

Decision No. 31356

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, con-)
tracts, and practices of WILLIAM S. L.) Case No. 4282
MAIN, doing business as BLACK AND)
WHITE TRANSFER.)

HARRY POLGLASE for respondent

JACKSON W. KENDALL and J. C. DONELY
for United Independent Van & Ware-
housemen's Association of America, Inc.

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by the Commission on its own motion to determine whether respondent William S. L. Main, doing business as Black and White Transfer, as a highway carrier other than a highway common carrier, charged or collected any rates less than the minimum rates prescribed by the Railroad Commission in Decision No. 29891, in Case No. 4086, for the transportation of household goods and personal effects, in violation of the Highway Carriers' Act (Chap. 223, Stats. 1935 as amended) pursuant to which the above mentioned decision was issued. Public hearings were held before Examiner Elder at San Francisco on

May 14th and June 3, 1938, and before Examiner Paul at San Francisco on July 6, 1958. On the last mentioned date, counsel for respondent appeared with one Henry B. Lewis, an employee of respondent, who participated in the hearing and offered evidence. It was stipulated by respondent's counsel that respondent, though not present at any of the hearings, had been properly notified of all hearings held in this proceeding.

All the evidence related to service performed October 31st and November 1st, 1937, in transporting a shipment of used, uncrated, personal effects and office equipment from Inglewood to 5729 Shafter Avenue, Oakland, for a Dr. C. M. Graham.

Dr. Graham testified that he made all arrangements for the move with Henry B. Lewis, at the office of respondent in Inglewood. The property moved consisted of trunks and boxes containing personal effects belonging to Dr. and Mrs. Graham, together with office and surgical equipment. Lewis arrived in Oakland on November 1, 1937, and unloaded the property into the doctor's residence. A receipt, signed by Henry B. Lewis, bearing the name "Black & White Transfer & Storage," marked "paid November 20, 1937" is in evidence. This receipt is to the effect that about 1600 pounds was moved in twenty-seven hours driving time by one man at a charge of \$67.50, with an additional charge of \$9.00 for loading and unloading at \$3.00 per hour, making a total charge of \$76.50. Dr. Graham stated that he paid \$40.00 to Lewis on the completion of the move, and that later, when he objected to the charge of \$76.50 as too high, Lewis said "I'll mark it paid anyway and if you ever get enough money you can pay me." Nothing in addition to the \$40.00 was ever paid, according to Dr. Graham.

The lawful rates for the transportation of used, uncrated household goods, office equipment, and personal effects between metropolitan Los Angeles, including Inglewood, and Oakland as provided in Section 3 of Appendix "A" of Decision No. 29891, in Case No. 4086, is as follows:

<u>Rates in cents per 100 pounds</u>		
<u>Minimum weight in pounds</u>		
<u>A. Q.</u>	<u>2000#</u>	<u>4000#</u>
360	324	288

As before stated, Lewis appeared at the final hearing, accompanied by counsel for respondent. He testified, on examination by respondent's counsel, that he was employed by respondent as a driver, though, due to respondent's many prolonged absences from Inglewood, he attended to practically all the business. On November 1, 1937, he drove a load of office equipment and personal effects from Inglewood to Oakland for Dr. Graham. On July 5, 1938, the day before the final hearing, he called at the doctor's home to estimate the weight of the articles previously moved. This visit was made in response to a phone call from respondent, who was in Utah, engaged in the promotion of an oil well. He estimated the lot at 3005 pounds, and stated that the percentage of error in his estimates ran about 200 pounds to the ton.

On cross-examination by counsel for the Commission, the witness stated that he did not know it was necessary to have correct

weights on long distance moving jobs, and that he was not familiar with the rate order involved in this proceeding. The record shows that the order was served on respondent on July 30, 1937. The witness was unable to justify his estimate of 1600 pounds, made at the time of the move, and which appears on the receipt in evidence.

