

DECISION NO. 12283

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 of GUISEPPE CAPACCIOLI.

CASE NO. 4396

ORIGINAL

GUISEPPE CAPACCIOLI, In Propria Persona.

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

BAKER, COMMISSIONER:

O P I N I O N

The above entitled matter came on regularly for public hearing on the 15th day of May, 1939, in the court room of the Railroad Commission, at San Francisco, State of California, the said respondent appearing in proper person and participating in the proceedings. And evidence, both oral and documentary, having been offered and received, and the said matter having been submitted, it is now ready for decision.

This proceeding was instituted by the Commission upon its own motion whereby to determine (1) Whether the respondent Guiseppe Capaccioli had transported household goods and other property in San Francisco and vicinity for less than the applicable minimum rates as prescribed by the Commission in Decision No. 29891, and, as amended in Cases Nos. 4086 and 4099; and (2) Whether the respondent had, in his transportation business, operated a certain motor vehicle without the insurance coverage required by law.

From the testimony of Z. E. Jones, Assistant Chief of the Truck and Stage Division, together with evidence from the

files and records of the Commission, it was established of record herein that on the 29th day of January, 1936, the Commission issued to the respondent, radial highway common carrier Permit No. 38-775, and city carrier Permit No. 38-376, each of which is still in full force and effect; that the respondent has been and still is operating two motor trucks, to-wit, a 1929 Dodge van, of loading area of 152½ square feet, and a 1929 Kleiber pick-up truck; that with respect to the former the respondent complied fully with the statutory requirements as to public liability and property damage insurance, but that the said Kleiber truck has not been covered by such insurance since the month of November, 1936; and that prior to the month of June, 1938, the respondent had been duly served with a copy of the Order Instituting Investigation in Case No. 4086, together with copies of Decisions Nos. 28810, 29891 and 30482, wherein are set forth the lawful minimum rates, as well as the rules and regulations, applicable to the movement of household goods by motor carrier.

The testimony of Fay Smalley, an investigator for the Commission, by deposition, disclosed that, in the month of June, 1938, he had personally noted the trucking operations of the respondent with respect to a movement of uncrated household goods and furnishings for one David Simonini from 1707 Stockton Street, San Francisco, to 1225 San Anselmo Avenue, San Anselmo, California. In this instance the above mentioned Kleiber truck was used, which, as aforesaid, was not at that time covered by insurance. For such movement the respondent designated and collected a charge of \$8.00. Not only did the respondent transfer the said household furnishings from the one designated point to the other, but likewise the household itself, consisting of Simonini, his wife, two young ladies and a young man, all on the same truck.

The witness further testified that on the 7th day of October, 1938, he noted the operations of the respondent in another movement of uncrated household goods, to-wit, for one Mrs. Lena De Rosa,

from 185 Seville Street to an apartment at 2743 Hyde Street, San Francisco. The respondent, with one helper, arrived at the former address with the said Dodge van at 7:00 o'clock a.m., finished the loading at 9:30 a.m., consumed twenty-eight minutes in transit, and completed the unloading of the truck at 11:45 a.m. Computed in accordance with the rule or formula of Decision No. 30482, the time actually consumed in the movement was five hours and 13 minutes. For such service, the respondent charged, and Mrs. De Rosa paid, a specified flat rate of \$12.00. It was established, however, incidentally, that Mrs. De Rosa tendered, and respondent accepted, a tip in the further sum of \$1.50. The lawful minimum charge for a shipment of personal property having the characteristics of the household furnishings involved herein is the sum of \$4.50 per hour. Through the application of this rate, according to the statement of Edwin Lake, Assistant Rate Expert for the Commission, on file herein as Exhibit 1, based upon the minimum rate schedule established by Decision No. 29891 as amended by Decision No. 30482 in Case No. 4086, the lawful minimum charge for such movement is the sum of \$23.63, thus disclosing a differential as an undercharge in the sum of \$10.13.

Inspector Smalley also testified that on the 1st day of February, 1939, he again made a personal check relative to the respondent's operations, and observed that, on the date last herein mentioned, the respondent hauled a load of plumbing equipment, in his said Kleiber truck, for one Borelli Romano, from 1541 Grant Avenue to 520 Vallejo Street, San Francisco, for which the respondent charged, and Romano paid, the sum of \$1.00. This witness further testified that his check of the records of the Commission, made soon after the 1st of February, 1939, disclosed that the said truck was not covered by insurance at the time of the said movement.

