

Decision No. 32465

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on)
the Commission's own motion into the) Case No. 4442
operations, rates, charges, contracts,)
and practices of VICTOR SILVA.)

VICTOR SILVA, in propria persona

BY THE COMMISSION:

O P I N I O N

This is an investigation, on the Commission's own motion, into the operations, rates, charges, contracts and practices of Victor Silva, hereinafter called respondent, to determine whether said respondent transported a shipment of household goods and personal effects on March 2, 1939, from 1445 Mason Street to 2419 $\frac{1}{2}$ Lombard Street, San Francisco, California, at rates less than the minimum rates established by the Commission in Decision No. 29891, as amended by Decision No. 30482 in Cases Nos. 4086 and 4099, in violation of said orders and of Section 9 of the City Carriers' Act (Stats. 1935, Ch. 312, as amended), and whether respondent issued to the shipper a freight bill in substantially the form prescribed by said Decision No. 29891.

Public hearing in this proceeding was had before Examiner McGettigan in San Francisco on October 2, 1939, where testimony was taken and the matter submitted; it is now ready for decision.

Respondent Silva appeared at the hearing, but did not participate in the proceedings.

Respondent holds permits to operate as a city carrier (No. 38-341) and as a radial highway common carrier (No. 38-340), issued November 1, 1935.

The record shows that on March 2, 1939, respondent transported the property described heretofore for a Miss Margaret Biada from 1445 Mason Street to 2419½ Lombard Street, San Francisco. Miss Biada stated that she paid respondent \$9.00 and that no freight bill or receipt was given her.

The record further shows that the van used in this furniture movement had a capacity of 120 square feet.⁽¹⁾ Loading time, as testified to by Inspector Horton of the Commission's staff, took from 10:00 A.M. to 11:55 A.M., or 1 hour, 55 minutes; driving time from 12:22 P.M. to 12:37 P.M., or 15 minutes which, under the minimum rate order of the Commission, must be doubled, giving a driving time therefor of 30 minutes; unloading occupied from 12:37 P.M. to 1:10 P.M., or 33 minutes. Total time consumed on the job amounted to three hours. According to further testimony, a driver and helper loaded the van and in the unloading were assisted by an extra man.

With respect to the particular operation described herein, Decision No. 29891, as amended by Decision No. 30482, in item 200 thereof, applying to Territory "A" which comprises the city and county of San Francisco, provides as follows:

(1) 12' x 7'6" and 7' x 4'6" over cab, as measured by Inspector Horton.

" . . . Vehicles having a loading area of 90 square feet or over . . . Vehicle, driver and helper: \$4.50 per hour . . . For help in addition to driver and first helper a charge per man per hour of \$1.25 in Territory 'A' . . . shall be made."

Applying the rule in item 200 to the instant matter, the following lawful minimum charge should have been made:

1 vehicle, driver and helper	3 hrs. at \$4.50 per hr.	\$13.50
1 extra man unloading	$\frac{1}{2}$ hr. at 1.25 per hr.	<u>.63</u>
Total lawful charge		\$14.13

As a charge of only \$9.00 was actually assessed and collected for the work performed, it is apparent that an undercharge of \$5.13 has resulted and that respondent therefore has violated the minimum rate orders of this Commission. A further violation exists because of respondent's failure to issue the prescribed freight bill.

Respondent was duly and properly served with the rate orders here applicable, and hence should be familiar with their contents. It should be ordered that respondent's city carrier permit be suspended for a period of 10 days and that respondent desist from such operations during the period of suspension.

An order of the Commission directing that an operation cease and desist 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 person 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 and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C., 371.

It should also be noted that under Section 13 of the City Carriers' Act (Stats. 1935, Ch. 312, 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.

Respondent is cautioned not to undertake to sell, furnish, or provide transportation to be performed by any other carrier, on a commission basis or for other consideration, while his permit is suspended, unless he shall first obtain the license required by the Motor Transportation Broker Act (Stats. 1935, Ch. 705) for such operations as a broker. It is to be noted that under Section 16 of that Act one who engages in business as a Motor Transportation Broker without the required license is subject to a fine of not to exceed \$500, or to imprisonment in the county jail for a term not to exceed six months, or to both such fine and imprisonment.

ORDER

Public hearing having been had in the above-entitled proceeding, the matter having been duly submitted, and the Commission now being fully advised in the premises,

IT IS HEREBY FOUND that respondent, Victor Silva, did, on March 2, 1939, engage¹ 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 1445 Mason Street and 2419¹/₂ Lombard Street, both points within the city and county of San Francisco, by means of a motor vehicle as a carrier as such term is defined in Section 1(f) of the City Carriers' Act (Stats. 1935, Ch. 312, 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 of the City Carriers' Act.

IT IS HEREBY FURTHER FOUND that respondent, as such carrier, in said transportation on March 2, 1939, 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, Victor Silva, 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, as that term is defined in Section 1(f) of the City Carriers' Act (Stats. 1935, Ch. 312, as amended), over any public highways in any city 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 city carrier permit No. 38-341, dated November 1, 1935, issued to and held by said respondent, Victor Silva, be and the same is hereby suspended for a period of ten days; that said ten-day period of suspension shall commence on the 13th 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 (20) days prior to the 13th day of November, 1939; otherwise said ten-day suspension shall commence on the effective date of this order and continue for a period of nine days thereafter.

IT IS HEREBY FURTHER ORDERED that during said period of suspension, said respondent, Victor Silva, 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 said Act for compensation or hire as a business over any public highway in any city in this State by means of a motor vehicle or motor vehicles and from performing any transportation service as such 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 Secretary of the Railroad Commission is directed to cause personal service of a certified copy of this decision to be made upon said respondent, Victor Silva, and to cause certified copies thereof to be mailed to the District Attorney of San Francisco County and to the Department of Motor Vehicles, Highway Patrol, at Sacramento.

Dated at San Francisco, California, this 17th day of October, 1939.

Robert W. Anderson
James D. DeWitt
Paul H. Quinn
H. B. Hall
Justus J. Casper

COMMISSIONERS