The \$40.00 which Lewis collected for the move represents the lawful charge for the transportation of slightly over 1000 pounds of office equipment and personal effects between the Los Angeles metropolitan area, including Inglewood, and the Oakland metropolitan area. The amount of \$76.50 charged by Lewis, represents the lawful charges on 2361 pounds of such articles transported between said points.

Thus, it is clearly shown that no effort was ever made to ascertain or apply the lawful rate to this shipment.

Estimates of the weight of this shipment were made following its delivery to the Graham residence in Oakland by two capable, experienced estimators.

Jack Blum, for many years engaged in the furniture storage and moving business, testified that he examined the articles pointed out to him by Dr. Graham as having been moved from Inglewood, and estimated their weight at 5305 pounds. He lifted many pieces in the process of estimation.

Roland P. Newcomb, also in the furniture storage and moving business for many years, stated that he estimated the weight of the various articles pointed out by Dr. Graham at a total of 6280 pounds. The task of estimating was rendered difficult, he said,

because of the unusually large number of boxes and containers articles not ordinarily found in household moving, and also because of the presence of much surgical equipment.

The Commission, in Matter of Trueblood, 40 C.R.C. 328, said:

"Highway carriers and city carriers are to be held to a high degree of accuracy in determining all the factors entering into minimum charges and are to be considered fully responsible for any undercharges resulting from failure to use proper means to determine such factors correctly."

The circumstances of this case make suspension of respondent's permits appropriate.

Respondent holds Radial Highway Common Carrier Permit No. 19-5488 and City Carrier Permit No. 19-5489. Under the provisions of Section 14 $\frac{1}{2}$ of the Highway Carriers' Act, suspension of the radial highway common carrier permit is authorized for violation of that act. There appears, however, to be no authority for the suspension of a city carrier's permit for violation of the Highway Carriers' Act.

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. 244; 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 (Stats. 1935, Chap. 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.

Respondent is cautioned not to undertake to sell, furnish, or provide transportation to be performed by any other carrier, on a commission basis or for other consideration, while his permit is suspended, unless he shall first obtain the license required by the Motor Transportation Broker Act (Stats. 1935, Chap. 705) for such operations as a broker. It is to be noted that under Section 16 of that act one who engages in business as a Motor Transportation Broker without the required license 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, or to both such fine and imprisonment.

O R D E R

Public hearings having been had in the above entitled proceeding, evidence having been received, the matter having been duly submitted, and the Commission now being fully advised:

IT IS HEREBY FOUND that respondent William S. L. Main, doing business as Black and White Transfer, did on the 31st day of October and the 1st day of November, 1937, engage in the transportation of household goods and personal effects for Dr. C. M. Graham for compensation as a business over the public highways in this State between Inglewood and Oakland by means of a motor vehicle, at rates less than the minimum rates prescribed therefor

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in and by virtue of Decision No. 29891 in Case No. 4086, in violation of the provisions of said Decision No. 29891 and of the Highway Carriers' Act.

IT IS HEREBY ORDERED, by reason of said offense:

1. That respondent William S. L. Main shall immediately cease and desist and thereafter abstain from charging, demanding, collecting, or receiving any charges for the transportation of any of the property described in Decision No. 29891 in Case No. 4086, less than those prescribed in said decision.

2. That Radial Highway Common Carrier Permit No. 19-5488, issued to William S. L. Main, doing business as Black and White Transfer, shall be suspended for a period of twenty days; that said twenty-day period of suspension shall commence on the 7th day of November, 1938, and continue to the 26th day of November, 1938, both dates inclusive, if service of this order shall have been made upon respondent William S. L. Main more than twenty (20) days prior to the 7th day of November, 1938; otherwise said twenty-day period of suspension shall commence on the effective date of this order and continue for a period of twenty 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 the Highway Carriers' Act, Chapter 223,

Statutes of 1935 as amended.

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 13th day of October, 1938.

Raymond
Leon Whitell

Ray & Ray

COMMISSIONERS.