

Decision No. 32509

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. 4436  
operations, rates, charges, contracts, )  
and practices of DANIEL SCOBIE. )

DANIEL SCOBIE, In Pro. Per.

BAKER, COMMISSIONER:

O P I N I O N

The above-entitled proceeding was instituted by the Commission on its own motion to determine whether respondent, Daniel Scobie, engaged in the transportation of property consisting chiefly of household goods and personal effects in San Francisco for compensation or hire as a business 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, Ch. 312, as amended), without first having obtained from the Railroad Commission and without holding a permit authorizing such operation, in violation of Section 3 of said Act.

A public hearing was held at San Francisco on August 14, 1939, in which the respondent participated and testified. The matter was then submitted, and it is now ready for decision.

Respondent conducts his business from a sidewalk stand at the corner of Fillmore and Ellis Streets, San Francisco, employing one

1935 Ford truck. His permit to operate as a city carrier, issued by this Commission on July 28, 1939, was revoked on September 30, 1939, for failure to maintain adequate insurance on deposit with the Commission. Two prior city carrier permits held by respondent have also been revoked, one on March 2, 1938, and the other on May 1, 1939, for the same reason.

William Hamilton, proprietor of the Allied Smoke Shop, 1399 Fillmore Street, San Francisco, testified that on July 7, 1939, respondent transported a shipment of 26 cartons of matches from 835 46th Avenue to the Allied Smoke Shop, for which the witness paid \$1.50.

George O'Brien, a police officer, testified that on July 7, 1939, respondent moved property consisting of a bathtub, to his residence at 334 Third Avenue, San Francisco, for which he charged the witness \$1.00. Respondent did not give the witness a receipt or any kind of freight bill.

Inspector Leo Carr testified that on July 13, 1939, he observed respondent and another man transport a green wardrobe trunk from the apartment of one H. B. Braden at 2402 California Street to the Southern Pacific Company Baggage Room in the Ferry Building. On questioning Braden shortly after the move, Carr ascertained that Braden paid respondent \$1.00 for this service. At the time these services were performed respondent had no permit as a city carrier, nor did he have on deposit with the Commission the necessary insurance required by the Highway and City Carriers' Act.

Respondent testified that he had performed the transportation services for Hamilton and O'Brien as an accommodation; but it is evident that they were performed for compensation in the course and

as a part of respondent's regular and usual occupation, that of a city carrier for hire. Cross-examination brought out that respondent's only business for many years past, and during the last two years particularly, was that of a carrier for hire. A revenue report signed by respondent covering his operations from January 1, 1938, to June 30, 1939, indicates that he received a monthly income from transportation of property during the reported period. Fees and delinquency penalties due on this revenue under the provisions of the Transportation Rate Fund Act have been assessed though not as yet paid. Respondent also stated under cross-examination that there was no deviation from his usual business practices in rendering the aforementioned services. The services in evidence, therefore, cannot be deemed to have been performed merely as an accommodation.

It was also established at the hearing that on at least two occasions during the last two years, respondent was convicted in the Municipal Court of the City and County of San Francisco of the misdemeanor of engaging in the business of a carrier without a permit from the Commission, in violation of the City Carriers' Act. Respondent also suffered a judgment for penalties in the sum of \$75.00, yet unpaid, and apparently uncollectible, on February 28, 1939, in an action brought in the Superior Court at San Francisco, founded on his unpermitted operations in this city during the month of June, 1938.

It is evident from the record that neither the sentences for the misdemeanors nor the penalty decreed in the civil action have been sufficiently severe or effective to dissuade respondent from persisting in repeated violations of law by operating without permit and without having in effect public liability and property damage protection. The order to cease and desist unlawful operation to

be issued in this proceeding will not, in itself, be more severe, but it will be issued with the expectation that respondent's knowledge of the penalties which the Commission may and will impose on him if that order is subsequently violated, will be sufficient to induce him to desist from operating without having in effect the required permit and liability protection.

Therefore let respondent plainly understand that an order of this Commission directing that an unlawful operation cease and desist is in effect not unlike an injunction by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution, the Public Utilities Act, and the City Carriers' 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, he may be fined 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. v. Bray, 37 C.R.C. 244; re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 37 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 571. Each day's unlawful operation constitutes a separate violation of such order and a separate contempt for which a separate and additional penalty may be imposed.

Upon consideration of all the facts and circumstances of record herein, I am of the opinion, and therefore find, as follows:

I.

That the respondent, Daniel Scobie, did on the 7th and 13th days of July, 1939, engage in the transportation of property for compensation or hire as a business over the public highways in the City and County of San Francisco, State of California, by means of a motor vehicle, as a carrier as that term is defined in Section 1(f)

of said City Carriers' Act, without first having obtained from the Railroad Commission and without holding a permit authorizing such operation, in violation of Section 3 of said Act.

The following form of order is recommended.

O R D E R

The above entitled matter having been duly heard and submitted, for decision, and the foregoing opinion having been duly considered with reference to the findings and conclusions set forth therein, together with the law in the premises,

IT IS HEREBY ORDERED that the said respondent, Daniel Scobie, shall cease and desist, and hereafter abstain from engaging in the transportation of property for compensation or hire, as a business, over any public highway, or over the public streets in any city or city and county in this State, as a carrier, as that term is defined in Section 1(f) of said City Carriers' Act, unless he shall have first secured from the Railroad Commission and hold a permit authorizing him to operate as such carrier.

The Secretary of the Railroad Commission is hereby directed forthwith to cause personal service of a certified copy of this decision and order to be made upon said respondent, Daniel Scobie.

This order shall be effective twenty (20) days after service thereof upon said respondent, as hereinabove provided.

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 31<sup>st</sup> day of October, 1939.

R. B. ...  
Frank ...  
Carl ...  
H. ...  
Justice J. ...

COMMISSIONERS