

Decision No. 31069

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 MARTIN MORRISON, doing  
business as PICKWICK PURCHASING  
AGENCY.

Case No. 4303

**ORIGINAL**

Kendall & Howell, by William A. Howell, Jr.,  
for Respondent.

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by the Commission, on its own motion, into the operations, rates, charges, classifications, contracts, and practices of respondent Martin Morrison, doing business as Pickwick Purchasing Agency, to determine whether his operations were and are in violation of the Highway Carriers' Act (Stats. 1935, Chap. 223), or of the Commission's decisions, orders, rules, or regulations, or any of them, or were or are otherwise unlawful. More specifically, the proceeding was instituted to determine whether respondent, in the conduct of his business:

(1) Transported property at rates less than the minimum rates prescribed and established by the Railroad Commission in and by virtue of Decision No. 28761 in Case 4088, Part A, as modified;

and

(2) Transported property without having issued to the shipper or shippers a freight bill or freight bills, in the form prescribed and established by the Railroad Commission in and by virtue of said Decision No. 28761, Appendix "E" thereof.

A public hearing was held before Examiner Jas. E. McCaffrey at Bakersfield, on April 26, 1938, at which time respondent appeared and was represented by counsel. Evidence was received, the matter submitted, and it is now ready for decision. Testimony was received from public witnesses, from an inspector of the Railroad Commission, and from the respondent. The facts are virtually undisputed.

The Commission's records, more specifically Permit File No. 19-7280, which was introduced in evidence by reference, indicate that respondent holds a contract carrier's permit, authorizing him to engage in business under the name and style of Pickwick Purchasing Agency, 1822 South Hope Street, Los Angeles, California.

On behalf of respondent, motions were made to dismiss both as to the matter of rates and as to freight bills. Relative to the former, the evidence adduced at the hearing was not such as to definitely indicate the existence of rate violations. Some witnesses testified, as did respondent, that the rates of respondent were higher than those of certificated carriers or the minimum rates prescribed by the Railroad Commission. Thus, witness C. E. Burke, of Chenslor & Lyon Company at Bakersfield, testified that the freight charges paid to respondent were higher than rates paid to other carriers who were certificated, and respondent testified that he had on various occasions tested the legality of his flat charges against the rates established by the Railroad Commission, and found that the aggregate for individual shippers over a period of a month (flat charge period), when the correct amount was charged

for each shipment, in accordance with the Commission's decisions, amounted to a figure less than the flat charges assessed against the respective shippers. The general tenor of the testimony of the shipper witnesses was that the flat charge per month was not cheaper than that charged for like service by other carriers, including certificated carriers. Witnesses voluntarily stressed the reason for the use of the service offered by respondent to be convenience, service, speed, purchasing knowledge, and reliability. This could account for the utilization of respondent's service at a higher cost.

All of the shipper witnesses testified that they kept no records of the weight of the commodities in question, and that any documents given to them by respondent were destroyed. Since there was no definite testimony as to the weight, it is clear no rate violation was proved, therefore the motion to dismiss relative to rates should be granted.

Conceding that the flat charge paid to respondent may be more than the amount which would be paid if the proper rates were assessed on each individual shipment, yet under the factual set-up there might nevertheless well be rate violations, due to the fact that respondent's charges represent not only charges for transportation of property but also for the purchasing service rendered in Los Angeles. The amount that should be allocated to this service should not be negligible. Respondent testified that he maintained an office in Los Angeles, equipped with teletype facilities, phone, and in which he hired a girl as a part-time employee, at the following costs: rent, \$30.00 per month; teletype, \$10.00 per month; telephone, \$80.00 to \$100.00 per month; office girl, \$10.00 per week. Respondent further testified that he bore all these expenses alone

and was not reimbursed directly from the shippers. In addition to this, respondent's time devoted to the purchasing service rendered in Los Angeles is worth a substantial amount. Indeed, in the minds of some shippers, this service is paramount. They have only to instruct respondent what to purchase or to give him a sample part, and where or how he purchases it is left to his own judgment and knowledge. In this respect, some shipper witnesses testified that they did not themselves know where to obtain the parts.

From the foregoing discussion, it is apparent respondent should maintain current books and records clearly showing the following:

(1) The proper and correct amount to be assessed against each shipper for the transportation phase of the service. . This amount should be equal to or greater than the aggregate of charges upon each of the shipments transported during the month (flat charge period), each shipment being rated separately according to the minimum rates established by the Commission.

(2) The proper and correct amount which must be apportioned against each shipper for the cost to respondent of the rent, teletype service, phone, part-time office help, and the reasonable value of the respondent's or assistant's time in making the purchases at Los Angeles.

