

Decision No. 32074

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, or any
thereof, of MARK BROKENSHERE, doing
business as BURNETT TRANSFER.

Case No. 4433.

ORIGINAL

APPEARANCES: Mark Brokenshire, en propria persona.

Jackson W. Kendall, for California
Van & Storage Association, interested
party.

WAKEFIELD, COMMISSIONER:

O P I N I O N

This proceeding was instituted by the Commission on its own motion into the operations of respondent, Mark Brokenshire, who holds Radial Highway Common Carrier permit No. 19-430, dated November 24, 1936, for the purpose of determining whether or not respondent, on or about December 31, 1938, engaged in the transportation of uncrated used household goods, furniture, and personal effects, or any of them, between 1136 Hoffman Avenue, Long Beach, California, and 937 Blaine Street, Los Angeles, California, as a highway carrier (other than a highway common carrier), as that term is defined in Section 1(f) of the Highway Carriers' Act (Stats. 1935, Chap. 223, as amended), 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 Decision No. 30482 in said Case No. 4086, in violation of said orders and of said Act; and whether or not said respondent failed to issue to the shipper for said shipment a freight bill in substantially the form prescribed and established by order of the Railroad Commission in and by Decision No. 29891, Appendix "B"

thereof, in violation of said order and said Highway Carriers Act.

Public hearing in this matter was held at Los Angeles on September 14, 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 was on December 31, 1938, engaged in the business of transporting used uncrated household goods, furniture and personal effects for compensation as a highway carrier, (other than a highway common carrier) as that term is defined in Section 1(f) of said Highway Carriers' Act, by means of his two Dodge trucks listed with this Commission.

Mrs. Jewel A. Smith testified that she hired the respondent to transport used household furniture from 1136 Hoffman Ave., Long Beach, to 937 Blaine St., Los Angeles, for \$30.00 or a little more or less; that pursuant to said hiring respondent performed the transportation; that she paid him the sum of \$34.00 in consideration thereof, and one dollar as a tip; and that respondent did not tender to her a shipping order or freight bill in substantially the same form as prescribed and established by Appendix "B" of Decision No. 29891, in Case No. 4086, or any shipping order or freight bill at all, but tendered to her only a purported receipt for the transportation charges, which showed simply the date, the point of origin, point of destination, number of hours worked, the date of and the amount received in payment.

Inspector Brison of the Railroad Commission testified that he witnessed the transportation in question and that the respondent made two trips with a large Dodge truck, which had a loading area of 16 feet by 7 feet 1 inch, or approximately 112 square feet, and one trip with a small Dodge truck measuring 6 feet 3 inches by 6 feet, or a loading area of approximately 37 square feet, and that there was

over five pieces of furniture transported on each of these trips. He observed on each trip the time taken for the loading of the furniture at point of origin, the time taken for driving from point of origin to point of destination and the time taken for unloading the furniture at point of destination, together with the number of men working in each of these acts on each of the three trips described above. His testimony is summarized as follows:

The number of men working in conjunction with the large van and the time that they worked computed after doubling the driving time, in accordance with said Decision No. 29891: Two men worked 290 minutes, which is adjusted to 4-3/4 hours under Decision No. 30482, and when the rate of \$4.00 per hour prescribed by said decision is applied it results in a sum collectible of \$19.00; three men worked 150 minutes, which is adjusted to 2-1/2 hours under Decision No. 30482, and when the rate of \$5.00 per hour prescribed by said decision is applied it results in a sum collectible of \$12.50; one man worked 120 minutes, which is adjusted to 2 hours under Decision No. 30482, and when the rate of \$3.25 per hour prescribed by said decision is applied it results in a sum collectible of \$6.50.

The number of men working in conjunction with the small van and the time that they worked computed after doubling the driving time, in accordance with said Decision No. 29891: Three men worked 40 minutes, which is adjusted to 3/4 of an hour under Decision No. 30482, and when the rate of \$4.50 per hour prescribed by said decision is applied it results in a sum collectible of \$3.38; two men worked 120 minutes, which is adjusted to two hours under Decision No. 30482, and when the rate of \$3.50 per hour prescribed by said decision is applied it results in a sum collectible of \$7.00. The total minimum charge collectible, therefore, for said transportation, under said decisions, is \$48.38. Since only \$34.00 was charged

and collected, an undercharge of \$14.38 therefore resulted.

