

Decision No. 32426

ORIGINAL

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, ) Case No. 4286  
and practices of C. W. CARLSTROM, )  
doing business as ACE VAN & STORAGE CO.)

PHIL JACOBSON, for respondent,

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

CRAEMER, COMMISSIONER:

O P I N I O N

This is an order to show cause why C. W. Carlstrom, doing business as Ace Van & Storage Co., hereinafter referred to as respondent, should not be judged guilty of contempt of an order of the Commission. The order was issued on the application of C. M. MacKenzie, and supported by the affidavits of said MacKenzie and J. Oliver Erison, both inspectors of the Commission. The application and affidavits and the order to show cause were personally served on respondent on February 28, 1939.

The affidavits charge a violation of the Commission's order contained in Decision No. 31184, issued August 8, 1938. The decision suspended respondent's radial highway common carrier and highway contract carrier permits, and provided in part as follows:

"IT IS HEREBY FURTHER ORDERED that during said period of suspension, respondent shall cease, desist and refrain from engaging in the transportation of property for hire, as a business, over any public highway in this state, and from performing any service as a radial highway common carrier, as defined in the Highway Carriers' Act, or as a highway contract carrier, as defined in the Highway Carriers' Act."

The affidavits charge separate violations of said order in two counts. The first count charges respondent with delivering a shipment of property from San Diego to Coronado, California. The second count charges respondent with transporting household goods from Coronado to Los Angeles, California.

It is alleged directly that respondent is engaged in the transportation business in San Diego as "Ace Van & Storage Co."; that on the 24th day of January, 1938, the Commission issued an Order of Investigation on its own motion into the practices of respondent; that a public hearing was held at which time evidence was taken and, subsequent to the hearing, on August 8, 1938, the Commission rendered its decision suspending respondent's highway contract carrier and radial highway common carrier permits for a period of ten days; that during said period of suspension, from September 5th to and including September 14th, while the order was unrevoked and in full force and effect, respondent disobeyed the Commission's order by rendering a transportation service in violation of said order. It is then alleged on information and belief that respondent performed certain transportation services on September 6, 1938, between San Diego and Coronado. It is stated directly that affiant MacKenzie observed respondent's truck laden with property driven over the public highways in San Diego to the ferry, and thence across the bay on the ferry to Coronado, where the property was delivered.

In the second count it is alleged on information and belief that certain household goods and effects of Mrs. A. M. de Bauviere were, in Coronado, loaded on a truck registered to respondent and the truck driven to respondent's warehouse in San Diego, where the goods were unloaded. It is alleged directly that the property was then placed on another truck at the warehouse of res-

pondent and by it taken to the office of Zimmerman Brothers in San Diego, and thereafter the truck proceeded to Zimmerman Brothers' address at Long Beach. It is alleged on information and belief from the supporting affidavit of Brison that a truck registered to respondent was loaded with said shipment at Zimmerman Brothers' address at Long Beach, and driven to the Ace Van & Storage Co. warehouse in Long Beach, and on information and belief that the shipment was subsequently delivered to Mrs. de Bauviere at 437 North Ardmore, Los Angeles, who then paid for the transportation. It is alleged directly that the property was so transported by respondent as a highway carrier other than a highway common carrier.

Brison's affidavit stated that he observed a truck registered to respondent at Zimmerman Brothers' office in Long Beach loaded with Mrs. de Bauviere's shipment, and the truck then driven to Ace Van & Storage Co. warehouse in Long Beach.

At the beginning of the hearing respondent moved to strike the affidavits in so far as the allegations contained therein are based upon information and belief. The motion was taken under submission. The respondent's motion is hereby denied.

Golden Gate Mining Co. v. Superior Court,  
65 Cal. 187;

Ex parte Acock, 84 Cal. 50;

In re Kolb, 60 Cal. App. 198;

Ex parte Pillsbury, 69 Cal. App. 784;

In re Reilly, 17 Cal. App. (2d) 55;

In re Simonillo, 6 Cal. App. (2d) 425.