It is quite significant, as tending to confirm the testimony of the witnesses aforesaid, that the respondent, although personally present at the hearing, neither sought to controvert any portion whatsoever of such testimony nor offered any statement, explanatory or otherwise, in justification of his unlawful practices as appearing upon the face of the record.

A review of the evidence in this case permits of but one conclusion, namely, that the respondent has, in several instances, been guilty of flagrant violations of the law as reflected from the Highway Carriers' Act and the City Carriers' Act, as well as of the conditions and restrictions imposed by his operating permits, and not only with respect to rates charged for services, but also, in at least two specific instances, through operating one certain truck in his business without having provided the insurance required by law.

Upon consideration of all the facts and circumstances of the record herein, I am of the opinion, and therefore find, as follows:

I.

That the respondent Giuseppe Capaccioli did, on or about the 9th day of June, 1938, transport a shipment of certain household goods and personal effects for one David Simonini, from 1707 Stockton Street, San Francisco, to 1225 San Anselmo Avenue, San Anselmo, California, for compensation, in connection with the respondent's transportation business, by means of a certain motor vehicle belonging to the respondent, to-wit, a 1929 Kleiber truck bearing engine No. 18E423, over certain public highways of this state, without having procured, and having in effect on the said 9th day of June, 1939, the public liability and property damage insurance, or other protection, required by law and by the terms and conditions of respondent's operative permit.

II.

That on the 7th day of October, 1938, the respondent engaged in the transportation of certain household goods and personal effects for one Mrs. Lona De Rosa, from 185 Seville Street, to 2743 Hyde Street, in the City and County of San Francisco, State of California, for compensation, in connection with the respondent's transportation business, over the public streets of the City of San Francisco, by means of a motor vehicle belonging to the respondent, described as a Dodge van, Engine No. GB-250400, at a rate less than the minimum rate prescribed therefor in Decision No. 29891 of the California Railroad Commission, as amended, in Case No. 4086, in violation of the provisions of the said Decision and of the said Highway Carriers' Act.

III.

That I further find that the respondent did, on the 1st day of February, 1939, transport certain personal property, consisting of plumbing equipment, for Borolli Romano, from 1541 Grant Avenue to 420 Vallejo Street, in the City and County of San Francisco, State of California, for compensation, in connection with the respondent's transportation business, by means of a certain motor vehicle belonging to the respondent, described as a 1929 Kleibor truck, bearing Engine No. 18E423, without having procured, and having in effect on the said 1st day of February, 1939, the public liability and property damage insurance, or other protection, required by law and by the terms and conditions of the respondent's operative permit.

The following form of order is recommended:

O R D E R

The above entitled matter having been duly heard and submitted for decision, and the foregoing opinion having been duly considered with reference to the findings and conclusions set forth therein, together with the law in the premises,

IT IS HEREBY ORDERED that the respondent's said permit to operate as a Radial Highway Common Carrier, being Permit No. 38-775, and likewise his permit to operate as a City Carrier, being Permit No. 38-376, be, and each of such said permits is, hereby revoked and cancelled, and the said respondent is hereby ordered and directed to remove from each vehicle operated under the said permits, and each of them, any and all distinctive symbols or license plates heretofore issued to the respondent, and thereupon to deliver the same forthwith to the Railroad Commission or to its duly authorized representative.

IT IS HEREBY FURTHER ORDERED that the said respondent Giuseppe Capaccioli be, and he hereby is, ordered to cease and desist, directly or indirectly, or by any subterfuge or device, and hereafter to abstain, from engaging in the transportation of property for compensation, as a business, over any public highway, or over the public streets in any city or city and county of this state, as a "Radial Highway Common Carrier", as that term is defined in Section 1(h) of the said Highway Carriers' Act, or as a "Carrier" as that term is defined in Section 1(f) of the said City Carriers' Act.

The Secretary of the Railroad Commission is hereby directed to cause personal service of a certified copy of this decision to be made upon the said respondent Giuseppe Capaccioli, and to cause certified copies thereof to be mailed to the District Attorneys of the City and County of San Francisco, of Marin, Alameda and San Mateo Counties, respectively, and to the Department of Motor Vehicles, California Highway Patrol, at Sacramento, California.

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

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

Dated at San Francisco, California, this 13th day of June, 1939.

Robert W. Quinn
Frank P. Sullivan
Ray R. Rice
H. H. H. H.
Justice J. Casner