

Decision No. ~~21933~~

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, )  
charges, contracts and practices of )  
GEORGE J. FRATIES, doing business as )  
ROCK AND GRAVEL TRUCKING COMPANY. )

Case No. 4284.

HARRY A. ENCELL, for G. J. Fraties, respondent.

ROY B. THOMPSON, for Truck Owners Association of  
California, Interested Party.

BY THE COMMISSION:

**ORIGINAL**

O P I N I O N

This is an investigation on the Commission's own motion into the highway carrier operation, rates, charges, contracts and practices of George J. Fraties for the purpose of determining whether or not said respondent George J. Fraties is engaging or has engaged in 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, at rates less than the minimum rates for such transportation as established by order of the Railroad Commission in Decision No. 28625, as amended by Decision No. 28836, Case No. 4087, or is charging or collecting or has charged and collected such lesser rates for such transportation, in violation of said order and of Section 10 of the Highway Carriers' Act (Chapter 223, Statutes of 1935 as amended) in connection with service agreement No. 33401, dated January 10, 1938, between respondent George J. Fraties and the Department of Public Works, Division of Highways of the State of California, for the transportation of such materials in four 4-cubic

yard dump trucks in Highway Division District No. III and for the purpose of determining whether or not any permit or permits of said respondent should be cancelled, revoked or suspended for such violation.

A public hearing in this matter was conducted by Examiner McGettigan in Marysville on February 1, 1938, and in San Francisco on February 8, 1938. The matter was submitted and is now ready for decision.

The facts in this case as developed from the testimony of witnesses and exhibits making up the record herein show that G. J. Fraties, doing business under the name and style of Rock & Gravel Trucking Company, as a radial highway common carrier (I-1055), received a "Notice to Prospective Bidders" (Exhibit 1), dated December 27, 1937, advising that District III of the Division of Highways would have use for four 4-cubic yard dump trucks and certain other equipment for approximately thirty-five days beginning January 10, 1938. The equipment was to be used for excavation of earth work on the Feather River Highway approximately eighteen miles east of Oroville. On January 3, 1938, Rock & Gravel Trucking Company returned its bid sheet to the Division of Highways (which bid sheet forms part of Exhibit 1) by which it agreed to furnish such trucks at \$2.60 per hour, including drivers' wages at 75 cents per hour. The record further shows that on January 10, 1938, Rock & Gravel Trucking Company entered into Service Agreement No. 33401 (Exhibit No. 2) to perform the work as described in the "Notice to Prospective Bidders) at the rate of \$2.60 per hour, including drivers' wages. <sup>(1)</sup> This agreement according to the record was approved by the Division of Highways on January 21, 1938.

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(1) The hourly rate of pay for dump truck operators in this section of the State was established as 75 cents per hour.

Further testimony and Exhibit No. 3 (Department of Public Works, Division of Highways Equipment Rental Pay Roll) showed that the Rock & Gravel Trucking Company had in use four 4-cubic yard dump trucks from January 11 to January 29, inclusive, pursuant to the terms of Service Agreement No. 33401.

The record further shows that the trucks were all loaded under a power shovel and the work performed consisted of the removal of slide material, in dump trucks, from the Feather River Highway.

Referring to Exhibit No. A-1 of Decision No. 28836, in Case No. 4087, which was made a part of this record by reference, it appears that the minimum rate for transportation of excavated material when loaded by power shovel in Northern California in trucks of  $3\frac{1}{2}$ -cubic yards or over, but less than  $4\frac{1}{2}$ -cubic yards, is \$2.15 per hour. To this hourly minimum rate must be added the prevailing hourly wage for drivers, in this instance 75 cents per hour, necessitating that an hourly rate of \$2.90 be assessed for this job instead of \$2.60 as bid by Rock & Gravel Trucking Company.

In the record by reference is Application No. 21711, filed by George J. Fraties for relief, under Section 11 of the Highway Carriers' Act, from the rates specified by Decision No. 28625, as amended by Decision No. 28836, in Case No. 4087. This application was filed with the Commission on January 14, 1938, and the relief sought was for the job referred to herein.

Counsel for respondent stipulated to the facts as heretofore set forth admitting that respondent had agreed to perform this work for less than the minimum rates prescribed by the Commission and applicable in the particular instance.

In his defense respondent referred to the Entremont Case now pending before the Supreme Court of this state and, also, to certain correspondence consisting of letters dated October 15, 1937, December 16, 1937 and December 17, 1937, between the Commission and respondent, which respondent contends should be deemed a mitigating circumstance in the instant proceeding.

Until it has been judicially determined that the Commission lacks authority to regulate operations of the character here involved, it rests under the duty of enforcing the highway carrier acts. In this proceeding no showing has been made tending in any way to modify our previously expressed opinion that such operations fall within our jurisdiction.

In connection with the correspondence referred to, it may be said that any mitigating circumstance which may possibly have existed disappeared completely with the receipt by respondent of the Commission's letter of December 16, 1937, wherein this operator was definitely advised that:

"Under date of October 15th we addressed a letter to you in reply to yours of September 29th, in which it was stated that the Commission deemed it inappropriate to undertake action with reference to highway carriers performing service for the Division of Highways at rates less than the minimum established by the Commission without special authority therefor, pending final determination of the case of Entremont vs. Railroad Commission.

