

Decision No. 33071

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, con- )  
tracts, and practices, of HARRY )  
SCHUPACK. )

Case No. 4460

Harry Schupack, in propria persona

WAKEFIELD, Commissioner:

O P I N I O N

This proceeding was instituted by the Commission on its own motion into the operations of respondent, Harry Schupack, for the purpose of determining whether or not respondent, as a city carrier as that term is defined in Section 1(f) of the City Carriers' Act (Statutes 1935, Chapter 312, as amended), engaged in the transportation of uncrated used household goods, furniture and personal effects in the City of Los Angeles, on or about January 28th, 1939 from 2006 Longwood Avenue, Los Angeles to 9125 West 25th Street, Los Angeles, California, and on or about August 7th, 1939 from 3854 West 27th Street, Los Angeles to 129 South Edgemont Street, and 1529 North Edgemont Street, Los Angeles, California, 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 said Act; and whether or not said respondent failed to issue to any of the shippers for the shipments received for transportation on any of the above dates, a freight bill or freight bills in substantially the form prescribed and established by order of the Railroad Commission in

and by Decision No. 29891, Appendix "B" thereof, in violation of said order and of said City Carriers' Act.

Public hearing in this matter was held at Los Angeles on November 16th, 1939, at which time respondent appeared, evidence was received, the matter submitted and the same is now ready for decision.

The evidence shows that respondent has been and now is and on January 28th and August 7th, 1939, <sup>was</sup> 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 January 28th and August 7th, 1939, as such carrier he transported such commodities between the addresses above set forth, by means of a motor truck having a loading area of approximately 112 square feet. The above transportation was performed in Territory "B" referred to in Item No. 200 of Decision No. 30482 and specifically defined in Rule No. 20 of Appendix "A" of Decision No. 29891. The minimum rates established and prescribed for said transportation in said Territory "B" by 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.

Harry Rosenthal, an Inspector for the Railroad Commission, testified relative to the transportation by respondent on January 28th, 1939 as follows: that loading commenced at 7:40 A.M. and was completed at 9:25 A.M.; that respondent's truck departed from 2006 Longwood Avenue, Los Angeles, at 9:30 A.M., and arrived at 9125 West 25th Street, Los Angeles, at about 9:37½ A.M.; that unloading commenced at 9:45 A.M. and was completed at 10:45; and that three men worked continuously during all of said time. The total time taken on this move after doubling the driving time as required by Decision No. 29891 was 3 hours. The minimum charge collectible

under said decision therefore was \$15.00 whereas respondent charged and collected \$10.00 for the job as appears from the testimony of Mrs. Ruth Jaffee, the shipper. It is apparent that there was an undercharge in the sum of \$5.00

In reference to the movement on August 7th, 1939, four men worked 4 hours, two of whom were not employees of respondent and received no pay from him. These two men were furnished by the shipper. This being the case, these two men cannot be included as helpers of respondent within the meaning of Decision No. 30482, and accordingly, the proper rate collectible is that for a driver and one helper, or \$4.00 per hour resulting in a minimum charge collectible of \$16.00 and since that was the amount which was charged and collected, it is apparent that there was no rate violation relative to this movement.

It is further evident that respondent has failed to issue to the shippers for each of the above mentioned shipments freight bills in substantially the form prescribed and established by order of the Railroad Commission in Decision No. 29891, Appendix "B" thereof.

The record shows that the order instituting investigation in Case No. 4086 was served upon respondent on December 4th, 1935; that Decision No. 29891 was served upon him on July 20th, 1937; and that Decision No. 30482 was served upon him on January 13th, 1938. At the time of the move on January 28th, 1939, Inspector Rosenthal informed respondent of the necessity of charging the rates and issuing freight bills as prescribed and ordered by the Railroad Commission in said decisions.

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 of courts of record. In the event a party is adjudged guilty of contempt, a fine may be imposed 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. 224;  
Wermuth v. Stamper, 36 C.R.C. 458;  
Re Hall & Hayes, 37 C.R.C. 407;  
Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should be noted that under Section 13 of the City Carriers' Act (Stats. 1935, Chap. 312, 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 engaged 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.

I recommend the following form of order:

O R D E R

Public hearing having been held, the matter having been duly submitted, and the Commission now being fully advised:

IT IS HEREBY FOUND that respondent, HARRY SCHUPACK, did on January 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 2006 Longwood Avenue, Los Angeles, and 9125 West 25th Street, Los Angeles, 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 the City Carriers' Act.

IT IS HEREBY FURTHER FOUND that respondent, as said city carrier, in said transportation on January 28, 1939, failed and neglected to issue a freight bill in substantially the form prescribed and established by order of the Railroad Commission in and by Decision No. 29891, Appendix "B" thereof.

IT IS HEREBY FURTHER FOUND that respondent, HARRY SCHUPACK, did on August 7, 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 3854 West 27th Street, Los Angeles, and 129 South Edgemont Street, Los Angeles, 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), without issuing to the shipper for each shipment received for transportation a freight bill in substantially the form prescribed and established in and by said Decision No. 29891.

IT IS HEREBY ORDERED that respondent, HARRY SCHUPACK, shall immediately cease and desist from charging, demanding, collecting, or receiving for the transportation, as such carrier, of any of the property described in Decision No. 29891, as amended, in Case No. 4086, any rates or charges less than the rates and charges prescribed in said decision, as amended.

IT IS HEREBY FURTHER ORDERED that respondent, HARRY SCHUPACK, shall immediately cease and desist from receiving shipments for transportation as such carrier without issuing to the shipper for such shipment so received a freight bill in substantially the form prescribed by Decision No. 29891, Appendix "B" thereof.

IT IS HEREBY FURTHER ORDERED that City Carrier's Permit No. 19-7382, dated March 8, 1938, issued to and held by said respondent Harry Schupack 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 5th day of June, 1940, and continue to the 11th 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 5th of June, 1940; otherwise said seven-day suspension shall commence on the effective date of this order and continue for a period of six days thereafter.

IT IS HEREBY FURTHER ORDERED that during said period of suspension said respondent, HARRY SCHUPACK, his associates, representatives, 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.

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 6<sup>th</sup> day of May, 1940.

Ray L. Riley  
Frank D. Allen  
Robert W. ...  
W. H. ...  
Justus J. Coe  
Commissioners.