

Decision No. 4320

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 of them,)
of FRED J. GERBER.)
-----)

ORIGINAL

Case No. 4320

W. N. McAdam, for Respondent

Jackson W. Kendall, for California Storage Association

BY THE COMMISSION:

O P I N I O N

This proceeding originated by the Commission on its own motion, for the purpose of determining whether FRED J. GERBER, respondent herein, violated the provisions of the Highway Carriers' Act (Statutes of 1935, Chapter 223, as amended), or the City Carriers' Act (Statutes of 1935, Chapter 312), or the Commission's decisions, orders, rules or regulations issued pursuant to said acts.

Public hearing was held before Examiner Cameron on the 31st day of May, 1938, at Los Angeles, at which time respondent appeared personally and was represented by counsel.

The undisputed facts disclose that respondent is the holder of a Radial Highway Common Carrier's permit No. 19-253, and a City Carrier's permit No. 19-254, issued by the Railroad Commission of the State of California, and that he is the owner of one van truck with an inside floor capacity of 166.88 square feet; that he has been engaged in the transportation business in Compton and vicinity for approximately eight (8) years, during which time he has employed

Jalmer M. Peterson as a helper.

The testimony of Mr. Peterson, in addition to the records of the Railroad Commission, shows that respondent was served with certified copies of the order instituting investigation in Cases No. 4086 and 4099 on November 26, 1935; that said respondent was served with a certified copy of Decision No. 29891 on July 20, 1937, and a certified copy of Decision No. 30482 on January 13, 1938.

The evidence discloses that on March 11, 1938, respondent, with the aid of his helper, transported uncrated furniture, consisting of household goods of more than five (5) pieces, for Mrs. May Butterworth, from 924 Santa Fe Avenue to 929 E. Compton Boulevard, in Compton, California, for which service a charge of \$3.00 per hour was made.

On March 18, 1938, respondent, with the aid of his helper, rendered a transportation service for Mr. and Mrs. E. E. Taylor, transporting household goods and effects of more than five (5) pieces, uncrated, from 1302 Catalina Avenue, to 543 Avenue "A", in Redondo Beach, California. In the rendition of this transportation service a rate of \$3.00 per hour was charged.

The transportation services rendered by respondent on March 11th and 18th, 1938, were performed within the exterior boundaries of Compton and Redondo Beach, respectively, both in California. The rate established by the Railroad Commission for the rendition of this type of transportation service with a vehicle having a loading area of 90 square feet or more in Cases No. 4086 and 4099, Decision No. 29891, as amended by Decision No. 30482, is \$4.00 per hour, where a helper is employed. It is apparent that the decision of the Commission has been violated by respondent in the rendition of these transportation services.

On March 20, 1938, respondent, with the aid of his helper, transported restaurant fixtures, including chairs, stools, counter, counter parts and equipment, a portion of which fixtures were picked up in Compton and a portion being picked up in Los Angeles, the entire shipment being transported to Shafter, California, which is nineteen (19) miles north and west of Bakersfield, California. While the testimony is conflicting as to the exact weight of the shipment, we feel this is immaterial in view of the rate of 90¢ per 100 pounds charged by respondent for this transportation service. The rate established by the Commission for the rendition of a transportation service of this character for shipments weighing less than 2000 pounds, from metropolitan Los Angeles, which includes Compton, to Shafter, is \$2.05 per 100 pounds; for shipments weighing from 2000 to 4000 pounds, the rate is \$1.85 per 100 pounds, and for shipments weighing more than 4000 pounds the rate is \$1.64 per 100 pounds. These rates are for ground floor pick-up and delivery, which the evidence shows are applicable in this instance. It is clear, even though the exact weight was not established, that a rate of 90¢ per 100 pounds is in violation of the rate established by the Commission.

The testimony of Inspector Brison, corroborated by the testimony of witness Peterson, respondent's helper, shows that out of seventy-six separate transportation services rendered as shown by respondent's books and records over a three-months period, including January, February and March, 1938, the rate was listed on said books in only four instances, the property was described in only nineteen instances, the weight was listed in only one instance, and in most every instance, the books failed to show the names of the consignor and consignee. Especially was the latter true regarding shipments of a Radial Highway Common Carrier nature. The evidence also shows that no uniform waybills, as required by the above mentioned decisions,

were used by this respondent.