"As it appears this case will not be finally decided for some time, it has been impossible to adhere to the policy indicated in that letter. Shortly after it was written, a rumor arose that no enforcement of the Highway Carriers' Act whatever was to be undertaken by the Commission. Considerable publicity thereupon was given the following statement of the Director of Transportation:

"The rumor is entirely false. On the contrary, the Commission is now enlarging its staff of inspectors and attorneys to wage a vigorous campaign of enforcement, and will use

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(2) Entremont v. Railroad Commission, S.F.No.15,772, now under submission.

all its powers and resources to the fullest extent possible to enforce the transportation laws and the Commission's orders. No infractions of law or of the Commission's orders will be condoned.'

"The same information was given you more recently in person and with specific reference to service for the Division of Highways by Inspector E. H. Griffiths and Scott Elder, Assistant Attorney for the Commission. This letter is in further confirmation of that information and to make clear to you the present attitude of the Commission on the subject, lest you should act to the contrary in mistaken reliance upon the letter of October 15th.

"You will understand by this that the Commission feels itself obliged to, and will, insist upon strict compliance with all provisions of the Highway Carriers' Act, the City Carriers' Act and its orders issued pursuant thereto, in connection with all transportation service, including that performed for state, county, municipal and federal governments until directed otherwise by competent authority."

We cannot agree, in view of the lapse of time between the date of this letter and the signing and approval of Service Agreement No. 33401, that respondent was justified in relying on any earlier correspondence. Rather, it appears that, even after being in full possession of the facts covering the Commission's policy in these matters, respondent entered into an agreement to transport property by dump truck at less than the minimum rates prescribed by this Commission. This fact seems further established by the filing of Application No. 21711, on January 14, 1938, three days after the commencement of actual work by respondent.

Based on the record herein and after duly considering each and every circumstance in connection therewith, we are of the opinion that G. J. Fraties, doing business as Rock & Gravel Trucking Company, has violated Decision No. 28625 as amended by Decision No. 28836 by reason of performing work under Service Agreement No. 33401 at a rate or charge less than the minimum rates established by said decision for dump truck operation of the kind and character heretofore described and that, pursuant to the authority vested in the

Commission by Section 14 $\frac{1}{2}$  of the Highway Carriers' Act, Chapter 223, Statutes of 1935, as amended, his radial highway common carrier permit No. 1-1055 should be suspended for a period of thirty days from the effective date of this order.

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. 571.

It should also be noted that under Section 14 of the Highway Carriers' Act (Chapter 223, as amended), 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 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 as a fact that respondent George J. Fraties, doing business as Rock & Gravel Trucking Company, did on the 11th day of January, 1938, and continuously thereafter to, and including, January 29, 1938, engage in the transportation of excavated material on the Feather River Highway approximately eighteen

miles east of Oroville pursuant to and in accordance with Service Agreement No. 33401, executed by said respondent and District No. III, Division of Highways, Department of Public Works, of the State of California, at rates or charges which were less than the minimum rates prescribed by the Railroad Commission in its Decision No. 28625, as amended by Decision No. 28836, in Case No. 4087, in violation of the provisions of said Decision No. 28625, as amended by Decision No. 28836, and of the Highway Carriers' Act, and particularly, Sections 2 and 10 thereof.

IT IS HEREBY ORDERED, by reason of such offense,

(1) That respondent George J. Fraties shall immediately cease and desist and thereafter abstain from charging, demanding, collecting or receiving any charges for the transportation of the property described in Decision No. 28625, as amended by Decision No. 28836, Case No. 4087, less than those prescribed in said decisions, unless and until proper relief has been sought for and obtained pursuant to Section 11 of the Highway Carriers' Act.

(2) That radial highway common carrier permit No. 1-1055 issued to George J. Fraties, doing business as Rock & Gravel Trucking Company, be and it hereby is suspended for a period of thirty (30) days; that said thirty (30) day period of suspension shall commence on the 27<sup>th</sup> day of July and continue until the 26<sup>th</sup> day of August, 1938, both dates inclusive, if service of this order shall have been made upon respondent George J. Fraties more than twenty (20) days prior to the 27<sup>th</sup> day of July, 1938, otherwise, said thirty (30) day period of suspension shall commence on the effective date of this order and continue for a period of thirty (30) days thereafter.

(3) That during said period of suspension respondent shall desist and abstain from engaging in transportation of property for compensation or hire as a business over any public highway in this State, not exclusively within the limits of any incorporated city or city and county, by means of a motor vehicle or motor vehicles, and from performing any other service as a radial highway common carrier as defined in said Highway Carriers' Act.

The Secretary of the Railroad Commission is hereby authorized and directed to cause service of a certified copy of this order to be made upon respondent George J. Fraties.

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 27<sup>th</sup> day of

June, 1938.

Walter A. Mason  
Leon C. Whelan  
George D. Miller  
Robert A. Bunker  
Ray C. Riley  
COMMISSIONERS.