

Decision No. 32054

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 GEORGE A. ALLEN, doing)
business as ALLEN TRANSFER.)

ORIGINAL

Case No. 4429

Geo. A. Allen, in propria persona

Jackson W. Kendall, for California Van & Storage
Association, as their inter-
ests may appear.

Ray Hampton, for Ray's Van & Storage,
interested party.

G. W. Hover, for Independent Van & Warehousemen's
Association, interested party.

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by the Commission on its own motion into the operations of respondent, George A. Allen, who holds City Carrier Permit No. 19-2247, dated November 21, 1935, for the purpose of determining whether or not respondent, on or about December 8, 1938, engaged in the transportation of uncrated used household goods, furniture and personal effects, or any of them, between 203 E. 76th Street, Los Angeles, and 1700 W. 84th Street, Los Angeles, 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 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 the City Carriers' Act.

Public hearing in this matter was held at Los Angeles

on July 27, 1939, before Examiner Ager. Respondent appeared and testified voluntarily. Evidence was received, the matter submitted and the same is now ready for decision.

The evidence shows respondent has been and was on December 8, 1938, engaged in the business of transporting used uncrated household goods, furniture and personal effects for compensation as a city carrier as that term is defined in Section 1(f) of said City Carriers' Act; and that on said day as such carrier he transported such commodities from 203 E. 76th Street, Los Angeles, to 1700 W. 84th Street, Los Angeles, by means of a motor truck, having a loading area of not less than 90 square feet.

Inspector Harry Rosenthal, an inspector of the Railroad Commission, testified that respondent with a helper made two trips in performing the moving job in question, that on each trip there were more than five pieces of furniture transported, and that he observed on each of said trips the time taken for loading at point of origin, the time taken for the driving from point of origin to point of destination and the time taken for unloading at point of destination. The total time taken by respondent for both of the trips, after doubling the driving time as required by Decision No. 29891, was 222 minutes, or 3 hours and 42 minutes, which under Decision No. 30482, is adjusted to 3-3/4 hours. The minimum rate established and prescribed by said Decision No. 30482, Item 200 thereof, for a vehicle with a loading area of not less than 90 square feet, with driver and helper, is \$4.00 per hour. The minimum charge collectible, therefore, was \$15.00. The respondent charged and collected the sum of \$14.00 and accepted in addition a tip in the sum of 50 cents. Since a tip is a mere gratuity and not part of the consideration, it is apparent that there was an un-

dercharge of \$1.00.

In defense respondent contends that the transportation in question is subject to the rate for a vehicle of less than 90 square feet on the grounds that the bed of his truck measures only 7 feet by 12 feet, 10 inches, or 89.83 square feet. The roof of the cab of respondent's truck, however, is adaptable for use as loading space and respondent admits that it is often so used as was the case in both of the loads in question. The loading area of a vehicle is defined in Item 200 of Decision 30482 as follows:

"The loading area of a vehicle as used in this item means the total space available for loading including tailgate and overhead (loading space above driver's compartment)".

It is clear that the space above the driver's compartment of respondent's truck was available for loading and it must be included in the "loading area" of the truck pursuant to this item. The total loading area of the vehicle, therefore, was more than 90 square feet. Accordingly the respondent must be held to have violated said decisions.

It is further evident from the record 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; that Decision No. 30482 was served on respondent on January 13, 1938; and that the respondent by letter from this Commission, dated June 15, 1937, was apprised in detail of the rates set forth in said decisions, together with the penalties which might be incurred for violation thereof.

It appears further that on the particular movement in question a competing carrier had negotiated with the shipper relative to performing the work, and he had quoted the shipper the lawful rates of \$4.00 per hour for a vehicle of 90 square feet

household goods, furniture and personal effects, for compensation as a business over the public highways of the State of California, between 203 E. 76th Street, Los Angeles, and 1700 W. 84th Street, 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 No. 30482, in Case No. 4086, in violation of said decisions and the City Carriers' Act.

IT IS HEREBY ORDERED that respondent, George A. Allen, 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 in said case or by subsequent decisions of the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that City Carrier's Permit No. 19-2247, dated November 21, 1935, issued to and held by said respondent, George A. Allen, be and the same is hereby suspended for a period of seven (7) days; that said seven (7) day period of suspension shall commence on the ^{12th} ~~13th~~ day of ^{November} ~~November~~, 1939, and continue to the ^{19th} ~~19th~~ day of ^{November} ~~November~~, 1939, both dates inclusive, if service of this order shall have been made upon said respondent more than ²⁰ ~~20~~ days prior to the ^{13th} ~~13th~~ day of ~~November~~, 1939, otherwise said 7 day suspension shall commence on the effective date of this order and continue for a period of 6 days thereafter.

or over and \$2.75 per hour for a vehicle of less than 90 square feet, each with driver and helper, but when the latter arrived to transport the property respondent had been hired instead at the rate of \$3.50 per hour for his truck, a driver and helper. Considering all the circumstances of the case, it appears to us that respondent's permit should stand suspended for a period of seven days, and it will be so 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. 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.

The following form of finding and 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, George A. Allen, did, on December 8, 1938, engage in the transportation of uncrated

IT IS HEREBY FURTHER ORDERED that during said period of suspension, said respondent, George A. Allen, 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 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 10th day of October, 1939.

R. A. [Signature]
Frank [Signature]
W. H. [Signature]
W. [Signature]
Justin D. Colver
Commissioners