

Decision No. 31184

ORIGINAL

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 of)
C. W. CARLSTROM, doing business as Ace Van)
& Storage Co.)

Case No. 4286

In the Matter of the Application of C. W.)
CARLSTROM, D.B.A. Ace Van & Storage Co., for)
authority to charge less than minimum rates.)

Application
No. 21719

In the Matter of the Application of C. W.)
CARLSTROM, D.B.A. Ace Van & Storage Co.,)
for authority to charge less than minimum)
rates.)

Application
No. 21496

In the Matter of the Application of C. W.)
CARLSTROM, D.B.A. Ace Van & Storage Co.,)
for authority to charge less than minimum)
rates.)

Application
No. 21816

Phil Jacobson, for respondent and applicant
C. W. Carlstrom.
Harold W. Dill, for Truck & Warehousemen's
Association of San Diego and Imperial
Counties, interested party.
C. C. Temple and Jackson W. Kendall, for
Bekins Van & Storage Company,
interested party.
Jackson W. Kendall for Bekins Van Lines, Inc.,
and W. L. Carpenter, doing business as
Argonne Van Lines, interested parties.
Ellis Brown, for Triangle Transfer & Storage
Co., interested party.

BY THE COMMISSION:

O P I N I O N

The above entitled proceedings involve the operations, rates, charges, contracts and practices of C. W. Carlstrom, an individual doing business as Ace Van & Storage Company, a radial highway common carrier (Permit 37-82), highway contract carrier (Permit 37-83) and city carrier (Permit 37-84). Case No. 4286 is an investigation instituted by the Commission on its own motion for the purpose of determining whether or

not said C. W. Carlstrom had transported household goods between points in California, and particularly from Coronado to Vallejo, at rates less than the minimum rates established for such transportation by Decision No. 29891 in Case No. 4086 (40 C.R.C. 533), contrary to the provisions of the Highway Carriers' Act. Applications Nos. 21496, 21719 and 21816 are applications of said carrier for authority under Section 10 of the City Carriers' Act and Section 11 of the Highway Carriers' Act to transport household goods (a) between San Diego and Redwood City, (b) between Coronado and Vallejo and (c) within San Diego and adjacent territory and within Long Beach and adjacent territory, respectively, at rates less than the minimum rates established by Decision No. 29891, supra. The term "household goods" as used throughout this opinion will be deemed to mean used property, viz., household goods, personal effects, furniture, musical instruments, radios, office and store fixtures and equipment.

A public hearing in each matter was held at San Diego before Examiner E. S. Williams. C. W. Carlstrom appeared in person and was represented by counsel. Each proceeding was heard on a separate record but all will be disposed of in this decision. Applicant requested at the hearing that Application No. 21816 be dismissed and that matter will not be discussed further.

Case No. 4286 was submitted upon an agreed statement of facts, which may be summarized briefly as follows: that C. W. Carlstrom, doing business as Ace Van & Storage Company, was and is a party respondent to Case No. 4086 and had due notice of Decision No. 29891 rendered therein, establishing minimum rates for the transportation of household goods by radial highway common carriers, highway contract carriers and city carriers; that on January 13, 1938, the U. S. Naval Supply Department, 11th Naval District, requested bids for moving certain household goods (the property of Lieutenant A. D. Barnes) by motor vehicle from Coronado to Vallejo; that

several carriers bid for the job but that respondent's bid of \$3.40 per one hundred pounds was low and the job was awarded to and accepted by him.

The agreed statement of facts shows further that on January 17, 1938, pursuant to the aforementioned contract, respondent transported seven thousand two hundred forty pounds of household goods by motor vehicle over the public highways of the State of California from Coronado to Vallejo; that the property so transported moved on a so-called government bill of lading; that it was partly crated and partly uncrated; that the crated portion was crated by respondent at his own expense to protect the property from damage in transit; that when the work was completed respondent charged \$3.40 per one hundred pounds for the transportation so performed, the total transportation charge being \$246.16; and that this amount was charged to and was paid by the U. S. Naval Supply Department, 11th Naval District. According to the stipulated facts, on January 14, 1938, one day after his bid had been accepted, respondent mailed an application to the Commission requesting authority to perform the aforesaid services at rates less than the minimum rate established by the Commission, to-wit, at a rate of \$3.40 per one hundred pounds. This application (No. 21719) was not received by the Commission until January 17, 1938, upon which day the work involved in the application was being performed, and the application has not been acted upon heretofore by the Commission.

The minimum rate established by Decision No. 29891, supra, for the transportation service hereinbefore described was \$3.76 per one hundred pounds, which on the weight of seven thousand two hundred forty pounds transported would have produced a total charge of \$272.22. It is clear that respondent's charge for such service was \$26.06 less than the minimum rate required to be charged, and that respondent has violated Sections 10 and

(1)
12 (a) of the Highway Carriers' Act.