It is evident from the record that the respondent does not issue any shipping orders or freight bills upon the transportation rendered by him and this was the case with the transportation in question. The record further discloses that the order instituting investigation in Case No. 4086 was served upon respondent on November 26, 1935; that decision No. 29891 in said case was served upon him on July 20, 1937; and that the respondent was interviewed by Inspector Brison on September 2, 1938, at which time he explained the rates and shipping order and freight bill which were prescribed and established by the Railroad Commission in Decisions Nos. 29891 and 30482, and pointed out to the respondent that he was not complying with the order for keeping the proper type of shipping orders or freight bills as established and prescribed in said Decision No. 29891. A letter from this Commission to the respondent, under date of December 16, 1938, not only incorporated this explanatory information but it further pointed out the penalties which might be incurred by a highway carrier for violating the decisions, or rules or regulations of the Commission.

The respondent admitted that it was his practice to perform transportation services at rates less than those prescribed and established by this Commission in the above decisions and in this regard stated that his rates were \$2.50 per hour for either his small van or large van with driver, and \$3.00 per hour for his large van with driver and helper. It is evident that all of the above rates are below those scheduled in Item No. 200 of said Decision No. 30482. Respondent attempted to justify this practice on the ground that the persons for whom he transported the property were poor people and could not afford to pay more, and that in many instances he was transporting property for employees of the county and that the county would not pay any more for his transportation than

\$3.00 per hour. However this may be, the rates prescribed and established by this Commission must be complied with, and any carrier who violates same is subject to the penalties prescribed in the Highway Carriers' Act, and accordingly in this case an order of 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 14 of the Highway Carriers' Act (Chap. 223, 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, Mark Brokenshire, did, on December 31, 1938, engage in the transportation of uncrated used household goods, furniture and personal effects, for compensation as a business over the public highways of the State of California, between 1136 Hoffman Ave., Long Beach, and 937 Blaine Ave., Los

Angeles, by means of a motor vehicle as a highway carrier, as that term is defined in Section 1(f) of the Highway Carriers' Act (Stats. 1935, Chap. 223, as amended), at rates less than the minimum rates prescribed therefor in and by virtue of Decisions Nos. 29891 and 30482, in Case No. 4086, in violation of said decisions and the Highway Carriers' Act.

IT IS HEREBY FURTHER FOUND that respondent, as said highway carrier, in said transportation on December 31, 1938, failed and neglected to issue a freight bill 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, Mark Brokenshire, 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 ~~carrier~~^{highway} carrier, as that term M.S.M. is defined in Section 1(f) of the Highway Carriers' Act (Stats. 1935, Chap. 223, as amended), over any public highways 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, or as may be required by future decisions of the Railroad Commission.

IT IS HEREBY FURTHER ORDERED THAT Radial Highway Common Carrier Permit No. 19-430, dated November 24, 1936, issued to and held by said respondent, Mark Brokenshire, be and the same is hereby suspended for a period of seven days; that said seven day period of suspension shall commence on the 1st day of November, 1939, and continue to the 7th day of November, 1939, both dates inclusive, if service of this order shall have been made upon said respondent more than twenty (20) days prior to the 1st day of November, 1939, otherwise

said seven day suspension shall commence on the effective date of this order and continue for a period of seven days thereafter.

IT IS HEREBY FURTHER ORDERED that during said period of suspension, said respondent, Mark Brokenshire, shall desist and abstain from conducting, directly or indirectly, or by any subterfuge or device, the transportation of property as a highway carrier, as that term is defined in the Highway Carriers' Act (Stats. 1935, Chap. 223, 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 Los Angeles, California, this 26th day of September, 1939.

Raymond A. Bunker
Paul D. Bunker
W. H. Baker
Justus F. Casner
Commissioners.