

Decision No. 32176

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, classi-
fications, and practices of GORDON T.
MARKS.

ORIGINAL
Case No. 4404

GORDON T. MARKS, in propria persona.

CRAEMER, COMMISSIONER:

O P I N I O N

This proceeding was instituted by the Commission on its own motion into the operations of respondent, Gordon T. Marks, who holds City Carrier permit No. 19-6401, dated August 11, 1937, for the purpose of determining whether or not respondent, as a carrier, as that term is defined in Section 1 (f) of the City Carriers' Act (Stats. 1935, Chap. 312, as amended), engaged in the transportation of uncrated household goods, furniture and personal effects, or any of them, at rates less than the minimum rates for such transportation established by order of the Railroad Commission in Decision No. 29891, in Case No. 4086, as modified and amended by order of the Railroad Commission in Decision No. 30482, in said Case No. 4086, and more particularly whether or not respondent, as said carrier,

transported household goods, furniture and personal effects on or about December 5, 1938, from 1836 Arapahoe Street, Los Angeles, to 4638 Van Noord Avenue, Los Angeles, for a charge less than the prescribed minimum rates in said decisions. The order was instituted for the further purpose of determining whether or not said carrier, while so engaged in said transportation, failed to issue a freight bill or freight bills in substantially the form prescribed and established by order of the Railroad Commission in and by said Decision No. 29891, Appendix "B" thereof, and more particularly whether or not said carrier failed to issue such freight bill in the said transportation on December 5, 1938.

Public hearing in this matter was held at Los Angeles on April 21, 1939. Respondent appeared and testified voluntarily. Evidence was received, the matter submitted and the same is now ready for decision.

It is evident from the record that respondent has been and now is, and particularly on December 5, 1938, engaged in the business of the transportation of property (uncrated household goods, furniture and personal effects), for compensation as a carrier, as that term is defined in Section 1 (f) of said City Carriers' Act. In this business he operates one truck and has one employee on a percentage basis, and sometimes another employee (his brother) on a part time basis. Respondent testified that prior to December 5, 1938, he issued no form of shipping order or freight bill whatsoever; that after that date he has issued freight bills, which, however, did not conform to the requirements of Decision No. 29891, but that subsequently after being interviewed by an employee of the Railroad

Commission he has included more shipping data upon them. No sample of the document now being used, nor the shipping data placed thereon, was introduced in evidence, and it is therefore not apparent whether or not all the requirements of said decision are being complied with, in reference to the issuance of shipping orders or freight bills. Respondent further testified that on the haul of December 5, 1938, no shipping order or freight bill of any description was made out or issued to the customer.

It is further evident that the respondent transported, by means of his motor truck, having a loading area of approximately 140 square feet, uncrated household goods, furniture and personal effects, consisting of approximately 38 pieces, from 1836 Arapahoe Street, Los Angeles, to 4638 Van Noord Avenue, Los Angeles; that according to Inspector Hughes, who timed the job, the time taken to load said property was twenty-five minutes; that the driving time, one way, was forty-five minutes and that the unloading time was twenty-five minutes. Under Rule No. 30 (b) of Decision No. 29891, in Case No. 4986, it is provided that the hourly rates which are applicable shall be computed as follows: "Loading time, plus double the driving time from point of origin to point of destination, plus unloading time." The application of this rule results in a total of one hundred forty minutes, or two hours and twenty minutes, to be used in figuring the rate. Under Rule No. 30 (d), in Decision No. 30482 in Case No. 4086, the time of twenty minutes is counted as one-fourth hour. Therefore, the time of this job to be taken for rate computation is two and one-fourth hours. The persons who worked continuously on the job were the respondent, his helper, L. Keefer, and another helper, his brother, Al Marks. In said

Decision No. 30482, it is provided in Item 200 thereof that the minimum rate to be charged for a vehicle with a loading area of 90 square feet, or over, with a driver and two helpers is \$5.00 per hour. The charge which should have been made for this haul, therefore, is \$11.25. There is a conflict in the testimony as to what particular charge was made by respondent for this haul. Inspector Hughes, of the Commission, testified that after the haul he asked respondent what consideration he was receiving, and respondent replied, "\$6.00." On the other hand, L. Keefer, a helper on the job, testified that the sum of \$9.00 was charged the customer, Mrs. Helen M. Magee. This latter figure would be correct for the services of a driver and one helper working two and one-quarter hours. Two checks were produced, each naming L. Keefer as payee, Helen M. Magee as drawer, and the Bank of America as drawee. One in the sum of \$6.00 was dated December 5, 1938, and the other in the sum of \$3.00 was dated December 15, 1938. Keefer insisted that both of these checks were in payment of the haul in question and that the reason there were two checks given in payment instead of one was that Mrs. Magee desired to pay in this way.