The evidence in support of count one is insufficient to support the allegations of the affidavit that respondent performed the transportation service described.

In reference to Count 2, the testimony of Mrs. de Bauviere shows she called the office of the Ace Van & Storage Company on the telephone and asked that an estimate be given for the cost of moving her household goods from Coronado to Los Angeles. In response to this call Mr. Greenman came to her residence at 1109 Ninth Avenue, Coronado, and estimated the cost of transporting her household goods and effects at the approximate sum of \$32.00. At this time Mrs. de Bauviere entered into an agreement which was reduced to writing on a printed form, on the top of which was printed in large bold type "Ace Van & Storage Co." There was written in the spaces provided on the agreement form by Mr. Greenman in the presence of Mrs. de Bauviere: "Mrs. A. M. de Bauviere"; "1109 9th St., Coronado"; after the printed word disposition: "437 N. Ardmore, Los Angeles, Calif.," and after the printed word date: "9/1/38." There was also written in the middle of the document the words "upright piano." The approximate cost of the service was stated to be \$27.00. There was also written "\$1.00 or \$1.50 extra per piano going to second floor." The agreement further contained this statement: "This will be your authority to do the above work. Date September 6 Tuesday. Time: 8:00. I hereby declare the value not to exceed \$ \_\_\_\_\_ per cwt. or \$ \_\_\_\_\_ for entire shipment. Signed: R. M. DeBauviere." The agreement is signed "Ace Van & Storage Co. per R. H. Greenman."<sup>(1)</sup> On September 6, 1938, at approximately 8 o'clock a.m., a large van with the word "Ace" on the side arrived at 1109 9th Ave., Coronado, and the household goods and effects were then loaded on to the truck. At this time one of the men accompanying the truck gave Mrs. de Bauviere a document showing a list of the furniture, which he prepared at that time.<sup>(2)</sup> The van then moved away.

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(1) Exhibit No. 5  
(2) Exhibit No. 6

About 4:45 o'clock p.m. on this date Inspector MacKenzie observed a truck at the Ace Van & Storage Company's warehouse at 4th and Market Streets, San Diego, being loaded with certain household goods and effects. He observed a cardtable, suitcase, cartons, upright piano, and piano bench. These articles were listed in the inventory (Exhibit 6). It will be observed that the piano, in addition to being listed on the inventory, was also listed in the agreement (Exhibit 5). At 5:07 o'clock p.m. the loaded truck left the warehouse and proceeded to the office of Zimmerman Bros., 1918 Main Street, San Diego, where it remained until about 6:40 o'clock p.m., at which time it returned to the Ace Van & Storage Co. warehouse and remained there until 3:00 o'clock a.m. on September 7, 1938. At 8:30 o'clock a.m. on September 8, 1938, Inspector Brison of Long Beach observed this truck in the rear of 1541 Cota Avenue, Long Beach, which is the office of Zimmerman Bros. The contents of this truck were then removed and placed on a truck, bearing the sign "Ace Van & Storage" and a license number registered to respondent, which, when observed, was parked alongside the other truck. When the contents were completely loaded into the truck bearing the Ace Van & Storage sign, the latter truck proceeded to the warehouse of respondent at 547 W. Anaheim Boulevard, Long Beach, where the household goods in the truck were loaded on to a platform. Witness Brison observed the name "A. M. de Bauviere" on some suitcases and trunks which were unloaded at this time. He also observed an upright piano.

Mrs. de Bauviere testified that her furniture was delivered at 437 North Ardmore, Los Angeles, on September 9th. She was unable to identify the truck from which her property was delivered. However, she stated it was not the same truck that picked up her property in Coronado. Her testimony shows she paid \$32.75 for the transportation, and was given a receipt, <sup>(3)</sup> signed by one Bill Patterson. Mr.

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(3) Exhibit No. 7

Zimmerman testified that respondent paid Zimmerman Bros. for transporting certain household goods and effects, though he could not identify the shipment any further, on September 7th or 8th, 1938, from San Diego to Long Beach, and that the shipment was delivered to Ace Van & Storage Co. at Zimmerman's Long Beach warehouse.

