

Decision No. 33025

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, classifications,  
rules, regulations, contracts and practices,  
or any thereof, of VICTOR MOREL, doing  
business under the fictitious name and style  
of OLD PLAZA TRANSFER COMPANY, respondent,  
for the purpose of determining whether said  
respondent is engaged in conducting any  
service as a City Carrier, as defined in  
Chapter 312, Statutes of 1935, without  
first having secured from the Commission  
a permit to operate as such carrier.

ORIGINAL

Case No. 4165

Dario H. Nelson, for respondent

CRAIGER, Commissioner

OPINION, FINDINGS AND JUDGMENT

This contempt proceeding was brought before the Commission by the affidavit of A. S. Groocox, supported by the affidavits of C. M. Bradford and N. Shimizu, referred to hereafter as affidavit, and application for an order to show cause why Victor Morel should not be adjudged guilty of contempt of the Commission's order.

The affidavit and order to show cause was personally served on respondent Victor Morel on November 21, 1939, and charged the violation of the Commission's order contained in its Decision No. 29162, in Case No. 4165, dated October 5, 1936. In said Decision No. 29162 the Commission found that Victor Morel, individually, and doing business under the fictitious name and style of Old Plaza Transfer Service, was engaged in operating an automobile truck service as a carrier (as defined in Section 1-(f), Chapter 312, Statutes of 1935) for compensation without first having secured from the Railroad Commission a permit as required by Section 3 of said Act, and ordered said Victor Morel to cease and desist

from continuing the conduct of said transportation service until he should have first complied with the provisions of said Act. Said decision became effective on November 3, 1936, and has not been cancelled or annulled and is still in full force and effect.

Victor Morel petitioned the Supreme Court of the State of California for a writ of review, which was granted, and the Commission's decision was upheld.<sup>1</sup>

On October 14, 1936, a certified copy of said Commission's decision and order was personally served on Victor Morel by the Sheriff's office of Los Angeles County.

This case came on regularly to be heard on December 13, 1939, in Los Angeles, at which time Victor Morel appeared personally and was represented by counsel.

At the commencement of the proceeding, Dario H. Nelson, counsel for Victor Morel, stated in effect that he had familiarized himself with the contents of the affidavit, that he had discussed the same with Victor Morel and that said Morel admitted all of the statements contained in said affidavit. Morel voluntarily testified in effect, after being duly admonished as to his constitutional rights, as follows:

On April 27, 1939, while conducting a for-hire trucking business, he made arrangements with W. I. Garcia to transport certain property consisting of signs from 1315 North Vine Street, to 3547 Beverly Boulevard, both addresses in the City of Los Angeles. Thereafter, between the hours of 3:30 p.m. and 6:30 p.m. on said day, Morel transported said property on his Stewart truck, bearing license number EE PC Z7691, which he used in the conduct of his said trucking business, for which W. I. Garcia paid Morel.

On March 24, 1939, while conducting a for-hire trucking business, he made arrangements with C. M. Bradford at 4822 Santa Monica Boulevard, Los Angeles, to transport certain household furniture from 4827

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<sup>1</sup> Morel v. Railroad Commission, 11 Cal. (2d) 488.

Lexington Street, to 614 North Harper Avenue, both addresses in the City of Los Angeles. Thereafter, on said day respondent Morel performed the transportation service, for which said Morel was paid the sum of \$3.50. That said transportation service was performed by motor vehicle by Morel in the conduct of his trucking business.

A short time prior to March 15, 1939, respondent Morel entered into an agreement with N. Shimizu to move certain household goods from 1433 Tamarind Street, to 1116 El Centro Avenue, both addresses in the City of Los Angeles, for the sum of \$7.00. Thereafter, on March 15, 1939, Morel transported said household goods in the conduct of his trucking business, in accordance with the terms of said agreement. N. Shimizu paid said Morel the sum of \$7.00 for said transportation service. Said household goods were transported by Morel in the conduct of his trucking business.

All of the heretofore mentioned transportation services were performed by respondent Morel over the public highways by motor vehicle in the City of Los Angeles as a business, with full knowledge and notice of the Commission's said Decision No. 29162. Notwithstanding said order of the Railroad Commission made in its Decision No. 29162, and with full knowledge and notice of said order, and knowing that said order was in full force and effect, said transportation services were performed by said Morel, as a business, without first having obtained a permit as required by Section 3 of the City Carriers' Act (Chapter 312, Statutes of 1935, as amended) and in violation of and in contempt of the Commission's said order.