It is apparent that, whether the sum of \$6.00 or \$9.00 was charged, the minimum rate prescribed by the Commission's said decisions was violated. Suspension of respondent's operating permit should be ordered.

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. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Koller, 33 C.R.C. 371.)

It should also be noted that under Section 13 of the City Carriers' Act (Chapter 312, Statutes of 1935, as amended), one 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.

The following form of order is recommended:

O R D E R

Public hearing having been held, the matter having been duly submitted and the Commission now being fully advised,

IT IS HEREBY FOUND that respondent, Gordon T. Marks, did, on December 5, 1938, engage in the transportation of uncrated household goods, furniture and personal effects, for compensation as a business over the public highways of the State of California, between 1836 Arapahoe Street, Los Angeles, and 4638 Van Noord Avenue, Los Angeles, by means of a motor vehicle as a carrier, as that term is defined in Section 1(f) of the City Carriers' Act (Stats. 1935, Chap. 312, as amended); that there was a driver and two helpers

engaged in said transportation; that under Decisions Nos. 29891 and 30482, the time to have been computed for the job for rate purposes was two and one-quarter hours, and that the minimum charge under said decisions was \$11.25; that the sum charged by said respondent was less than \$11.25 and was in violation of the minimum rate established by said decisions and in violation of said City Carriers' Act.

IT IS HEREBY FURTHER FOUND that respondent, as said carrier, prior to December 5, 1938, engaged in the transportation of uncrated household goods, furniture and personal effects, and failed and neglected to issue to the shipper or shippers a freight bill or freight bills in substantially the form prescribed and established by order of the Railroad Commission in Decision No. 29891, Appendix "B" thereof.

IT IS HEREBY FURTHER FOUND that respondent, on December 5, 1938, engaged in the transportation of uncrated household goods, furniture and personal effects as said carrier, between 1836 Arapahoe Street, Los Angeles, and 4638 Van Noord Avenue, Los Angeles, and failed and neglected to issue a freight bill or freight bills in substantially the form as prescribed and established by order of the Railroad Commission in and by said Decision No. 29891, Appendix "B" thereof.

IT IS HEREBY ORDERED that respondent, Gordon T. Marks, immediately cease and desist and hereafter abstain from engaging in the transportation of property for compensation or hire by means of a motor vehicle or motor vehicles as a city carrier, as that term is defined in Section 1(f) of the City Carriers' Act (Stats. 1935, Chap. 312, as amended), over any public highway in this State

without charging and collecting not less than the minimum rates prescribed and established by the Railroad Commission and without also complying with the orders, rules and regulations regarding the form of shipping order or freight bill, as required by said Decision No. 29891 in Case No. 4086, as modified and amended by Decision No. 30482 in said case.

IT IS HEREBY FURTHER ORDERED that City Carrier's Permit No. 19-6401, dated August 11, 1937, issued to and held by said respondent, Gordon T. Marks, be and the same is hereby suspended for a period of ten days; that said ten day period of suspension shall commence on the 15th day of August, 1939, and continue to the 24th day of August, 1939, both dates inclusive, if service of this order shall have been made upon said respondent more than 20 days prior to the 15th day of Aug., 1939, otherwise said ten day suspension shall commence on the effective date of this order and continue for a period of nine days thereafter.

IT IS HEREBY FURTHER ORDERED that during said period of suspension, said respondent, Gordon T. Marks, shall desist and abstain from engaging in the transportation of property as a carrier, as that term is defined in the City Carriers' Act (Stats. 1935, Chap. 312, as amended), for compensation or hire as a business over any public highway in this State by means of a motor vehicle or motor vehicles and from performing any transportation service as said carrier.

IT IS HEREBY FURTHER ORDERED that for all other purposes, the effective date of this order shall be twenty (20) days from and

after the date of service hereof upon 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 18th day of July, 1939.

Joseph R. Stone
Carl F. Casey
H. B. Smith
Justus J. Cramer
COMMISSIONERS.