

Decision No. 31943

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation,)
on the Commission's own motion, into)
the city carrier operations, rates,) Case No. 4387
charges, contracts, and practices of)
M. RUANO, doing business as LARKIN)
VAN & STORAGE.)

M. RUANO, in propria persona

J. W. BARKER, for San Francisco Movers,
Inc., interested party

BAKER, COMMISSIONER:

O P I N I O N

This proceeding was instituted by the Commission on its own motion to determine whether respondent, M. Ruano, doing business as Larkin Van & Storage, transported a shipment of used, crated household furniture and personal effects over the public streets in San Francisco, California, at rates less than those prescribed as minimum for such transportation by city carriers in Decision No. 29891, as amended, in Case No. 4086, in violation of the City Carriers' Act (Stats. 1935, Chap. 312, as amended), pursuant to which said decision was issued. A public hearing was held before Commissioner Baker at San Francisco on February 28, 1939, in which the respondent participated and offered evidence. The matter was then submitted, and it is now ready for decision.

The evidence related to service performed July 30, 1938, by respondent, in transporting 31 pieces of crated used household furniture weighing 5241 pounds from the Southern Pacific Freight Depot, Fourth and Berry Streets, San Francisco, to an upstairs flat at 3141 Geary Street, San Francisco, a distance of 4.3 miles, for Mrs. Joe N. Sello, to whom the shipment was consigned.

Mr. Joe N. Sello, a witness called by the Commission, stated that his wife's mother, Mrs. Nora Crosbie, arranged for the crating and shipping of the furniture in question from her home in San Antonio, Texas, by rail, to her daughter's residence in San Francisco in July 1938. When the shipment arrived in San Francisco the witness was informed by the Southern Pacific Company that he would have to arrange for its delivery from the railroad's freight terminal at San Francisco to his residence. After securing estimates from several local draymen, the witness obtained from respondent a quotation of a rate of \$4.50 per hour and engaged him for the job.

On arrival at 3141 Geary Street, the shipment was unloaded, some of the furniture into the basement of the premises, and the remainder, including a piano, into the flat. Witness helped respondent and his assistant to unload and uncrate the property, and to move it into the house. He then paid respondent \$20.00, the charges having been assessed, as shown on the freight bill in evidence, at \$4.50 an hour for four hours time.

F. A. Howard, assistant freight auditor for the Southern Pacific Company, identified the waybill on which the shipment moved from San Antonio to San Francisco. This bill shows a shipper's

weight of 5241 pounds for the 31 pieces of property included in the shipment.

Joe F. Lagler, a freight handler employed by the Southern Pacific Company, testified that he unloaded the shipment on its arrival at the Southern Pacific Freight Shed at San Francisco, and personally supervised the weighing thereof. He checked each crate or box as it was weighed by placing a number and check mark on the back of the aforementioned waybill, and stated that the weight of the entire shipment was 5241 pounds, which is identical with the shipper's weight indicated on the face of the waybill.

Inspector Keough of the Commission testified that he was familiar with the streets in San Francisco and the routes between various points in the city. He stated that he had found the shortest practicable route between the points involved in the transportation service herein to be 4.3 miles. He also counted the number of stairs at the 3141 Geary Street flat and stated that there were fifteen steps outside and thirteen stairs inside the premises. This evidence has a bearing on the lawful rate as developed by the testimony of the next witness called by the Commission.

Witness Edwin Lake, a rate expert for the Commission, introduced in evidence a statement prepared by him (Exhibit 5) showing the computation of charges under minimum rates established by Decision No. 29891, as amended, in Case No. 4086, for the transportation of a shipment of household goods and personal effects having the characteristics indicated by the evidence herein. Decision No. 29891, supra, established a minimum charge of \$29.84 for the transportation performed. It will thus be seen that the carrier collected charges in the amount of \$9.84 less than the minimum charges established.

Ruano was a respondent in Case No. 4086, and was served with a copy of Decision No. 29891 on July 20, 1937. His explanation of his failure to observe the rates provided by this decision was that he had transported but one shipment of used crated household goods during the preceding year, and was unaware that rates for transportation of this type of property are based on weight and mileage factors, rather than by the hour.

City carriers, as well as other carriers, are under a duty to familiarize themselves with the contents of the Commission's rate orders and to charge no less than the rates prescribed as minimum in such orders. Erroneous application of the order will not excuse a violation resulting therefrom. Respondent's failure in this instance to observe the lawful minimum rates established by the Commission renders the suspension of his city carrier permit appropriate.

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 13 of the City Carriers' Act (Stats. 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 (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.

ORDER

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

IT IS HEREBY FOUND that respondent, M. Ruano, did, on the 30th day of July, 1938, engage in the transportation of 5241 pounds crated used household goods, personal effects and musical instruments for Mrs. Joe N. Selle, for compensation as a business over the public streets in the City and County of San Francisco, State of California, between the Southern Pacific Company Freight Terminal, Fourth and Berry Streets, and certain premises located at 3141 Geary Street, a distance of 4.3 miles, by means of a motor

vehicle, and rendered accessorial services in connection with such transportation, at rates less than the minimum rates prescribed therefor in and by virtue of Decision No. 29891, as amended, in Case No. 4086, in violation of said decision and of the City Carriers' Act.

IT IS HEREBY ORDERED, by reason of said offense:

1. That respondent M. Ruano 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 said Decision No. 29891, as amended, in Case No. 4086, less than those prescribed in said decision.
2. That City Carrier permit No. 38-672, issued to said respondent, shall be suspended for a period of five days; that said five-day period of suspension shall commence on the 15th day of May, 1939, and continue to the 19th day of May, 1939, both dates inclusive, if service of this order shall have been made upon said respondent M. Ruano more than twenty (20) days prior to said 15th day of May, 1939; otherwise said five-day period of suspension shall commence on the effective date of this order and continue for a period of five days thereafter.
3. That during said period of suspension respondent M. Ruano shall desist and abstain from engaging in transportation of property for compensation or hire as a business over any public street in the City and County of San Francisco, State of California, 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 said City Carriers' Act.

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

The foregoing opinion and order are hereby approved and ordered filed as an opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of April, 1939.

Francis A. ...
Ray L. ...
H. Baker
Justus J. ...

COMMISSIONERS.