

Decision No. 32545

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, contracts,)
and practices of C. A. RYAN, LOTTIE RYAN) Case No. 4441
and LAURA RYAN, co-partners, doing)
business under the fictitious firm name)
and style of SOUTHWEST VAN & STORAGE CO.)

C. A. RYAN in propria persona

C. P. VON HERZEN, for California Van &
Storage Association, interested party

CRAEMER, COMMISSIONER:

O P I N I O N

This proceeding was instituted by the Commission on its own motion to determine whether respondent transported used property, viz. household goods, furniture and personal effects in the city of Los Angeles, California, on or about July 16, 1938, at less than the lawful minimum rate for such transportation by radial highway common carriers, highway contract carriers and city carriers established by order of the Commission in its Decision No. 29891, as amended.

Public hearing was held at Los Angeles on September 22, 1939, at which respondent C. A. Ryan appeared and testified. The case was submitted and it is now ready for decision.

From the testimony of Inspector Harry Rosenthal, together with evidence from the records and files of the Commission, it was established of record that respondent is engaged in the household goods and furniture moving business in Los Angeles, and holds permits Nos. 19-1510 (contract), 19-2609 (city) and 19-2720 (radial) issued by this Commission in February, 1936, which are now in effect. Respondent, according to these records, possesses seven pieces of motor vehicle equipment, viz. three trucks and a tractor, a small pickup truck and two trailers, all of which are used in its business. The witness measured the truck designated in the carrier's records as Truck #7, which was used in performing the service hereinafter described, and found it to have an available loading area of 199 square feet.

Mrs. J. W. Leser, a witness called by the Commission, testified that on July 16, 1938, she was desirous of moving her furniture from 5873 Saturn Street to 1452 So. Hayworth, Los Angeles. She called on another carrier who showed her a large and a small van, quoting a rate of \$4.00 per hour on the former and \$3.50 per hour on the latter. She was interested, she said, in having a large van with a tailgate, but did not want to pay the higher rate. She then phoned respondent and engaged him to do the job, because, she stated, he offered her a large van at the same rate (\$3.50 per hour) quoted by the other mover for the use of the small van.

The move consumed a total time of something more than two hours, according to the witness. Her best recollection of the time was two hours and ten minutes, though she stated it might have been two hours and fifteen minutes. To this time she added an extra five minutes, she said, in calculating the amount to be paid to the carrier.

The witness' testimony was not contradicted in any material respect on the subject of the time involved, and hence, on this record, we may say that the total time was between two hours and ten minutes and two hours and twenty minutes. Two men, she said, performed the work, at the conclusion of which she paid them \$8.20 by a check, which is in evidence. The witness was unable to produce a receipt other than the cancelled check, or a freight bill, stating that she had lost it.

The lawful minimum rate prescribed by the Commission in its Decision No. 29891, as amended, in Case No. 4086, for the transportation of a shipment of property having the characteristics outlined by the preceding witness is \$4.00 per hour. Decision No. 30482, in Case No. 4086, provides in Rule No. 30(d) thereof that 8 minutes or more but less than 24 minutes shall be counted as one-quarter hour in calculating the time consumed on the job. Thus the total lawful minimum charge for the movement of such a shipment as described, taking from two hours and ten minutes to two hours and twenty minutes, is \$9.00. As a result, it is established that the carrier undercharged the shipper 80 cents.

Thomas O. Grounds, an employee of the Commission's Rate Division, was called as a witness on behalf of the Commission and gave testimony concerning the proper application of the minimum rate order to the shipment in question.

Inspector Rosenthal testified further than on January 18, 1939, he called on respondent to ascertain why none of the Commission's letters regarding the undercharge for this shipment had been answered. These letters, dated respectively August 27, 1938, September 23, 1938, and November 9, 1938, are in evidence. They indicate respondent's records show the time consumed in the movement to be 2½ hours and the

resulting undercharge to be \$1.80, and request him to proceed immediately to collect the deficiency. Just what respondent's records show does not appear from this record, as respondent's records are not in evidence. However, whatever the undercharge was, whether \$.80 or \$1.80, the evidence shows defendant made no effort to collect it.

C. A. Ryan, who appeared for respondent copartnership, did not deny that he had moved Mrs. Leser's property at less than the lawful minimum rates, and indicated that he frequently used a van of over 90 square feet loading area, charging only the rate for a small van.

Suspension of respondent's permit for an appropriate period should be ordered, and the order should also direct that respondent cease and desist from its operations 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 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 & 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 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, 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.

Upon full consideration of all the evidence of record, I am of the opinion, and therefore find:

I.

That respondent, Southwest Van & Storage Co., a copartnership, did, on the 16th day of July, 1938, engage in the transportation of used property, to-wit, household goods, furniture and personal effects, for Mrs. J. W. Leser, for compensation as a business over the public highways in the City of Los Angeles, California, by means of a motor vehicle, at a rate less than the minimum rate prescribed for such transportation in and by virtue of Decision No. 29891, as amended, by Decision No. 30482, in Case No. 4086, in violation of said decisions and of Section 9 of the City Carriers' Act.

The following form of order is recommended:

O R D E R

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

1. IT IS HEREBY ORDERED that respondents C. A. Ryan, Lottie Ryan, and Laura Ryan, copartners, doing business under the fictitious firm name and style of Southwest Van & Storage Co., shall immediately cease and desist and thereafter abstain from charging, demanding, collecting, or receiving rates for the transportation of any of the property described in said Decision No. 29891, as amended, in Case No. 4086, less than those prescribed by said decision, as amended.

2. That city carrier permit No. 19-2609, issued to said respondents, shall be and is hereby suspended for a period of seven (7) days; that said seven-day period of suspension shall commence on the 5th day of December, 1939, and continue to the 11th day of December, 1939, both dates inclusive, if service of this order shall have been made upon said respondent Southwest Van & Storage Co. more than twenty (20) days prior to said 5th day of December, 1939; otherwise said seven-day period of suspension shall commence on the effective date of this order and continue for a period of six days thereafter.

3. That during said period of suspension respondent, Southwest Van & Storage Co., shall desist and abstain from engaging in transportation of property for compensation or hire as a business over any public street in the city of Los Angeles, State of California, by means of a motor vehicle or motor vehicles, and from performing any other service as a carrier as defined in Section 1(f) of said City Carriers' Act.

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

The foregoing opinion and order are hereby approved and ordered filed as an opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of November, 1939.

Raymond
Frank D. Allen
Ray Riley
H. H. Allen
Justus J. Calver

COMMISSIONERS