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ORIGINAL

Decision No. 31401

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-) Case No. 4331
tracts, and practices, or any of them,)
of MAX KAPLAN.)

LEO H. SHAPIRO and VIRGIL G. SKINNER,
for respondent.

ERVIN S. BEST, for J. W. Silva,
protestant.

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by the Commission on its own motion to determine whether or not Max Kaplan, herein called respondent, was engaged in the business of transporting property for compensation or hire by means of a motor vehicle or motor vehicles, as a highway carrier other than a highway common carrier, over the public highways in this state at less than the minimum rates established therefor by the Commission and without issuing freight bills as required by the orders of the Commission; and to determine whether or not the highway contract carrier and radial highway common carrier permits issued to respondent should be cancelled, suspended, or revoked for such violations. Public hearing was held before Examiner Elder on June 16, 1938, in San Francisco, at which time and place respondent appeared personally and was represented by counsel.

Evidence was received from shippers served by respondent, from employees of the Commission, and from respondent himself, who testified in his own behalf.

The record shows that respondent, who resides in Salinas, holds permits issued to him by the Commission to operate as a highway contract carrier and as a radial highway common carrier, as those terms are defined in Section 1(f) of the Highway Carriers' Act. His operations consist of the transportation of property for compensation by a motor vehicle over the public highways of the state from San Francisco to Salinas and the vicinity thereof and intermediate points once each week. Respondent also has a furniture store and a junk business in Salinas, and on the northbound trip from Salinas hauls his own property in connection with one or the other of those businesses.

Harvey J. Bernard, Inspector for the Commission, testified that he called on respondent at the latter's place of business on March 3, 1937, and examined respondent's records. Respondent had not up to that time issued any freight bills and had recorded his transactions only on a ledger. The witness advised respondent that under Decision No. 28761 in Case No. 4088, Part "A", he was required to issue a freight bill covering each shipment and containing necessary information as outlined in a blank form which the witness showed respondent. The information called for by that decision includes the name of the carrier, the points of origin and destination, the shipper's and consignee's names and addresses, the date of the shipment, the number of packages, a description of the commodities, the weight, the rate charged, and total charges made.

Very little of this information was contained in the ledger kept by respondent. Bernard again called on respondent on April 4, 1937, at which time respondent showed him freight bills in the proper form, but not containing the necessary information. On many of them, the names of the consignors and consignees, the description of the commodities, and the weights, rates, and charges were omitted. Furthermore, no copies had been given to the shippers as required by the decision mentioned above. Bernard repeated his instructions and called again on November 17, 1937. At that time respondent was still failing to place upon the freight bills most of the information called for. For example, one of the freight bills, ⁽¹⁾ dated October 21, 1937, showed the United Grocers in San Francisco as the shipper, but contained no other information except that there were 223 packages weighing 8636 pounds. No description of commodities, rate, or charge was shown. Bernard repeated the instructions given respondent on the previous visits. In March, 1938, Bernard again examined respondent's books and found that there had been no improvement. One of the freight bills, ⁽²⁾ dated January 13, 1938, showed the Campbell Company in San Francisco as the shipper and described the commodities as 48 packages "Em," weighing 1715 pounds, but omitted any reference to the kind of merchandise, the rate, and the charge. Other freight bills contained similar deficiencies. On June 15, 1938, the day preceding the hearing, Bernard made another examination of respondent's books and found that respondent had not improved his practices. An illustration is supplied by a freight bill ⁽³⁾ dated May 27, 1938, showing San Francisco as the point of

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- (1) Exhibit #7
 - (2) Exhibit #8
 - (3) Exhibit #9

origin, United Grocers as the shipper, "F. Shore" as the consignee's city, 54 packages weighing 2007 pounds as a description of the commodities, 42¢ as the rate, and \$8.42 as the charge.

Another illustration of respondent's failure to place the necessary information on his freight bills is supplied by a freight bill⁽⁴⁾ dated June 9, 1938. This freight bill showed San Francisco as the point of origin, "Campbell" in the blank for the shipper's address, "Bertelsman" in the blank designating the consignee's address, and "33 packages canned goods" weighing 1240 pounds as a description of the commodities. A rate of 42¢ and a charge of \$5.20 were also shown. Respondent admitted on the witness stand that this shipment actually consisted of twelve bundles of paper bags, two bundles of brooms, and nineteen cases of canned groceries, instead of 33 packages of canned goods as shown on the freight bill. The minimum rates fixed by the Commission on paper bags and on brooms differ from those on canned groceries.

The failure of respondent to record on his freight bills complete information regarding shipments hauled by him makes it impossible for either the shipper or receiver, whichever may pay the freight charges, or the Commission to determine therefrom whether or not the rates demanded are lawfully applicable, and where the actual commodities are falsely described, the bills are misleading. Respondent's failure to keep proper records despite five warnings to do so throughout a period of fifteen months must be viewed, if not as a wilful disregard of the Commission's regulations, at least as callous indifference to them.

