

Decision No. 31357

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

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 CHARLES ARTAL and A. RODRIGUEZ.)

Case No. 4316

CHARLES ARTAL and A. RODRIGUEZ, in pro. per.

A. M. BURGESSON, for Bekins Van Lines and
for Coordinating Committee of the
United Independent Van & Storage
Association.

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by the Commission on its own motion to determine whether respondents Charles Artal and A. Rodriguez, individually, or as co-partners, as a highway carrier other than a highway common carrier, charged or collected rates less than the minimum rates proscribed 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 (Stats. 1935, Chap. 223 as amended), pursuant to which the above mentioned decision was issued.

Public hearings were held before Examiner McCaffrey at Los Angeles on May 19, 1938, and before Examiner Hall at San Francisco on June 29, 1938. Respondents appeared on the last mentioned date and participated in the hearing.

The evidence related to service performed November 26, 1937, in transporting a shipment of used, uncrated household goods and personal effects from a second floor apartment at 2900 Pierce Street, San Francisco, to a one-story house at 168 South Hobart Blvd., Los Angeles, for one A. Ponzio.

Ponzio testified that other concerns had given him estimates for the move, but that he had given the job to respondent Artal, an old business acquaintance, who quoted him a flat price of \$80.00. This sum was paid by Ponzio's personal check given to Artal at Los Angeles on the completion of the move. The witness accounted for his failure to produce the cancelled check by stating it had been lost.

Oscar Dellie, a weight estimator called by the Commission, testified that he had been engaged in the furniture storage, estimating, and moving business for 30 years. About a week before the movement in question, at Ponzio's request, he had called to make an estimate and bid for the job on behalf of his company. He estimated the lot at 6,000 pounds, including 29 cartons weighing a total of about 1,450 pounds. His estimates, he said, might vary 10% in either direction from actual weights, but that such variation was usual in estimating household goods. He did not again hear from Ponzio after this visit.

On February 4, 1938, another estimate was made of the articles transported by respondents. Tom Rose, for many years engaged in estimating weights of household goods, as part of the business of storing and moving such articles, testified that he called at Ponzio's home in Los Angeles in company with an inspector of the Railroad Commission. Ponzio pointed out the items comprising the shipment with the exception of the 29 cartons and their contents. Rose estimated the lot at 4,840 pounds. He stated that his estimates were based on long experience in handling and viewing such articles, and did not vary beyond acceptable limits. He said he did not see the 29 cartons referred to by Dellie, nor were their contents pointed out to him by Ponzio. This fact accounts for the difference in the estimates, as the estimated weight of the cartons, added to Rose's estimate, would be 6,290 pounds, or slightly in excess of Dellie's estimate of the entire lot, made shortly before the move.

The lawful rate provided by Section 3 of Appendix "A" of Decision No. 29891 in Case No. 4086 for the transportation between San Francisco and Los Angeles of uncrated household goods, based on a minimum of 4,000 pounds, is \$2.88 per hundred pounds. To this should be added 5¢ per hundred pounds for pickup at other than ground floor, or a total rate in this instance of \$2.93 per hundred pounds. The sum of \$80.00 charged and collected for this shipment represents the lawful charge on 2,431 pounds of household goods transported between San Francisco and Los Angeles, with second floor pickup service, which is plainly far less than the actual weight of the lot. The record points clearly to the conclusion that the \$80.00 charge was less than the minimum and that respondents

charged a flat price for this move in complete disregard of the Commission's minimum rate order, a copy of which was served on them, as shown by the record, some three months prior to the transportation service here under consideration.

The circumstances of this case make suspension of respondents' operative permits appropriate.

Respondents hold Radial Highway Common Carrier Permit No. 38-27, and City Carrier Permit No. 38.28. Under the provisions of Section 14 $\frac{1}{2}$ of the Highway Carriers' Act, suspension of the radial 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.

Respondents are 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 their permit is suspended, unless they 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 respondents, Charles Artal and A. Rodriguez, did on the 26th day of November, 1937, engage in the transportation of household goods and personal effects for A. Ponzio for compensation as a business over the public highways in this State, between San Francisco and Los Angeles, by means of a motor vehicle, at rates less than the minimum rates prescribed therefor in and by virtue of Decision No. 29891, 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 respondents, Charles Artal and A. Rodriguez, shall immediately cease and desist and thereafter abstain from charging, demanding, collecting, or receiving any charges for the transpor-

tation of any of the property described in Decision No. 29891, Case No. 4086, less than those prescribed in said decision.

2. That Radial Highway Common Carrier Permit No. 38-27, issued to Charles Artal and A. Rodriguez, shall be and the same is hereby suspended for a period of twenty days; that said 20-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 respondents, Charles Artal and A. Rodriguez, more than twenty (^{days}20) prior to the 7th day of November, 1938; otherwise, said 20-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 respondents shall desist and abstain from engaging in the 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 (Stats. 1935, Chap. 223 as amended).

The effective date of this order shall be twenty (20) days after the date of service hereof upon respondents. .

Dated at San Francisco, California, this 13th day of October, 1938.

Raymond J. Kelly
Raymond J. Kelly
Raymond J. Kelly
COMMISSIONERS.