

Decision No. 31741

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, or any thereof, of TED
KISS, an individual doing business under
the fictitious name and style of SERVICE
PARCEL DELIVERY.

Case No. 4349

HARRY A. ENCELL, for respondent

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, Ted Kiss, doing business as Service Parcel Delivery, as a carrier, as defined in Section 1 (f) of the City Carriers' Act (Statutes 1935, Chap. 312, as amended), charged or collected any rates less than the minimum rates prescribed by the Commission for wholesale parcel deliveries in the City and County of San Francisco, in violation of Decision No. 28632, as amended, in Case No. 4084, and of the City Carriers' Act, pursuant to which act the above mentioned decision was issued. A public hearing^{was}/held before Examiner Paul at San Francisco on November 10, 1938, at which time evidence was received and the matter having been duly submitted is now ready for decision.

The evidence related to parcel deliveries made by respondent, who holds city carrier permit No. 38-520, for two wholesale firms located in San Francisco, from December 1937 through March 1938.

Edward M. Hirschfelder, a co-partner of the firm of Hirschfelder and Company, dealing in wholesale bakers and confectioners

supplies, testified that he shipped all small parcels up to 60 pounds for local delivery by means of respondent's facilities. Sales slips showing five typical deliveries of small packages of bakers and confectioners supplies during March 1938 are in evidence. The witness stated he paid \$20.00 to respondent for books of 100 stamps, and affixed a 20 cent stamp to each package of 40 pounds or fraction thereof, delivered to respondent for transportation. After April 1, 1938, the charge for a book was raised to \$22.00.

George Carter, Hirschfelder's shipping clerk, stated that he prepared all shipments for the firm for transportation, and that all smaller shipments or parcels moved by way of respondent's facilities. He stated that he had personally weighed the shipments covered by the sales slips above mentioned, and had delivered them to respondent for transportation. According to Carter, respondent made out no freight bills, merely signing the sales slip. Some of the sales slips in evidence bear the initials "T.K." which the witness stated were placed there by respondent upon receiving the shipment for transportation.

Fred Beronio, manager of Stettheimer & Co., a San Francisco wholesale knit goods firm testified that he used respondent's service for delivery of the firm's merchandise, and identified a number of checks covering payments for deliveries for the months of December 1937, and January to March, inclusive, 1938.

Respondent's statements of charges for these deliveries show only that, for example, during March, 1938, he made 274 deliveries for Stettheimer, and charged \$54.80, or 20 cents per delivery. No data is shown from which any such shipment could be properly rated.

Jack Barry, shipping clerk for Stettheimer & Co., testified that as a rule, packages to be transported by respondent were not weighed unless it was judged that the weight would be over 40 pounds.

For example, if a package weighed 45 pounds it was billed as two packages, even though it was actually but a single package. In other words, every 40 pounds in weight was considered a separate package, and each "package" was paid for at the rate of 20 cents for each 40 pounds for transportation.

The witness stated that about April 1, 1938, he started paying 22 cents per package to respondent for transportation.

The proper rate for the shipments covered by the sales slips and statements in evidence was 22 cents per shipment of 40 pounds or less, according to rate expert James. W. Mulgrew, who testified for the Commission. The authority for this rate, as shown by an exhibit (No. 6) prepared under the witness' direction, is Decision No. 28632, as amended by Decision No. 30167, in Case No. 4084, San Francisco City Carriers' Tariff No. 1, Item 610-A. This rate became effective October 17, 1937. The record shows that Ted Kiss was a respondent in said Case No. 4084 and was duly served with the rate order involved herein, and, also with Decision No. 29595 in Case No. 4084, prescribing the form of freight bill to be used by city carriers, and his counsel so stipulated.

Respondent testified that he did not know he was charging less than the lawful rate until so informed by his wholesale customers, and by a Commission investigator. Since April 1, 1938, he stated he has charged the lawful rate for the service, but was not familiar with the Commission's rules regarding freight bills.

A careful review of this record leads to the conclusion that respondent charged rates less than the minimum rates prescribed by the Commission. He also failed to comply with the Commission's order with respect to issuing freight bills and retaining copies

thereof. The violations of the Commission's orders in these two respects is ample grounds to justify the temporary suspension of respondent's permit and operations.

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. Stemper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 13 of the City Carriers' Act (Statutes 1935, Chap. 312, 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 (Statutes 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

A public hearing 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, Ted Kiss, doing business as Service Parcel Delivery, did on March 24, 25, 26, 28, and 29, 1938, engage in the transportation of bakers and confectioners supplies in wholesale parcels for E. M. Hirschfelder & Co., and did, during the months of December 1937, January, February, and March 1938, engage in the transportation of knit goods in wholesale parcels for Stettheimer & Co., for compensation as a business over the public highways in the City and County of San Francisco, in this State, by means of a motor vehicle, at rates less than the minimum rate prescribed therefor in and by virtue of Decision No. 28632, as amended, in Case No. 4084, in violation of the provisions of said decision and of the City Carriers' Act.

IT IS HEREBY FURTHER FOUND that respondent did not, as required by the provisions of Decision No. 29595, in Case No. 4084, issue to the shipper, either E. M. Hirschfelder & Co., or Stettheimer & Co., for each shipment received for transportation from said shippers during the months of December 1937, January, February, and March 1938, a freight bill in substantially the form prescribed by said Decision No. 29595.

IT IS HEREBY ORDERED, by reason of said offenses:

1. That respondent Ted Kiss shall immediately cease and desist and thereafter abstain from charging, demanding, collecting,

or receiving any rates for the transportation of any of the property described in Decision No. 28632, as amended, in Case No. 4084, less than those prescribed in said decision, as amended.

2. That City Carrier Permit No. 38-520, issued to Ted Kiss, doing business as Service Parcel Delivery, is hereby suspended for a period of five (5) consecutive days; that said five (5) day period of suspension shall commence on the 20th day of March, 1939, and continue to the 24th day of March, 1939, both dates inclusive, if service of this order shall have been made upon respondent Ted Kiss more than twenty (20) days prior to the 20th day of March, 1939; otherwise said five (5) day period of suspension shall commence on the effective date of this order and continue for a period of four (4) days thereafter.

3. That during said period of suspension respondent shall desist and abstain from engaging in the transportation of property for compensation or hire as a business over any public highway in the City and County of San Francisco, by means of a motor vehicle or motor vehicles, and from performing any other service as a carrier as defined in Section 1 (f) of the City Carriers' Act, Chapter 312, 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 14th day of February, 1939.

Rafael J. Quinn
Grace R. Quinn
Ray H. Riley
H. B. Miller
Justice F. Coe
COMMISSIONERS