It has long been recognized by our Supreme Court that the Commission is empowered to punish for contempt.

"(a) \*\*\*and the Commission and each of the Commissioners shall have the power to administer oaths, take testimony and punish for contempt in the same manner and to the same extent as courts of record\*\*\*". (Article XII, Sec. 22, Constitution of California.

"(b) Every public utility, corporation or person which shall fail to observe, obey or comply with any order, decision, rule, regulation, demand or requirement, or any part or portion thereof, of the Commission or any Commissioner, shall be in contempt of the Commission and shall be punishable by the Commission for contempt in the same manner and to the same extent as contempt is punished by courts of record." (Sec. 61, Public Utilities Act, State of California.)

See also In re Garner, 179 Cal. 409; In re Barry, 94 Cal. 562; Barry v. Superior Court, 91 Cal. 486.

However, this power should not be abused and should be exerted only when necessary to insure a respect for and observance of its lawful orders. (United Parcel Company v. 20th Century Delivery Service, 38 C.R.C. 455).

The record discloses that respondent Morel has failed and refused to comply with the provisions of the City Carriers' Act and of the Commission's said order. There is no evidence or any showing in the record that would tend to mitigate or extenuate Morel's conduct. However, Morel cooperated with the Commission in this proceeding to the extent of voluntarily taking the witness stand and testifying to all of the allegations set out in the affidavit. It is questionable, whether this fact in itself should be considered as a mitigating circumstance. A penalty should be imposed upon said respondent for his contempt in a manner which will insure the obedience of the Commission's orders.

Upon a thorough consideration of the evidence as presented by the record in this proceeding, I hereby make the following Findings of Fact.

#### FINDINGS OF FACT

(1) That the Railroad Commission, on October 5, 1936, in its Decision No. 29162, in a proceeding designated as Case No. 4165, found that Victor Morel, individually, and doing business as Old Plaza Transfer Service, was engaged in operating a transportation

business for compensation by motor vehicle on the public highways in the City of Los Angeles as a carrier as that term is defined by the City Carriers' Act (Chapter 512, Statutes of 1935) without a permit as required by Section 3 of said Act. Said decision ordered Victor Morel to cease and desist from conducting a transportation business by motor vehicle in the City of Los Angeles as a city carrier. Said decision has never been revoked, annulled or stayed and is and was at all times herein mentioned in full force and effect. A certified copy of said Decision No. 29162 containing said cease and desist order was personally served upon Victor Morel on October 14, 1936, who had personal knowledge and notice of said decision and of the contents thereof prior to the effective date of said decision and order, to-wit, November 3, 1936, and was able at all times thereafter to comply with said order.

(2) On October 31, 1939, there was filed with the Railroad Commission the affidavit and application for order to show cause of A. S. Groocox, in which it was alleged in substance that Victor Morel notwithstanding the order contained in its Decision No. 29162, and with full knowledge of the contents thereof, and subsequent to its effective date, had failed and refused to comply with said order in that he transported property for compensation by motor vehicle as a carrier over the public highways within the City of Los Angeles. Upon the filing of said affidavit as hereinabove set out, the Railroad Commission, on October 31, 1939, issued its order directing Victor Morel to appear on December 13, 1939, to show cause why he should not be punished for the alleged contempts contained and set forth in said affidavit. Said order to show cause, together with the affidavit on which said order was based, was personally served on Victor Morel on November 21, 1939. Upon the return date of said order said Victor Morel appeared in person and

was represented by counsel.

(3) Notwithstanding the order of the Railroad Commission contained in its Decision No. 29162, and with full knowledge and notice of said order and the contents thereof, and subsequent to the effective date thereof, Victor Morel failed and refused to comply with the terms thereof and has engaged in the transportation of property by motor vehicle for compensation as a business over the public highways in the City of Los Angeles, as a carrier as that term is defined in said City Carriers' Act, without first having obtained from the Railroad Commission of the State of California a permit as required by said Act.

