

Decision No. 31274

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 thereof,
of SAM WEINSTEIN, an individual, doing
business under the fictitious name and
style of WHITE LINE TRANSFER COMPANY

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) Case No. 4353
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ORIGINAL

Sam Weinstein, in propria persona.

BY THE COMMISSION:

O P I N I O N

This investigation was instituted by the Commission to determine whether or not respondent has been transporting used furniture and household goods by motor truck between points within the City and County of San Francisco as a city carrier at less than the minimum rates established for such transportation by the Commission in its Decision No. 30482, Case No. 4086, and for the further purpose of determining whether or not respondent has been failing to issue and preserve freight bills in the manner and form required by Decision No. 29891, Case No. 4086. Public hearing was held in San Francisco before Examiner Paul, at which respondent appeared in his own behalf. The matter was submitted and is now ready for decision.

Respondent has been and now is engaged in the business of transporting household effects by motor truck between points located within the City and County of San Francisco. This operation is conducted under authority of City Carrier Permit No. 38-174 issued by this Commission on October 23, 1935.

Glenn C. Burbank, an inspector for the Commission, testified that subsequent to May 7, 1938 he had requested respondent to exhibit to him the freight bills required to be kept, under the provisions of this Commission's orders in Decisions Nos. 29891, effective September 6, 1937, and 30482, effective February 2, 1938. This, respondent was unable to do, and he informed Burbank that he had not been keeping such records. The only available record was a note book in which there was a chronological entry of sums received.

It thus appears that respondent has made no effort to comply with the Commission's requirement concerning the preservation of freight bills. He appears to be equally lax in observance of the order requiring that they be issued. Mrs. J. W. David, for whom respondent performed the services hereinafter described, testified that no freight bill of any kind whatsoever was issued to her.

We next give attention to the evidence as it concerns respondent's failure to observe the minimum rates established by the Commission in its said Decision No. 30482.

J. W. Barker, Secretary of San Francisco Movers, Inc., testified, in substance, that on May 8, 1938, he observed respondent transport used furniture and personal effects in a motor vehicle, having a loading area of less than 90 square feet, from 540 Van Ness Avenue and 449 O'Farrell Street to 795 Geary Street. Two men, in addition to the driver, were employed on the job; the minimum time required to complete this work was five hours and 47 minutes.

Mrs. J. W. David testified that respondent had performed the service hereinbefore described for her and that she had paid him the sum of \$12.00 therefor.

The minimum rate for such transportation service performed with a van less than 90 square feet loading area and with the services of a driver and two helpers, established by said Decision No. 30482, is \$5.25 per hour; the minimum lawful charge for respondent's service to Mrs. David, based upon this rate, is the sum of \$30.18. Therefore, respondent's said charge of \$12.00 was \$18.18 under the prescribed lawful minimum. The records of the Commission show that respondent was regularly served with a certified copy of Decision No. 29891 and Decision No. 30482 on July 20, 1937 and January 13, 1938, respectively.

The record establishes therefore that respondent has not only ignored the requirement respecting the issuance and keeping of freight bills but has also failed to observe the minimum rates. He should be ordered to cease and desist such violations and his permit be suspended.

An order of the Commission directing the suspension of an operation and practice 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 Co. v. Keller, 33 C.R.C. 371.)

It should also be noted that under Section 12 of the Highway Carriers' Act (Chapter 223, Statutes of 1935, 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.

Respondent is cautioned not to accept transportation business for reference to other carriers upon a commission basis while his permit is in suspense, unless he shall first obtain the license required by the Motor Transportation Broker Act (Stats. 1935, Chap. 705).. It is to be noted that, under Section 16 of said Motor Transportation Broker Act, one who engages in business as a transportation broker without the necessary authority is subject to a fine of not to exceed \$500.00, or to imprisonment in the county jail for a term not to exceed six months.

O R D E R.

Public hearing having been held in the above entitled proceeding, evidence having been received, and the matter submitted, and the Commission being fully advised,

IT IS HEREBY FOUND:

That respondent, Sam Weinstein, did on May 8, 1938, render the transportation service, as a carrier, described in the preceding opinion, at a rate less than the minimum rate established therefor under and by virtue of Decision No. 30482 in Case No. 4086, and without issuing a freight bill therefor, or preserving a copy thereof, as required by Decision No. 29891 in Case No. 4086.

IT IS HEREBY ORDERED that respondent, Sam Weinstein, shall immediately cease, desist and hereafter abstain from engaging in the transportation of property of the classes described in Decision No. 29891 and Decision No. 30482, Case No. 4086, as a carrier:

(a) at rates and charges less than the minimum rates and charges established by said Decision No. 30482;

(b) without issuing freight bills in substantially the form and manner required by said Decision No. 29891;

(c) without preserving copies of freight bills in the manner, form, and for the period of time required by said Decision No. 29891.

IT IS HEREBY FURTHER ORDERED that, by reason of said offense, City Carrier Permit No. 33-174 issued to respondent, Sam Weinstein, shall be and it is hereby suspended for a period of five (5) days, which said five-day period shall commence on the effective date of this order and continue for a period of five (5) days thereafter.

IT IS HEREBY FURTHER ORDERED that during said five-day period of suspension respondent shall entirely cease, desist and refrain from engaging in the transportation of property for hire as a "carrier", as that term is defined in Section 1 (f) of the City Carriers' Act; and the Secretary of the Railroad Commission is hereby authorized and directed to cause service of this order to be made upon said respondent.

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 19th day of September, 1938.

Ray L. Kelly
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COMMISSIONERS