(4) Exhibit #15

As illustrative of the manner in which respondent's inadequate commodity descriptions conceal the true nature of the commodities and the propriety or impropriety of the rates, when rates are shown, it is to be observed that most of the shipments carried by respondent originated in wholesale grocery houses and were destined for retail grocery stores. When described at all, these shipments were usually described on the freight bills as "groceries" or "canned groceries." Shipments for grocery houses usually include many items embraced within the "canned goods" description. Many of the rates assessed on "groceries" and "canned groceries" were insufficient if the shipments consisted of such canned goods items.

We need not indulge in speculation as to the existence of rate violations, however. Among the few bills showing rates and accurate commodity descriptions, violations of Decision No. 30370, as amended, in Case No. 4088, Parts "U" and "V", are frequent. We will describe some of those shipments in detail, using the terms "minimum rate" and "minimum charge" to designate the applicable minimum rates and the charges based thereon, as fixed by the Commission in said decision.

On May 20, 1938, on a shipment of 34 packages of wrapping paper weighing 1600 pounds from Atlas Paper Company in San Francisco to a consignee in Salinas, ⁽⁵⁾ respondent charged \$6.72, based on a rate of 42¢ per 100 pounds, as compared with the minimum rate of 54¢ per 100 pounds, or a minimum charge of \$8.64.

On June 9, 1938, on a shipment of 43 packages of wrapping paper weighing 1520 pounds from Atlas Paper Company in San

(5) Exhibit #17

Francisco to a consignee in Salinas, ⁽⁶⁾ respondent charged \$6.36, based on a rate of 42¢ per 100 pounds, as compared with the minimum rate of 54¢ per 100 pounds, or a minimum charge of \$8.21.

On June 9, 1938, on a shipment of 43 packages of paper bags and wrapping paper weighing 1400 pounds from Atlas Paper Company in San Francisco to a consignee in Salinas, ⁽⁷⁾ respondent charged \$5.88, based on a rate of 42¢ per 100 pounds, as compared with the minimum rate of 54¢ per 100 pounds, or a minimum charge of \$7.56.

Respondent testified that on June 9, 1938, he received a shipment of 12 bales of paper bags weighing 500 pounds, two bundles of brooms weighing 40 pounds, and 19 cases of canned goods weighing 700 pounds from T. H. Campbell Company in San Francisco for delivery to a consignee in Salinas. Respondent's freight bill ⁽⁸⁾ covering this shipment described the commodities as 33 packages of canned goods weighing 1240 pounds and showed a charge of \$5.20, based on a rate of 42¢ per 100 pounds. The minimum rate applicable to the item of paper bags is 54¢ per 100 pounds, and on the brooms, 60¢ per 100 pounds.

These proven rate violations appearing from the few bills susceptible to accurate rating, coupled with respondent's persistence, over a period of many months, in describing shipments insufficiently, arising from an operation conducted only one day a week, are indicative of the serious nature of respondent's offenses.

Transportation is only one of several businesses occupying respondent's time and attention and his other enterprises are evidently

(6) Exhibit #17
(7) Exhibit #11
(8) Exhibit #15

his principal concern. But this does not excuse his refusal or neglect to make the effort necessary to adequately comply with the law and the Commission's regulations, or his repeated failure to heed the recommendations and warnings of the Commission's representative. No extenuating circumstances appear. Until the Commission can be satisfied as to respondent's disposition, intention, and ability to comply with all requirements, his operating permits should be revoked.

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 Five Hundred Dollars (\$500.), or he may be imprisoned for five days, or both (C.C.P. Sec. 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 244; re Ball & Hayes, 37 C.R.C. 407; Wermuth v. Stemper, 37 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 (Chap. 223, Stats. 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.

O R D E R

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

IT IS HEREBY FOUND that respondent Max Kaplan did on the 20th day of May, 1938, and the 9th day of June, 1938, engage in the

transportation of property, as a highway carrier other than a highway common carrier, at rates less than the minimum rates established therefor under and by virtue of Decision No. 30370, as modified in Case No. 4088, Parts "U" and "V", as set forth in the preceding opinion.

IT IS HEREBY FURTHER FOUND that respondent Max Kaplan, subsequent to March 3, 1937, did engage in the transportation of property as a highway carrier other than a highway common carrier without issuing freight bills therefor in the form and manner required by Decision No. 28761, in Case No. 4088, Part "A".

IT IS HEREBY ORDERED that by reason of said offenses highway contract carrier permit No. 27-355 and radial highway common carrier permit No. 27-354, issued to respondent Max Kaplan, be and the same are hereby revoked.

IT IS HEREBY FURTHER ORDERED that respondent Max Kaplan cease and desist and hereafter abstain from any and all operations as a highway contract carrier or as a radial highway common carrier as those terms are defined by the Highway Carriers' Act (Stats. 1935, Chap. 223 as amended).

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission cause service of this order to be made upon respondent.

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

Dated at San Francisco, California, this 31st day of October, 1938.

Robert W. Brown
Leon J. Kelly
Samuel Nelson
Carl H. Kelly

COMMISSIONERS.