Chapter 223, Statutes of 1935, as amended by Chapter 722, Statutes of 1937 (Highway Carriers' Act), Section 10, provides in part as follows:

"It shall be unlawful for any such highway carrier to charge or collect any lesser rate than the minimum rate***established by the commission under this section.

"The commission shall make such rules and regulations as may be necessary to the application and enforcement of the rates established or approved under the provisions of this act.***"

Section 14 $\frac{1}{2}$ of said act provides in part as follows:

"The commission may in its discretion cancel, revoke or suspend the operating permit or permits of any highway carrier whenever it shall appear that said highway carrier has conducted any highway carrier operations illegally, or has violated any of the provisions of this act,***or of any order, decision, rule, regulation, direction, demand or requirement***established by the commission pursuant to the provisions of this act.***"

An order of this Commission directing that an unlawful operation cease and desist is in 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 a 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. 571.

It should also be noted that under Section 14 of the Highway Carriers' Act (Chapter 223, Statutes 1935,) a person 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 (3) 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 now being fully advised:

IT IS HEREBY FOUND that respondent, FRED J. GERBER, during the months of January, February and March, 1938, and particularly on the 11th and 18th days of March, 1938, engaged in the transportation of property (household furniture) for compensation as a business over the public highways of the State of California, by means of motor vehicle as a City Carrier, which service was rendered with the assistance of a helper; that the rate charged by said respondent for said transportation services was \$3.00 per hour, which rate is in violation of the minimum rate established by the Commission for the rendition of such services.

That said respondent, during the months heretofore mentioned, and particularly on March 20, 1938, engaged in the transportation of property (store fixtures and equipment) for compensation as a business over the public highways of the State of California by means of motor vehicle, as a Radial Highway Common Carrier between Los Angeles and Compton, on the one hand, and Shafter, California, on the other hand, at a rate of 90¢ per 100 pounds, which rate is less than the minimum rate established by the Railroad Commission for the rendition of such transportation services.

IT IS HEREBY FURTHER FOUND that during the months of January, February and March, 1938, respondent, FRED J. GERBER, engaged in the transportation of property for compensation as a business over the public highways of the State of California by means of motor vehicle, as a City Carrier and a Radial Highway Common Carrier; that said respondent, during said time, failed and neglected to issue waybills and keep records in compliance with the rules, regulations and orders issued by the Railroad Commission.

IT IS HEREBY ORDERED, from the foregoing facts hereinabove set out, that respondent, FRED J. GERBER, shall immediately cease

and desist and hereafter abstain from engaging in the transportation of property for compensation or hire by means of motor vehicle as a Radial Highway Common Carrier and as a City Carrier, as those terms are defined in the Highway Carriers' Act (Statutes 1935, Chapter 223, as amended) and the City Carriers' Act (Statutes 1935, Chapter 312), respectively, over any public highway in this state without charging and collecting not less than the minimum rate established by the Commission, or without also complying with the orders, rules and regulations regarding the form of waybill, to be used and the records to be kept by such carriers, as required by said Decision No. 29891, as amended by Decision No. 30482, issued in Cases No. 4086 and No. 4099.

IT IS HEREBY FURTHER ORDERED, by virtue of the foregoing facts, that Radial Highway Common Carrier's permit No. 19-253, issued to said respondent, Fred J. Gerber, shall and the same is hereby suspended for a period of thirty (30) days; that said thirty day period of suspension shall commence on the effective date of this order and continue for a period of thirty days thereafter.

IT IS HEREBY FURTHER ORDERED, by virtue of the foregoing facts, that City Carrier's permit No. 19-254, issued to said respondent, FRED J. GERBER, shall be suspended for a period of thirty (30) days; that said thirty day period of suspension shall commence on the effective date of this order and continue for a period of thirty days thereafter,

IT IS HEREBY FURTHER ORDERED that during the period of suspension, said respondent, FRED J. GERBER, shall desist and abstain from engaging in the transportation of property for compensation or hire as a business over any public highway in this state by means of motor vehicle, and from performing any transportation service as a Radial Highway Common Carrier, as said term is defined in the Highway Carriers'

Act, or as a City Carrier, as said term is defined in the City Carriers' Act.

The effective date of this order shall be ten (10) days after the date of service hereof upon respondent.

Dated at San Francisco, California, this 13th day of June, 1938.

William H. Hall
Leon Overhill
George R. Miller
Robert W. Johnson
Ray A. Riley