Directing attention to the type of freight documents used by respondent, the record is clear that for the most part forms substantially the same as that set forth in Appendix "E" of Decision No. 28761 were not used, but even when the correct form was used, in most instances it was not filled out with regard to weight, rate, charges, or commodity. Respondent testified that from the time he started his business in March, 1937, until about January 1, 1938, he used a form such as the yellow form in Exhibit 7, which is a

simple delivery or order tag not substantially like the form prescribed by the Railroad Commission; that for a short time after January 1, 1938, he used a form such as Exhibit 11, which is a uniform straight bill of lading and which was not filled out substantially as required by Decision No. 28761; that he then used the other type of form in Exhibit 7, which is substantially the same as that prescribed by said decision; that thereafter he again resorted to the use of the yellow type in Exhibit 7, and that at the present time he is using the correct type of billing.

The record shows that a letter from the Commission (Exhibit 10) dated July 31, 1937, was sent to the respondent. This letter directs attention to Decision No. 28761, as modified by Decisions Nos. 28831, 28888, and 29003, and to the requirement of the order in Decision No. 28761, which requires radial and contract carriers to issue for each shipment a statement similar to that set forth in Appendix "E" of Decision No. 28761. The permit file heretofore referred to as having been introduced into the record by reference contains a written admission, signed by respondent Morrison, acknowledging due service of said Decisions Nos. 28761, 28831, 29003 in Case 4088-A on August 17, 1937. An inspector of the Railroad Commission testified that he had served respondent with said decisions, also that he had spoken to Morrison on various occasions relative to rates and freight bills and other transportation matters. Respondent testified that he was under the impression he could use the type of freight bill (yellow form in Exhibit 7, incorrect type), of which he had a supply until he ran out or obtained the proper type.

It is clear that defendant has violated Decision No. 28761 by his failure to keep and issue proper freight bills, and by his failure properly to complete the proper type of bill which he is now using. It further appeared from respondent's testimony and the manner in which he testified, that he is desirous of bringing his

operations into entire accord with this Commission's rules, regulations, and decisions, etc. Though there are mitigating circumstances in this case and there was no planned scheme or intent to evade the act, still the respondent is not altogether with clean hands, and it is therefore concluded that a suspension of his permit for thirty (30) days is proper.

An order of the Commission directing the suspension of operation is in its effect 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 Co. v. Keller, 33 C.R.C. 371.

It should also be noted that under Section 12 of the Highway Carriers' Act (Chap. 225, Stats. 1935, as amended) and Section 15 of the City Carriers' Act (Chap. 312, Stats. 1935), 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

A 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 that respondent MARTIN MORRISON, doing business as PICKWICK PURCHASING AGENCY, did from March, 1937 to April 25, 1938, engage in the transportation of automotive parts for compensation as a business over the public highways in this State between Los Angeles, on the one hand, and Bakersfield, Taft, and territory proximate thereto, in Kern County, on the other hand, by means of a motor vehicle, as a highway carrier other than a highway common carrier, and from March, 1937 to on or about January 1, 1938, and from April 1, 1938 to April 8, 1938, has failed to issue to the shipper for each shipment received for transportation a freight bill in substantially the form set forth in Appendix "E", attached to and made a part of Decision No. 28761, or to retain or preserve a copy of any such freight bill for a period of three (3) years, or at all, in violation of said Decision No. 28761 and of the Highway Carriers' Act, and that at such times since January 1, 1938, as respondent issued freight bills in substantially the same form as said Appendix "E" in said Decision No. 28761, said freight bills were not substantially completed or filled out, in violation of said Decision No. 28761 and of said Highway Carriers' Act, and that at all of the times herein mentioned respondent has failed to keep adequate and sufficient records determining the rate for said transportation, in violation of said decision and said Act.

IT IS HEREBY ORDERED, by reason of said offense set forth in paragraph (2) of this order that said respondent shall immediately

cease and desist and thereafter restrain from failing to observe decisions, and issue freight bills or shipping orders in substantially the same form as that prescribed in said Decision No. 28761, Appendix "E" thereof.

IT IS HEREBY FURTHER ORDERED that Contract Carrier Permit No. 19-7280, issued to MARTIN MORRISON, doing business as PICKWICK PURCHASING AGENCY, be and it is hereby suspended for a period of thirty (30) days; that said thirty days' period of suspension shall commence to run on the effective date of this order, and continue for a period of thirty (30) days thereafter.

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 30<sup>th</sup> day of June, 1938.

William H. ...  
Leon ...  
Francis ...  
Ray ...  
Ray L. ...  
Commissioners