

Decision No. 32223

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, classifications and practices of R. M. AUSTIN, doing business as AUSTIN TRUCK CO., and/or AUSTIN TRUCKING CO., and/or AUSTIN TRUCKING & TRANSFER CO., and/or R. M. AUSTIN ENTERPRISES and/or AUSTIN TRANSFER CO.

Case No. 4405

ORIGINAL

R. M. Austin, propria persona.

Henry M. Burgeson, for California Storage Association, Bekins Van Lines, and Bekins Van & Storage, Inc.

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, R. M. Austin, who holds City Carrier permit No. 19-7646, 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 (Statutes 1935, Chapter 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. 29291, 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 uncrated household goods, furniture and personal effects on or about November 2, 1938, from 854 Cloverdale Avenue, Los Angeles, to 907 South

Sycamore Avenue, Los Angeles, for a charge less than the prescribed minimum rates.

Public hearing in this matter was held at Los Angeles on April 20, 1939. Respondent appeared and testified voluntarily. Evidence was received, the matter submitted, and it is now ready for decision.

Respondent, taking the stand voluntarily, testified and admitted the transportation of property, consisting of more than five pieces of uncrated household goods and furniture, in his motor truck with a carrying capacity of approximately 144 square feet, from 854 Cloverdale Avenue, Los Angeles, to 907 South Sycamore Avenue, Los Angeles, on November 2, 1938, for a Mr. Herbst, and that the sum of \$12.00 was received in payment for said transportation. He admitted that two men worked upon the job from 7:15 o'clock a.m., to 10:05 o'clock a.m., or two hours and fifty minutes, and that three men worked from about 10:10 o'clock a.m. until about 11:45 o'clock a.m., or one hour and thirty-five minutes. The minimum rate prescribed by the Commission under Decisions No. 29891 and 30432, in Case No. 4086, for the transportation here involved, where a vehicle with a driver and helper are employed, is \$4.00 per hour and \$1.00 per hour more for each additional helper. It is evident that a vehicle and driver and one helper were employed for two hours and fifty minutes, and a driver, vehicle and two helpers for one hour and thirty-five minutes. Under said decisions these times are adjusted to two hours and forty-five minutes and one hour and thirty minutes, respectively. Under said decisions, therefore, the minimum lawful charge for the service was \$13.50, being the sum of \$11.00 for the vehicle and two men, and \$7.50 for the vehicle and three men. Since \$12.00 was the actual charge, it is apparent that there was an undercharge of \$6.50.

The record further discloses that the order instituting Case No. 4086 was served upon respondent November 26, 1935; that Decision No. 29891 was served upon him on May 29, 1936; and that Decision No. 30482 was served upon him on January 13, 1938.

As matter of excuse or defense for his violation, the respondent testified that he was engaged in another business as well as trucking at the time of the transaction in question, which caused him to be very busy, and further that his employees had charged the incorrect rate without his authority or permission. However this may be, a carrier who acts by and through agents or employees is responsible for their acts and will not be permitted to escape the penalties provided by law for violations of the act. An order for suspension of respondent's permit will be entered.

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. vs. Bray, 37 C.R.C. 224; Re Ball and Hayes, 37 C.R.C. 407; Wermuth vs. Stamper, 36 C.R.C. 458; Pioneer Express Company vs. Keller, 33 C.R.C. 371.)

It should also be noted that under Section 13 of the City Carriers' Act (Chap. 312, Stats. 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.

I recommend the following form of Order:

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, R. M. Austin, did, on November 2, 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 854 Cloverdale Avenue, Los Angeles, and 907 South Sycamore 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), at rates less than the minimum rates prescribed therefor in and by virtue of Decisions No. 29891 and 30482, in Case No. 4086, in violation of said decisions and the City Carriers' Act.

IT IS HEREBY ORDERED that respondent, R. M. Austin, shall immediately cease and desist and thereafter abstain from charging, demanding, collecting or receiving any charge for the transportation of any of the property described in Decisions No. 29891 and 30482, in Case No. 4086, at rates less than those prescribed in said decisions or in subsequent decisions of the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that City Carrier's Permit No. 19-7646, dated April 12, 1938, issued to and held by said respondent, R. M. Austin, be and the same is hereby suspended for a period of ten (10) days; that said ten-day period of suspension shall commence on the 5th day of September, 1939, and continue to the 15th day of September, 1939, both dates inclusive, if service of this order shall have been made upon said respondent more than twenty (20) days prior to the 5th day of September, 1939, otherwise said ten-day suspension shall commence on the effective date of this order and continue for a period of 10 days thereafter.

IT IS HEREBY FURTHER ORDERED that during said period of suspension, said respondent, R. M. Austin, shall desist and abstain from conducting, directly or indirectly, or by any subterfuge or device, 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 *1<sup>st</sup>* day of *August*, 1939.

*Raymond J. ...*  
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*W. H. ...*  
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*W. H. ...*  
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*Justice J. ...*  
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COMMISSIONERS