(4) On April 27, 1939, respondent Victor Morel transported property consisting of signs from 1315 North Vine Street to 3547 Beverly Boulevard, both addresses in the City of Los Angeles, for compensation by motor vehicle as a carrier as that term is defined in the City Carriers' Act (Section 1-(f), Statutes of 1935, Chapter 312.)

(5) On March 24, 1939, respondent Victor Morel transported household goods and effects by motor vehicle over the public highways, to-wit: from 4827 Lexington Street to 614 North Harper Avenue, both addresses in the City of Los Angeles, for compensation as a carrier as that term is defined in the City Carriers' Act (Section 1-(f), Statutes of 1935, Chapter 312.)

(6) On March 15, 1939, respondent Victor Morel transported household goods and effects by motor vehicle over the public highways, to-wit: from 1433 Tamarind Street to 1116 El Centro Avenue, both addresses in the City of Los Angeles, for compensation as a carrier as that term is defined in the City Carriers' Act (Section 1-(f), Statutes of 1935, Chapter 312.)

(7) Each and all of said acts mentioned in the foregoing paragraphs, (4) to (6) inclusive, are in violation of said Decision No. 29162. The failure and refusal and the failure or refusal of respondent Victor Morel to cease and desist from performing the matters and things set out in said paragraphs (4) to (6) inclusive, and in each of said paragraphs, were and are and was and is in violation and disobedience of said Decision No. 29162. All of said violations of said decision were and each of them was committed with full knowledge and notice thereof upon the part of said respondent Victor Morel. Said order of the Railroad Commission contained in said decision was at all times mentioned herein and in said paragraphs (4) to (6) inclusive, and each of said paragraphs, and now is in full force and effect. Said respondent Victor Morel has violated said order with full notice and knowledge of the contents thereof and with the intent on his part to violate the same. At the time said Decision No. 29162 was rendered and at the time of the effective date thereof, said respondent Victor Morel was able to comply and has been at all times since and was at the time of said violations, and each of them, able to comply therewith and with the terms thereof.

(8) The failure and refusal of said respondent Victor Morel to comply with said decision of the Railroad Commission and to engage in the transportation of property by motor vehicle for compensation over the public highways in the City of Los Angeles as a carrier, as that term is defined in the City Carriers' Act (Section 1-(f), Chapter 312, Statutes of 1935), is in contempt of the Railroad Commission of the State of California and of its decision and order.

Victor Morel having appeared personally and by counsel, and having been given full opportunity to answer the order to show

cause of October 31, 1939, and to purge himself of its alleged contempt, I hereby recommend the following form of Judgment.

J U D G M E N T

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the said Victor Morel has been guilty of contempt of the Railroad Commission in disobeying its order made on October 5, 1936, in Decision No. 29162, by failing and refusing to cease and desist from transporting property by motor vehicle over the public highways in the City of Los Angeles for compensation as a carrier as that term is defined in the City Carriers' Act (Section 1(f), Statutes of 1935, Chapter 312), without first having obtained from the Railroad Commission a permit as required by Section 3 of said Act.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that for each of said contempts of the Railroad Commission and its order, as shown in findings (4) to (6) inclusive, herein, said Victor Morel shall be punished by a fine of Fifty Dollars (\$50.00), in the total sum of One Hundred Fifty Dollars (\$150.00), said fine of One Hundred Fifty Dollars (\$150.00) to be paid to the Secretary of the Railroad Commission of the State of California within ten (10) days after the effective date of this opinion, findings and judgment.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that in default of the payment of the aforesaid fine said Victor Morel be committed to the County Jail of Los Angeles County, State of California, until such fine be paid or satisfied in the proportion of one (1) day's imprisonment for each Five Dollars (\$5.00) of said fine that shall so remain unpaid.



IT IS HEREBY FURTHER ORDERED that this opinion, findings and judgment shall become effective twenty (20) days after service of a certified copy thereof upon said respondent Victor Morel.

The foregoing opinion, findings and judgment are hereby approved and ordered filed as the opinion, findings and judgment of the Railroad Commission of the State of California.

Dated at San Francisco, California, this <sup>23<sup>rd</sup></sup> day of April, 1940.

Ray L. Riney  
Frank D. Smith  
Ralph W. Stephens  
H. H. H.  
Justus J. Casner  
COMMISSIONERS.