The evidence thus clearly shows that transportation service as a highway carrier other than a highway common carrier was performed for Mrs. de Bauviere; that this service was rendered pursuant to a written order signed in the name of respondent's company by one who called in response to a request made at respondent's warehouse; that the goods were taken from Mrs. de Bauviere's residence at Coronado in a truck bearing the name under which respondent operates, and were seen thereafter in the course of transportation at respondent's warehouse in San Diego and again at his warehouse in Long Beach, at the latter place on a truck bearing the name respondent uses in his business and registered in respondent's own name; that Zimmerman Bros., from whom respondent's truck received the shipment in Long Beach, transported a shipment on that day from San Diego to Long Beach for respondent, who paid them for doing so. In the absence of any explanation of these facts, and none was offered, it must be concluded that the service was contracted for and performed by respondent, partly by himself and partly through the agency of other carriers, in violation and contempt of the Commission's order.

It has long been recognized by the Supreme Court that the Commission is empowered to punish for contempt.

"(a) \* \* \* And the Commission and each of the Commissioners shall have the power to administer oaths, take testimony and punish for contempt in the same manner and to the same extent as court of record. \* \* \*"  
(Article 12, Section 22, Constitution of California.)

"(b) Every \* \* \* person which shall fail to observe, obey or comply with any order, decision, rule, regulation,

demand or requirement, or any part or portion thereof, of the Commission or any Commissioners shall be in contempt of the Commission and shall be punishable by the Commission for contempt in the same manner and to the same extent as contempt is punished by courts of record."

(Sec. 31, Public Utilities Act, State of California.)

In re Garner, 179 Cal. 409  
in re Barry, 94 Cal. 562  
Barry v. Superior Court, 91 Cal. 486.

The power to punish for contempt should not be abused and should be exercised only when necessary to insure a respect for and observance of the Commission's lawful orders.

United Parcel Company v. 20th Century Delivery Service,  
38 C.R.C. 455.

In view of the operation by respondent during the period that his permits were suspended by the Commission order, and the lack of any evidence of mitigating or extenuating circumstances, respondent should be adjudged guilty of contempt and there should be an appropriate penalty imposed.

#### F I N D I N G S

Upon consideration of the record in this proceeding,  
IT IS HEREBY FOUND:

##### COUNT ONE

That the evidence is insufficient to support the allegations of the first count set forth in the Affidavits and Application for Order to Show Cause, that respondent transported property of Mrs. A. A. Burke, as a highway carrier other than a highway common carrier, between San Diego and Coronado on September 6, 1938, or at all.

##### COUNT TWO

1. That the Railroad Commission on the 5th day of August, 1938, rendered its Decision No. 31184 finding that respondent, C. W. Carlstrom, while engaged in the business of transporting

property for hire over the public highways of the State of California by motor vehicle as a highway carrier other than a highway common carrier, rendered a transportation service in violation of the Commission's rate order and ordered radial highway common carrier permit No. 37-82 and <sup>highway</sup> contract carrier permit No. 37-83, issued to respondent C. W. Carlstrom, doing business as Ace Van & Storage Company, suspended for a period of ten (10) days; and further ordered that during the period of suspension, to-wit from September 5th to and including September 14, 1938, respondent should cease and desist and refrain from engaging in the transportation of property for hire as a business over any public highway in this State and from performing any service as a highway carrier other than a highway common carrier. That said order has never been revoked, annulled or stayed, and is and was at all times mentioned herein in full force and effect. That a certified copy of said decision No. 31184, containing said order of suspension and said cease and desist order was personally served on C. W. Carlstrom on the 16th day of August, 1938. That C. W. Carlstrom had personal knowledge and notice of said decision and the contents thereof prior to the effective date of said decision and order, and was able at all times thereafter to comply with said order.

