

Decision No. 21195

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)
RUTH THOMAS and D. G. VALASCO,)
individually and as co-partners doing)
business under the firm name and style)
of RAPID TRANSFER VAN & STORAGE.)

Case No. 4332

ORIGINAL

ERNEST SPAGNOLI, ESQ., for Respondents

J. W. BARKER, for San Francisco Movers, Inc.

RILEY, COMMISSIONER:

O P I N I O N

This proceeding was instituted by the Railroad Commission, on its own motion, to determine whether respondents RUTH THOMAS and D. G. VALASCO (otherwise known as D. T. Valasco), doing business as RAPID TRANSFER VAN & STORAGE, and holding City Carrier and Radial Highway Common Carrier permits from the Commission, had been engaged in the transportation of household goods and furniture, as a city carrier, or as a highway carrier other than a highway common carrier, at rates less than the minimum rates for such transportation established by order of the Railroad Commission in Decision No. 30482 (amending Decision No. 29891) in Cases Nos. 4086 and 4099, in violation of the Highway Carriers' Act or City Carriers' Act, pursuant to which acts the above decisions were issued.

A public hearing was held at San Francisco on June 22, 1938, at which both respondent co-partners appeared and testified, and were represented by counsel. Evidence was received, and the matter having been duly submitted, it is now ready for decision. The facts, as developed at the hearing, may be summarized briefly as follows:

On or about March 16, 1938, respondents undertook to move certain furniture and household goods for a family named Kane, from 180 Baywood Drive to 1695 Twelfth Avenue, in San Francisco. Mrs. Kane testified that respondents estimated the charges for the move at \$18.00, but when furniture, in addition to that first indicated by her, was included, respondents demanded \$30.00. After some discussion about this figure between Mrs. Kane and respondent Valasco, who drove the van employed in the move, it seems that the sum of \$27.00 was finally agreed upon, and a receipt for this amount, introduced in evidence, was given to Mrs. Kane after some of the furniture involved had been held by respondents, pending the payment of the balance of the charges.

J. W. Barker, a witness called by the Commission, testified that he and an inspector employed by the Commission watched the arrival of respondents on the job, and the loading and unloading of the furniture, and checked the time involved in making the move. He stated that a large van, in excess of ninety square feet loading capacity, and two men, arrived in front of 180 Baywood Drive at 8:31 A.M. of the day of the move, and finished loading at 11:45 A.M.; that 33 minutes was consumed in driving from the former address to 1695 Twelfth Avenue; that the men began unloading at 12:23 P.M. and finished unloading at 2:30 P.M., thus making a total time for the move of 6 hours 27 minutes (doubling the 33 minutes'

driving time, as provided by Rule 30(b), Section 1, of Decision No. 29891 in Cases Nos. 4086 and 4099). Incidentally, no dispute exists regarding the time upon which respondents based their charges, nor as to the size of the van employed, for, in response to questions propounded to respondent Valasco, on cross-examination by counsel for the Commission, he stated that he based his charges for the move on an estimated time of $6\frac{1}{2}$ hours, and that the van used had a loading area of about 110 square feet.

By Decision No. 29891, as amended by Decision No. 30482 in Cases 4086 and 4099, both of which decisions were incorporated in the record by reference, the rate in effect during the time here involved for driver and helper, using a van having a loading area in excess of 90 square feet for moving uncrated property in Territory "A" (Rule 20(c), Section 1, Decision No. 29891), is \$4.50 per hour; $6\frac{1}{2}$ hours at \$4.50 per hour is \$29.25. The undisputed testimony shows that respondents charged and received not more than \$27.00 for this move, or \$2.25 less than the lawful rate.

In addition to the foregoing, there is evidence in the record, uncontradicted by respondents, that the form of freight bill prescribed by Appendix "B" to Decision No. 29891, above referred to, was not used by respondents either in the instance here under consideration or in other operations of this carrier, as shown by his books, which are in evidence, and by the testimony of the respondents themselves.

Inspector Burbank, who testified for the Commission, stated that his inspection of respondents' books was rendered most difficult by reason of the keeping of improper and inconsistent records relating to their operations.