Section 11 of the Highway Carriers' Act does not authorize the Commission to grant retroactive relief. This point was directly in issue in Application of J. A. Clark Draying Co. Decision No. 29105 in Application No. 20629, in which the Commission said:

"Applicants ask, however, that the authority sought be granted as of June 1, 1936, or, in the event the Commission is of the opinion that it is without authority to grant such relief, that it be made effective from the time the application was filed. Under what provision of law this relief is sought, the record does not show. This Commission is authorized to award reparation in cases where the applicable charges of carriers subject to the Public Utilities Act are found to be unreasonable, excessive or discriminatory by virtue of Section 71 of that act. No such provision is contained, however, in the Highway Carriers' Act under which this proceeding is brought. The request for retroactive relief will be denied."

This interpretation was reaffirmed in Application of Triangle Transfer & Storage Company (Decision No. 29974 in Application No. 21275) and in Applications of C. & R. Transfer Company (Decision No. 29992 in Applications Nos. 21309 and 21310). Respondent, therefore, has not improved his position by the filing of Application No. 21719 and that application will be dismissed.

(1)

Section 10 of the Highway Carriers' Act provides in part:
"It shall be unlawful for any such highway carrier to charge or collect any lesser rate than the minimum rate or greater rate than the maximum rate established by the Commission under this section."

Section 12 (a) provides:

"No highway carrier, other than a highway common carrier, shall charge, demand, collect or receive for the transportation of property, or for any service in connection therewith, rates or charges less than the minimum rates and charges or greater than the maximum rates and charges applicable to such transportation established or approved by the Railroad Commission; nor shall any such carrier directly or indirectly pay any commission or refund or remit in any manner or by any device any portion of the rates or charges so specified, except upon authority of the commission."

Counsel for C. W. Carlstrom stipulated that Application No. 21496 involved a factual situation similar to that existing in Application No. 21719, that is, the transportation sought to be performed at less than the minimum rates had been performed prior to the filing of the application. It is evident that similar reasoning applies and that this application should be similarly dismissed.

Upon consideration of the record, therefore, the Commission is of the opinion and finds:

1. That respondent C. W. Carlstrom, doing business as Ace Van & Storage Company, on the 17th day of January, 1938 engaged in the transportation of seven thousand two hundred forty pounds of used furniture, household goods and personal effects, the property of Lieutenant A. D. Barnes, as a business, over the public highways of the State of California, for compensation, from Coronado, California, to Vallejo, California, by means of a motor vehicle, as a highway carrier other than a highway common carrier; that the compensation received for such services was at the rate of \$3.40 per one hundred pounds, or a total compensation of \$246.16; that the minimum rate required to be charged by Decision No. 29891, supra, for such service was \$3.76 per one hundred pounds, or a total charge of \$272.22.

2. That Application No. 21719 was filed with the Commission on January 17, 1938, on which day the service which respondent sought by said application to perform at less than the minimum rate established by Decision No. 29891, supra, was already being performed and has since been completed; and that said application should therefore be dismissed.

3. That at the time Application No. 21496 was filed with the Commission, the services which respondent sought by said application to perform at less than the minimum rate established by Decision No. 29891, supra, had already been performed and that said application should therefore be dismissed.

4. That Application No. 21816 should be dismissed at applicant's request.

O R D E R

These matters having been duly heard and submitted, and basing this order on the findings of fact contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that respondent C. W. Carlstrom, doing business as Ace Van & Storage Company, shall immediately cease and desist and thereafter abstain from charging, demanding, collecting or receiving any charge for the transportation of property of the classes described in Decision No. 29891, in Case No. 4086, at rates less than the minimum rates established in said decision or in any subsequent decision of the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that radial highway common carrier Permit No. 37-82 and contract carrier Permit No. 37-83 issued to respondent C. W. Carlstrom, doing business as Ace Van & Storage Company, shall be and each of them is hereby suspended for a period of ten (10) days; and that said ten (10) day period of suspension shall commence on the effective date of this order and continue for a period of ten (10) days thereafter.

IT IS HEREBY FURTHER ORDERED that during said period of suspension, respondent shall cease, desist and refrain from engaging in the transportation of property for hire, as a business, over any public highway in this state, and from performing any service as a radial highway common carrier, as defined in the Highway Carriers' Act, or as a highway contract carrier, as defined in the Highway Carriers' Act.

IT IS HEREBY FURTHER ORDERED that Applications Nos. 21496, 21719 and 21816 be and they are hereby dismissed.

The Secretary of the Commission is hereby directed to cause personal service of a certified copy of this decision to be made upon respondent C. W. Carlstrom, doing business as Ace Van & Storage Co.

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 8th day of August, 1938.

R. B. Crawford
Leon J. Whittell
Frank D. Sullivan
W. L. Carey

COMMISSIONERS