

Decision No. 32479

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Investigation)
on the Commission's own motion into)
the operations, rates, charges,)
contracts, and practices of C. L.)
ARNOLD.)

Case No. 4432

A P P E A R A N C E S

C. L. ARNOLD, in propria persona

HAROLD DILL, for The Truck and Warehouse
Association of San Diego and Imperial
Counties, Interested Party

CRAEMER, COMMISSIONER:

O P I N I O N

This proceeding was instituted by the Commission on its own motion for the purpose of determining whether respondent, C. L. Arnold, who holds permit No. 37-689 as a highway contract carrier, transported certain shipments of property specifically described in the order instituting investigation herein, at rates

less than the minimum rates therefor established by the Commission in its Decision No. 29480, as amended, in Case No. 4088, Part "M", in violation of said decision and of the Highway Carriers' Act.

Public hearing was held at San Diego on July 31, 1939, at which respondent appeared. Evidence was received and the matter submitted; it is now ready for decision.

Witness Paul E. Steak, purchasing agent for Whiting Mead Co., a wholesale hardware concern, stated that respondent had been hauling for his firm for four years under written contract and that the shipments described in the Order Instituting Investigation had been transported by respondent pursuant to the terms of said contract. He further stated that respondent charged and was paid for these services at the rate of fifteen cents per 100 pounds, which was the contract rate. The minimum rates and charges applicable to this transportation were established by said Decision No. 29480 and are higher than those which Steak testified were charged and collected by respondent. (1)

(1) The following table shows: the shipments which Witness Steak testified respondent transported; the rates and charges which he stated respondent assessed and collected therefor; and the lawful applicable minimum rates and charges established by Decision No. 29480, as amended, in Case No. 4088, Part "M". The point of origin of each shipment is 14th and K Streets, San Diego, and rates are stated in cents per 100 pounds.

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Respondent contended that the lawful rates applicable to this transportation were the rates specified in said decision for the transportation of junk. This contention was founded upon witness Steak's description of the shipments as shipments

(Footnote (1), page 2, continued:)

Date	Point of :Destination	Commodities : Transported	wt. : in : Lbs	Charge : at 15¢ : rate	Lawful : rate	Lawful : Charge
1938 6/3	4361 Firestone Blvd., South Gate	15 water heater brackets, iron	195	.29	.65	1.27
6/28	4361 Firestone Blvd., South Gate	2 hot water heater tanks, iron	170	.26	.73	1.24
6/28	3851 Santa Fe Ave., Vernon	72 - 4 inch 1/5 bends, cast iron	860	1.29	.51	4.39
6/29	2035 E. Vernon Ave., Vernon	1 iron enameled sink and 1 iron enameled lavatory	231	.35	.65	1.50
7/5	1633 San Pablo Ave., Los Angeles	11 bales compos- ition roofing and 1 roll slate roofing	1160	1.74	.52	6.03
7/6	3851 Santa Fe Ave., Vernon	Cast Iron Pipe Fittings	2940	4.41	.44	12.94
7/9	213 Jackson St., Los Angeles	2 kegs nails	210	.32	.58	1.22
8/10	1203 E. 79th Street, Los Angeles.	6 empty putty drums	240	.36	.81	1.94
8/19	2260 E. Vernon Ave., Vernon	1 wall heater gas, bronze	32	.05	.65	.50
8/18	3851 Santa Fe Ave., Vernon.	10 soil fittings cast iron	250	.38	.57	1.43

of defective merchandise being returned by Whiting Mead Co. for a credit allowance. The record, however, clearly shows that the shipments were not shipments of junk. Witness Steak specifically described the merchandise transported, and from his description thereof it appears that while it could no longer be considered as first class merchandise, it was still suitable for its ordinary intended use. This is further apparent from the shipping documents read into the record by Witness Steak, which describe the property transported as consisting of various merchantable articles and which do not even indicate that their value or character has been affected by damage. Thus, at the time the transportation was performed, neither the shipper nor the carrier considered the claimed defects sufficient to alter the character of the property transported. The record, therefore, does not support respondent's contention that the shipments should be rated as junk.

However, even assuming as correct respondent's contention that these shipments were shipments of junk, and that the minimum junk rates were applicable to their transportation, still the rates and charges of respondent would be unlawful, as respondent's rate of fifteen cents per 100 pounds is less than half the minimum rate applicable to junk. Thus, respondent charged and collected less than the lawful minimum rates for this transportation, in violation of the terms and provisions of said Decision No. 29480 and Sections 10 and 12(a) of the Highway Carriers' Act.

Witness Steak's testimony indicates that respondent has been hauling hardware for Whiting Mead Co. at the contract rate of fifteen cents per 100 pounds continuously since the higher rates established by Decision No. 29480 became effective. Respondent should collect the undercharges resulting from the application of the contract rate.

By reason of the violations herein particularly set forth, it should be ordered that respondent's permit be suspended for a period of ten days and that respondent desist from his highway carrier 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 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 the party is adjudged guilty of contempt, a fine may be imposed in the amount of \$500.00, or he may be imprisoned for five days, or both. (C.C.P. Sec. 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 244; re Ball & Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Co. v. Keller, 33 C.R.C. 571.)

It should also be noted that under Section 12 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 (3) 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 in suspension unless he shall first obtain the license required by the Motor Transportation Broker Act (Stats. 1935, Ch. 705). It is to be noted that under Section 16 of said Motor Transportation Broker Act, one who engages in business as a transportation broker, without the necessary authority, is subject to a fine of not to exceed \$500.00, or to imprisonment in the county jail for a term not to exceed six months, or to both such fine and imprisonment.

The following form of order is recommended:

ORDER

Public hearing having been held in the above-entitled matter, evidence having been received and the matter submitted for decision, and based upon the record and upon the factual findings contained in the above opinion,

IT IS HEREBY FOUND that respondent C. L. Arnold did, on the 3rd, 26th, and 29th days of June, 5th, 6th, and 9th days of July, 10th and 18th days of August, 1938, engage in the transportation of property for compensation as a business over the public highways in this State between San Diego, on the one hand, and Los Angeles, Vernon, and South Gate, on the other hand, by means of a motor vehicle as a highway contract carrier at rates lower than the minimum rates prescribed therefor in and by virtue of Decision No. 29480 in Case No. 4088, Part "M", as amended, in violation of the provisions of said decision and the Highway Carriers' Act (Stats. 1935, Ch. 223, as amended).

IT IS HEREBY ORDERED that, by reason of said violations, contract carrier permit No. 37-689, issued to C. L. Arnold, shall be

and it is hereby suspended for a period of ten (10) days, and that said ten-day period of suspension shall commence on the 13th day of ¹⁰ November, 1939, and continue to the 22nd day of November, 1939, both days inclusive, if service of this order shall have been made upon respondent more than twenty (20) days prior to said 13th day of November, 1939; otherwise said ten-day period of suspension shall commence on the effective date of this order and continue for a period of ten (10) days thereafter.

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

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.

The effective date of this order shall be twenty (20) days after the date of service hereof upon respondent.

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

Paul A. Valerius
James D. Quinn
Ray H. Kelly
H. B. M.
Justus J. Cusumano

COMMISSIONERS