

DECISION NO. 30087

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, or any)
thereof, of AARON M. SMITH, doing)
business as TURNER MOVING & STORAGE.)

Case No. 4447

Aaron M. Smith, in propria persona

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by the Commission on its own motion into the operations of respondent, AARON M. SMITH, who holds City Carrier Permit No. 19-992, dated October 31, 1935, for the purpose of determining whether or not respondent, on or about February 28, 1939, engaged in the transportation of uncrated used household goods, furniture, and personal effects, or any of them, between 8609 Olympic Boulevard, Los Angeles, California, and 416 N. Palm Drive, Beverly Hills, California, as a carrier, as that term is defined in Section 1(f) of the City Carriers' Act (Statutes 1935, Chapter 312, as amended), at rates less than the minimum rates for such transportation established by order of the Railroad Commission in Decision No. 29891, in Case No. 4086, as modified and amended by Decision No. 30482 in said Case No. 4086, in violation of said orders and of the City Carriers' Act; and whether or not said respondent failed to issue to the shipper for said shipment a freight bill in substantially the

form prescribed and established by order of the Railroad Commission in Decision No. 29891, Appendix "B" thereof, in violation of said order and said City Carriers' Act.

Public hearing in this matter was held at Los Angeles on October 20, 1939, before Examiner Cameron. Respondent appeared, evidence was received, the matter submitted and the same is now ready for decision.

The evidence shows respondent has been and was on February 28, 1939, engaged in the business of transporting used uncrated household goods, furniture and personal effects for compensation as a city carrier as that term is defined in Section 1(f) of said City Carriers' Act; and that on said day as such carrier he transported such commodities from 8609 Olympic Boulevard, Los Angeles, California, to 416 N. Palm Drive, Beverly Hills, California, by means of a motor truck, having a loading area of approximately 186.82 square feet.

Major Ransome, an inspector for the Railroad Commission, testified that he arrived at 8609 Olympic Boulevard, Los Angeles, California, at 1:25 P.M. on said date; that two men commenced loading said furniture onto said truck at 1:30 P.M., and completed said loading at 4:20 P.M.; that the latter departed from 8609 Olympic Boulevard, Los Angeles, California at 4:20 P.M. and arrived at 416 N. Palm Drive, Beverly Hills, California, at 4:35 P.M.; that unloading commenced at 4:35 P.M. and was completed at 7:30 P.M.; and that a third man assisted for about 15 minutes in unloading at point of destination. The total time taken on this move after doubling the driving time as required by Decision No. 29891 was 375 minutes. Of this time two men worked 360 minutes, or 6 hours, and three men worked 15 minutes or 1/4 hour. The above mentioned transportation was performed in Territory "B"

referred to in Item No. 200 of Decision No. 30482 and specifically defined in said Decision No. 29891. The minimum rate established and prescribed for said transportation in said Territory "B" by said Decision No. 30482, Item No. 200 thereof, for a vehicle with a loading area of not less than 90 square feet with driver and helper, is \$4.00 per hour, and for each additional helper, \$1.00 per hour. The minimum charge collectible for the 6 hours worked by two men was \$24.00 and for the 1/4 hour worked by three men \$1.25, resulting in a total minimum charge collectible therefor of \$25.25. Mrs. Lyda B. O'Connor testified that she paid the sum of \$22.00 as full payment for the movement. It is apparent therefore that there was an undercharge in the sum of \$3.25.

The respondent has not failed to issue to the shipper for this shipment a freight bill in substantially the form prescribed and established by order of the Railroad Commission in Decision No. 29891, appendix "B" thereof.

It is further evident from the record that the order instituting investigation in Case No. 4086 was served upon respondent November 26, 1935; that Decision No. 29891 in said case was served upon respondent on July 20, 1937, and that Decision No. 30482 in said case was served upon respondent on January 13, 1938.

It is evident that respondent had knowledge of the rates prescribed and established by the Railroad Commission in said decisions, not only from the fact respondent was served with said decisions as stated above, but also from testimony of one of his solicitors, Henry C. Retzer, who testified in reference to the movement in question that he told Mrs. O'Connor that there were definite rates set by the Railroad Commission in amount of \$3.50 per hour for a small van and \$4.00 per hour for a large van.

As a matter of defense respondent called Mr. Retzer who stated that the job in question was not performed for the purpose of violating the rates, but that a large van was used for the movement because a small van was not available; however, he stated that \$3.50 per hour was charged.

Considering all the circumstances of the case it appears to us that respondent's permit should be suspended and respondent directed to desist from operation 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 party is adjudged guilty of contempt, a fine may be imposed in the sum 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. 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 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 \$500.00 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.

IT IS HEREBY FOUND that respondent AARON M. SMITH did on February 28, 1939, engage in the transportation of uncrated household goods, furniture, and personal effects for compensation as a business over the public highways of the State of California, between 8609 Olympic Boulevard, Los Angeles, California, and 416 N. Palm Drive, Beverly Hills, California, 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), 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 said City Carriers' Act.

IT IS HEREBY ORDERED that respondent AARON M. SMITH shall immediately cease and desist from charging, demanding, collecting, or receiving for the transportation as such carrier of any of the property described in Decisions Nos. 29891 and 30482 in Case No. 4086, any rates or charges less than the rates and charges prescribed therefor in said decisions.

IT IS HEREBY FURTHER ORDERED that City Carriers' Permit No. 19-992 dated October 31, 1935, issued to and held by said respondent Aaron M. Smith, be and the same is hereby suspended for a period of seven (7) days; that said seven-day period of suspension shall commence on the 8th day of June, 1940, and continue to the 14th day of June, 1940, both dates inclusive, if service of this order shall have been made upon said respondent more than twenty (20) days prior to the 8th day of June, 1940; otherwise said seven-

day suspension shall commence on the effective date of this order and continue for a period of seven (7) days thereafter.

IT IS HEREBY FURTHER ORDERED that during said period of suspension said respondent AARON M. SMITH, his agents, servants, and employees 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 the City Carriers' Act (Stats. 1935, Ch. 312, as amended), for compensation or hire as a business over any public highway in this state by means of a motor vehicle or motor vehicles, and from performing any transportation service as said 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 service hereof upon said respondent.

Dated at San Francisco, California, this 6th day of May, 1940.

Ray L. Riden
Frank R. Sullivan
Raymond W. Johnson
W. B. Hall
Justin J. Hoover

Commissioners.