937

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 CLYDE RIVERA. )

Case No. 4298

ORIGINAL

William Gissler, for respondent.

Robert Brennon and William S. Brooks,  
for Atchison, Topeka and Santa Fe  
Railroad Company.

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by the Commission on its own motion to determine if respondent, Clyde Rivera, engaged in operation as a highway carrier, other than a highway common carrier, without a permit authorizing such operation, in violation of the Highway Carriers' Act, particularly between August 1, 1937, and December 7, 1937, and whether a permit subsequently issued to him should be revoked or suspended for such operation.

Public hearing was held before Examiner Elder in San Francisco on April 4, 1938, at which time respondent appeared and was represented by counsel. Evidence was received and the matter adjourned to April 21, 1938, for further hearing. Prior to such adjourned hearing it was stipulated by the counsel for respondent and for the Commission that copies of certain letters between Stanley Phipps, an attorney at law at Los Angeles, and the Railroad Commission might be received in evidence and the matter submitted without further hearing.

This correspondence consists of a request from Phipps for information concerning public liability and property damage insurance covering respondent's equipment, made on behalf of one of Phipps' clients whose car, it was stated, was damaged by equipment registered to respondent near the La Verne Orange Association packing house near La Verne on August 13, 1937; a second letter from Phipps stating he had ascertained that respondent held a license from the State Board of Equalization, issued July 22, 1937, to operate a motor vehicle for compensation; and a reply from the Commission advising Phipps that no public liability and property damage insurance covering respondent was on deposit with the Commission and that investigation would be made to determine if respondent's operations were subject to the Commission's jurisdiction.

Respondent, testifying on his own behalf, admitted ownership of the vehicle referred to in Phipps' letter and that he was or might have been operating it in La Verne on August 13, 1937, but he denied any accident occurring at that time and place in which the vehicle was involved. The record shows, however, and respondent acknowledges that between August 9th and December 16, 1937, he was continuously engaged in highway carrier operations. Most of respondent's hauling was traffic of the Eureka Commission Company of Oakland, another highway carrier. Its manager testified respondent was engaged by the Eureka Commission Company to transport this traffic for it and received compensation therefor. A tabulation of the records of the Eureka Commission Company pertaining to such hauling was received in evidence and shows forty-seven shipments handled for it by respondent on various days throughout the period.

Respondent testified that prior to August, 1937, he was engaged in driving a truck transporting his father's farm products to market. When he entered the trucking business in August, he was entirely ignorant of any requirement of law that he first obtain a permit from the Railroad Commission. Although he saw other for-hire trucks bearing Railroad Commission license plates, he did not know why they were displayed and never thought to inquire. He remained in ignorance of the necessity for a permit until he was investigated by the Commission's inspector, whereupon he promptly applied for and obtained a permit, which was issued December 16, 1937.

The record clearly shows that respondent operated as a highway carrier, other than a highway common carrier, between August 9th and December 16, 1937, without a permit as required by the Highway Carriers' Act. It further appears that this offense was committed in ignorance and without attempt to avoid or evade the law, but that respondent failed to use reasonable or proper diligence to inform himself as to the requirements of law affecting the business in which he was engaged. The offense, though not willful, cannot be overlooked and respondent's permit should be ordered suspended for a period of ten (10) days.

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 the power and authority to punish the 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 a period of 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 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 and the matter having been submitted and the Commission now being fully advised,

IT IS HEREBY FOUND that respondent Clyde Rivera did engage in the transportation of property for compensation or hire over the public highways by motor vehicle as a business as a highway carrier, other than a highway common carrier, between August 9, 1937, and December 16, 1937, without first obtaining a permit as required by Section 3 of said Highway Carriers' Act.

IT IS HEREBY ORDERED that by reason of said offense radial highway common carrier permit, No. 1-1260, issued to respondent Clyde Rivera be and it is hereby suspended for a period of ten (10) days, said ten-day period of suspension to commence on the 27th day of June, 1938, and to continue to the 6th day of July, 1938, both dates inclusive, if service of this order shall have been made upon respondent more than twenty (20) days prior to said 27th day of June, 1938; otherwise said period of suspension shall begin on the effective date of the order and shall continue for ten days thereafter; and that during said period of

suspension, respondent shall cease, desist and abstain from engaging in the transportation of property for compensation as a business over any public highway in the State of California as a highway carrier, other than a highway common carrier.

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

Dated at San Francisco, California, this 27<sup>th</sup> day of May, 1938.

Walter Mason  
James Sweeney  
Frank R. Nelson  
Paul W. Smith  
Ray H. Riley  
COMMISSIONERS.