2. That on the 25th day of January, 1939, the affidavits and application for order to show cause were filed with the Commission, in which it was alleged in substance that C. W. Carlstrom, doing business as Ace Van & Storage Company, notwithstanding the order contained in its decision No. 31184, and with full knowledge of the contents thereof and during its effective period, has failed and refused to comply with said order, and has rendered a transportation service as a highway carrier other than a highway common carrier for hire as a business in the transportation of property by motor vehicle over the public highways of the State of California in violation of the Commission's order contained in said decision.

3. That on the 6th day of February, 1939, subsequent to the



filing of the affidavits and application for order to show cause as hereinabove set out, the Railroad Commission issued its order directing C. W. Carlstrom, doing business as Ace Van & Storage Company, to appear at ten o'clock a.m. on the 28th day of March, 1939, in the Court Room of the Appellate Court, in the Electric Building, San Diego, to show cause why he should not be punished for the alleged contempts contained and set forth in said affidavits. That said order to show cause, together with the affidavits upon which said order was based, was personally served on C. W. Carlstrom on the 28th day of February, 1939. That notwithstanding the order of the Railroad Commission contained in its decision No. 31184, C.W. Carlstrom, doing business as Ace Van & Storage Company, failed and refused to comply with the terms thereof and did engage in the transportation of property for hire as a business by motor vehicle over the public highways of the State of California by transporting a shipment of household goods and effects between Coronado and Los Angeles as a highway carrier other than a highway common carrier during the period that respondent's highway contract carrier permit and radial highway common carrier permit were suspended, to-wit, on September 6, 7, 8, and 9, 1938, in violation of said decision and order.

4. That the failure of said C. W. Carlstrom, doing business as Ace Van & Storage Company, to comply with the said order of the Railroad Commission and his performance of said transportation service as a highway carrier other than a highway common carrier, was and is in contempt of the Railroad Commission of the State of California and its order.

#### J U D G M E N T

C. W. Carlstrom having appeared in person and by counsel and having been given full opportunity to answer the order to show cause of the 6th day of February, 1939, and to exonerate himself of the alleged contempt, from the foregoing Opinion and Findings of Fact,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that C. W.

Carlstrom, doing business as Ace Van & Storage Company, is not guilty of contempt of the Railroad Commission of the State of California in disobeying its order made on August 8, 1938, in its Decision No. 31184, as alleged in Count One.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that C.W. Carlstrom, doing business as Ace Van & Storage Company, is guilty of contempt of the Railroad Commission of the State of California in disobeying its order made August 8, 1938, in its Decision No. 31183 by failing and refusing to cease, desist, and refrain from engaging in the transportation of property for hire as a business over any public highway in this State, and from performing any service as a radial highway common carrier or a highway contract carrier during the period of the suspension of said C. W. Carlstrom's radial highway common carrier and highway contract carrier permits.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that for this said contempt of the Railroad Commission and its order as hereinabove set out, C. W. Carlstrom be punished by a fine of \$500., said fine to be paid to the Secretary of the Railroad Commission of the State of California within five (5) days after the effective date of this Opinion, Findings and Judgment.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that in default of the payment of the aforesaid fine as hereinabove ordered said C. W. Carlstrom be committed to the County Jail of the County of Los Angeles, State of California, until such fine be paid or satisfied in the proportion of one day's imprisonment for each Five Dollars (\$5.00) of said fine that shall be unpaid.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission of the State of California, if said fine or any part thereof shall not be paid within the time specified above, prepare appropriate order or orders of arrest and commitment in the name of the Railroad Commission of the State of California, directed to the Sheriff of the County of San Diego, to which shall be attached and made a part thereof a certified copy of this Opinion,

Findings and Judgment.

IT IS HEREBY FURTHER ORDERED that this Opinion, Findings and Judgment shall become effective twenty (20) days after personal service of a certified copy hereof upon said C. W. Carlstrom.

The foregoing Opinion, Findings and Judgment are hereby approved and ordered filed as the Opinion, Findings and Judgment of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3<sup>rd</sup> day of October, 1939.

Robert W. [unclear]  
Francis P. [unclear]  
Ray H. Riley  
[unclear]  
Justice J. Casner  
Commissioners.