

Decision No. 32464

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, ) Case No. 4443  
contracts, and practices of ARTHUR M.)  
GARIDELLE, doing business as )  
ARTHUR'S TRANSFER. )

Arthur N. Garidelle, in propria persona

RILEY, COMMISSIONER:

O P I N I O N

This proceeding was instituted by the Commission on its own motion into the operations of respondent, ARTHUR N. GARIDELLE (named Arthur M. Garidelle in the Order Instituting Investigation), who holds City Carrier Permit No. 19-4240, dated August 4, 1936, for the purpose of determining whether or not respondent, on or about January 30, 1939, engaged in the transportation of uncrated used household goods, furniture, and personal effects, or any of them, between 550 North Flores Avenue, Los Angeles, California, and 837 North La Jolla Avenue, Los Angeles, California, 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 of the City Carriers' 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 Decision No. 29891, Appendix "B" thereof, in violation of said order and said City Carriers' Act.

Public hearing in this matter was held at Los Angeles on September 29, 1939. Respondent appeared, evidence was received, the matter submitted and the same is now ready for decision.

The evidence shows respondent has been and was on January 30, 1939, 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 550 North Flores Avenue, Los Angeles, to 837 North La Jolla Avenue, Los Angeles, by means of a motor truck, having a loading area of approximately 105 square feet.

Wayne Wilson testified that he was employed by the respondent; that he was instructed by respondent to charge and did charge the rate of \$3.50 per hour; that he and a helper, Everett Branch, performed the transportation in question; that they commenced loading the furniture into the van at about 8:00 A.M. and worked continuously until they completed the loading. Everett Branch testified directly from a memorandum made by him at the time of the movement that the loading commenced at 8:00 A.M.

Harry Rosenthal, an inspector for the Railroad Commission, testified that he arrived at 550 North Flores Avenue, Los Angeles, at 10:10 A.M. on said date and that Wilson and Branch completed the loading at that time; that the latter departed from 550 North Flores Avenue, Los Angeles, at 10:13 A.M. and arrived at 837 North La Jolla Avenue, Los Angeles, at 10:15 A.M.; and that unloading commenced at 10:15 A.M. and was completed at 11:20 A.M. He further testified that another trip was made in the movement of the household furniture and that the loading for the second trip commenced at 11:50 A.M. and was completed at 1:20

P.M.; that the truck departed from 550 North Flores Avenue, at 1:23 P.M. and arrived at 837 North La Jolla Avenue at 1:25 P.M.; that the unloading commenced at 1:25 P.M. and was completed at 3:00 P.M.; and that on each of these trips there were over five (5) pieces of furniture transported. The total time taken by the respondent for both trips, after doubling the driving time as required by Decision No. 29891, was 388 minutes, or 6 hours and 28 minutes, which under Decision No. 30482 is adjusted to 6-1/2 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 \$26.00. Mrs. Henrietta W. Cohen testified that she hired the respondent at the rate of \$3.50 per hour and paid him the sum of \$21.00 for the movement. Further, respondent admitted that he quoted and charged the rate of \$3.50 per hour for the movement in question. It is apparent therefore that there was an undercharge in the sum of \$5.00.

It is further evident from the record that Decision No. 29891 in Case No. 4086 was served upon respondent on July 20, 1937, and that Decision No. 30482 in said case was served upon him on January 13, 1938.

Respondent stated in defense that a portion of the loading area above the cab, 14 inches by 6-1/3 feet, should not be included as available loading space. It appears from the record, however, that there was not a bulkhead dividing this area from the rest of the loading area of the truck and therefore it should be included as available loading space of the truck. Assuming, however, that there were such a bulkhead, nevertheless, the number of square feet would still remain not less than 90 square feet loading area and accordingly, respondent's contention is immaterial. No further excuse was offered by respondent and considering all the circumstances of the case, it appears to us

that respondent's permit should be suspended and respondent directed to desist from operation during the period of suspension.

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. 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 & Hayes, 37 C.R.C. 407;  
Wermuth v. Stamper, 36 C.R.C. 458;  
Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should 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. 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, Arthur N. Caridelle, did on January 30, 1939, 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 550 North Flores Avenue, Los Angeles, and 837 North La Jolla 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, Arthur N. Garidelle, his agents, servants, employees, aiders and abettors, 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. 19-4240, dated August 4, 1936, issued to and held by said respondent, Arthur N. Garidelle, be and the same is hereby suspended for a period of seven days; that said seven-day period of suspension shall commence on the 16th day of November, 1939, and continue to the 22nd day of November, 1939, both dates inclusive, if service of this order shall have been made upon said respondent more than twenty days prior to the 16th day of November, 1939, otherwise said seven-day suspension shall commence on the effective date of this order and continue for a period of six days thereafter.

IT IS HEREBY FURTHER ORDERED that during said period of suspension, said respondent, Arthur N. Garidelle, his agents, servants, employees, aiders and abettors, 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 17<sup>th</sup> day of October, 1939.

Raymond  
Grant

Ray & Wiley

H. B. A. M.

Justice J. Coe  
Commissioners