

Decision No. 31742

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,) Case No. 4323
of H. FUJI, doing business as FUJI)
TRANSFER COMPANY.)

HANJIRO FUJI, in propria persona

J. T. VIZZARD, for Draymen's Association,
as its interests may appear

McCUTCHEEN, OLNEY, MANNON & GREENE,
by F. W. Mielke, for The River Lines

BY THE COMMISSION:

O P I N I O N

In this matter, the Commission instituted an investigation, on its own motion, into the operations, rates, charges, contracts, and practices of the respondent, H. Fuji, doing business under the name and style of Fuji Transfer Company, to determine whether or not said respondent had been transporting property, particularly rice, within the City and County of San Francisco, as a city carrier, as defined by Chapter 312, Statutes of 1935, as amended, at rates less than the minimum rates prescribed for such transportation by Decision No. 28632, as amended, in Case No. 4084.

Public hearings were had before Examiner Elder at San Francisco on June 20th and September 6, 1938, the respondent appearing personally at both hearings. Evidence was adduced and the matter submitted at the conclusion of the latter hearing. It is now ready for decision.

Testimony was received from Murray A. Katz, an importer of rugs, and from an inspector for the Commission, concerning the transportation by Fuji for Katz of cotton rugs in bales from docks in San Francisco to the Customs House and from the Customs House to Katz' place of business in San Francisco. This transportation occurred almost daily during the fall of 1937 and until February 1938. Fuji's charges for the transportation were assessed by the bale, based upon the estimated weights of the bales, at a rate which apparently bore no relation to the minimum rates established by the Commission. Katz testified the bales were of two sizes weighing, respectively, from 60 to 70 pounds and from 130 to 200 pounds. All of the shipments described in the evidence, however, show weights that do not fall within the range of either of these groups, and there is nothing in the record to establish reliably the weight of any of the shipments. The evidence in general is not sufficiently definite to support a finding that the minimum rate order was violated.

There is no evidence regarding transfer of rice.

Decision No. 29595 amending Decision No. 28632 requires, however, that every city carrier shall issue to the shipper for each shipment received for transportation a freight bill in substantially the form proscribed in said decision. This form is designed to show the origin and destination of the shipment, a description of the commodities transported, and all other factors necessary to compute

and support the amount charged.

The record is clear that respondent has failed to issue these freight bills. On receiving the rug shipments, respondent issued a mere hand-tag receipt for goods, describing the shipment as, for example, "8 bales," without indication of the point of origin, point of destination, consignor or consignee, name, nature, and weight of the commodity, or the rate or charge. Even the office records kept by respondent are inadequate and conflicting and, in the case of Katz, show different amounts charged than appear in the statements rendered Katz. It is essential that the required freight bills be rendered and copies preserved, not only for the carriers' protection but to enable the shipper or receiver to determine the lawfulness of the charges demanded by the carrier.

Respondent's violation of this requirement renders appropriate suspension of his permit for a period of two days. Such period of suspension, however, is not to be regarded as indicative of the action the Commission may find appropriate in other cases of failure to keep proper records. Since the hearing in this case, all carriers have individually been cautioned regarding the importance of the freight bill requirement and have been admonished to comply strictly therewith. In the face of such warning, future violations of this nature may be expected to result in more severe penalty than is being imposed in this case.

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. 224; 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. 371.

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 Five Hundred Dollars (\$500.00) or to imprisonment in the County Jail for a term not to exceed six (6) months.

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 H. Fuji, doing business as Fuji Transfer Company, did, during the month of November, 1937, perform transportation services as a carrier as defined in Section 1(f) of the City Carriers' Act, for M. A. Katz Co., in the City and County of San Francisco, State of California, without issuing to said shipper for each shipment received for transportation, a freight bill in substantially the form prescribed by Decision No. 29595 in Case No. 4084, in violation of said decision and of the City Carriers' Act.

IT IS HEREBY ORDERED, by reason of said offense:

1. That respondent, H. Fuji, shall immediately cease and desist and thereafter abstain from receiving any shipment for transportation without issuing to the shipper, for each shipment received for transportation, a freight bill in substantially the form proscribed by Decision No. 29595 in Case No. 4084.

2. That City Carrier Permit No. 38-1698, issued to respondent H. Fuji, shall be suspended for a period of two (2) days, to-wit, the 21st and 22nd days after the service of this order upon respondent.

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 by Section 1 (f) of the City Carriers' Act, as amended.

This order shall become effective the 21st day after service hereof upon respondent.

Dated at San Francisco, California, this 14th day of February, 1939.

Raymond
Frank R. Owen
W. H. Rice
H. B. Ball
Justice F. Cameron

COMMISSIONERS.