The evidence further shows, without dispute, that respondents were served with a copy of the Order Instituting Investigation in Cases 4086 and 4099, and with copies of each of the decisions herein referred to.

It is conclusively shown by the record that respondents Ruth Thomas and D. G. Valasco, doing business as Rapid Transfer Van & Storage, have charged and received a sum computed at a rate less than the minimum hourly rates prescribed by the Railroad Commission in its Decision No. 30482, and have failed to use the form of shipping order and freight bill prescribed by said Commission in Appendix "B" of its Decision No. 29891, in violation of said decisions and the Highway Carriers' and City Carriers' Acts, and as a penalty therefor the City Carrier Permit No. 38-1573 of respondents, under which they are now operating, shall be suspended for a period of five (5) 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 power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a person 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 13 of the City Carriers' Act (Stats. 1935, Chap. 312, 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

A public hearing in this proceeding having been held, evidence having been received, the matter having been duly submitted, and the Commission now being fully advised:

IT IS FOUND AS A FACT that respondents Ruth Thomas and D. G. Valasco did, on the 16th day of March, 1938, engage in the transportation of household goods and furniture, as a carrier, as defined by Section 1(f) of the City Carriers' Act, as amended, over the public highways in the City and County of San Francisco, State of California, at a rate less than the minimum rate prescribed by the Railroad Commission in and by its Decision No. 30482, and in violation of said decision and the City Carriers' Act (Stats. 1935, Chap. 312, as amended).

IT IS FURTHER FOUND AS A FACT that respondents Ruth Thomas and D. G. Valasco did not, on March 16, 1938, issue to the shipper for the shipment received for transportation by said respondents on said date, a freight bill in substantially the form set forth in Appendix "B" of Decision No. 29891, as prescribed by said Railroad Commission therein, in violation of said decision.

and of said City Carriers' Act, as amended.

IT IS ORDERED, by reason of such offenses:

1. That respondents Ruth Thomas and D. G. Valasco, individually and as co-partners doing business under the firm name and style of Rapid Transfer Van & Storage, shall immediately cease and desist, and hereafter abstain from charging, demanding, collecting, or receiving any compensation for the transportation of any property described in Decision No. 29891 and/or Decision No. 30482 in Cases Nos. 4086 and 4099, when the rate for such transportation is computed at a rate less than those proscribed in and by said decisions, unless and until proper relief therefrom has been sought and obtained, pursuant to Section 10 of the City Carriers' Act (Stats. 1935, Chap. 312, as amended).

2. That said respondents shall immediately cease and desist, and hereafter abstain from issuing to any shipper, for each and any shipment received by said respondents for transportation, except such shipments as are described in Rule 10(b) (1) of Section 1 of Appendix "A" to said Decision No. 29891, a freight bill not substantially in the form set forth in Appendix "B" to said Decision No. 29891.

3. That City Carrier Permit No. 38-1573, heretofore issued to and now held by said respondents Ruth Thomas and D. G. Valasco be and it is hereby suspended for a period of five (5) consecutive days beginning on the 1st day of August, 1938, and ending on the 6th day of August, 1938, if service of this order shall have been made upon either of said respondents more than twenty (20) days prior to August 1, 1938; otherwise, the said five-day period of suspension shall begin on the effective date of this order.

4. That during the period of suspension herein set forth respondents Ruth Thomas and D. G. Valasco, and each of them, as individuals and as co-partners doing business under the firm name and style of Rapid Transfer Van & Storage, shall cease and desist from engaging in the transportation of property for compensation or hire over any public highway in the City and County of San Francisco, State of California, by means of a motor vehicle or motor vehicles, as a carrier, as such term is defined in Section 1(f) of the City Carriers' Act (Stats. 1935, Chap. 312, as amended).

IT IS FURTHER ORDERED that the Secretary of the Railroad Commission shall cause a certified copy of this decision to be served upon each of said respondents, Ruth Thomas and D. G. Valasco.

The effective date of this order shall be twenty (20) days after date of service upon respondents, or either of them.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of

July 1938.

Malcolm Mac
Leon A. Whalley
Frank R. Lister

Commissioners.