

Decision No. 32288

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of EARL P. BROOKS for authority to charge less than minimum rates. } Application No. 21370

P. N. McCLOSKEY and EARL P. BROOKS, in propria persona, for Applicant.

HAROLD W. DILL, for Truck & Warehouse Association of San Diego and Imperial Counties, Protestant.

J. C. BOWDEN, for Dump Truck Association of Southern California, Protestant.

F. F. WILLEY, for Pacific Electric Railway Company, Interested Party.

BY THE COMMISSION:

O P I N I O N

Earl P. Brooks, the applicant in this proceeding, operating as a radial highway common carrier and as a city carrier under permits issued to him by the Commission, seeks authority under section 11, Highway Carriers' Act, and section 10, City Carriers' Act, to establish rates for the transportation of property in dump trucks lower than the minimum rates established by the Commission for such transportation, in its Decision No. 28836, dated May 25, 1936, in Case No. 4087.

Specifically, applicant requests authority to maintain a rate of \$1.20 per hour for the transportation of material in a two-cubic-yard dump truck, and \$1.05 per hour in a one-half ton pickup truck.

A public hearing was had before Examiner Hunter at Los Angeles on August 4, 1937, but consideration of this matter has been delayed pending the determination of litigation affecting the Commission's power to prescribe minimum rates for carriers engaged in transporting property by dump trucks for the State Department of Public Works. Such authority has been upheld (Entremont v. Whitsell, 97 Cal. Dec. 505, dated April 17, 1939).

The evidence discloses that applicant proposed to transport in two-cubic-yard dump trucks hand-loaded material where the average mileage did not exceed eight miles per hour per day. The minimum rate established by the Commission for this service is \$1.25 per hour. From applicant's testimony it appears that when the application was filed, he mistakenly believed the minimum rate to be \$1.35 instead of \$1.25 per hour, and had he then known the actual facts he would not have applied for relief. Since applicant kept no accurate records of his costs, he was unable to show that the proposed rate would be compensatory. No evidence was offered regarding the rate of \$1.05 proposed for handling material in pickup trucks.

In view of applicant's failure to substantiate his claims, the application should be denied.

#### 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 being now fully advised:

IT IS HEREBY ORDERED that the application herein be and it is hereby denied.

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

Dated at San Francisco, California, this 6<sup>th</sup> day of June, 1939.

Raymond J. Quinn  
Frank R. Smith  
Ray H. Curry  
H. B. Baker  
Justus D. Cooney  
COMMISSIONERS