

Decision No. 33168

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on  
the Commission's own motion into the  
highway carrier operations, rates,  
charges, contracts, and practices of  
A. VOLPA and J. VOLPA, co-partners,  
doing business as VOLPA BROS. )

Case No. 4468

J. Volpa, for respondents

Kenneth Say, for respondents Volpa Bros.

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted to determine whether A. Volpa and J. Volpa, co-partners doing business as Volpa Bros., hereinafter called the respondent, had transported property for the Department of Public Works of the State of California at rates less than the established minimum rates<sup>(1)</sup>.

Public hearings were had at Redding and Fresno before Examiner Jacobsen and the matter was submitted upon briefs.

The evidence shows respondent has been and was between September 5, 1939 and November 30, 1939, engaged in the business of transporting property in dump trucks for compensation, and during said period was the holder of radial highway common, highway contract and city carrier permits numbered respectively 10-1337, 10-1338 and 10-1339.

At the hearing had in Redding, J. Volpa appeared personally for the respondent, and at the Fresno hearing respondent was represented by counsel.

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(1) Decision No. 28655 as amended by Decision No. 28336 in Case 4027 established minimum rates for the transportation of property in dump trucks.

It is evident from the record that the order instituting investigation in Case No. 4087 was served upon respondent on November 29, 1935 and that Decision No. 28836 in said case was also served upon respondent on June 11, 1936.

The record clearly shows from testimony of members of the staff of District II of the Division of Highways, Department of Public Works of the State of California that the respondent transported property in dump trucks for the Division of Highways near Redding during a period of not exceeding forty (40) eight-hour shifts on a five-day week basis between September 5 and November 30, 1939; that respondent agreed to furnish and did furnish four (4) five-yard dump trucks and that the rate assessed and collected by the respondent was \$3.15 per hour less 1 per cent for prompt payment. This rate assessed by respondent for a total of 1,041.5 hours allowing for a discount of 1 per cent produces a net rate of \$3.1185 per hour.

The minimum rate prescribed by the Commission's order in Decision No. 28836 for transportation of property in Northern California in dump truck equipment, the body of which has a cubic measurement of 4.5 cubic yards or over but less than 5.5 cubic yards where the loading is performed by power loading device is \$2.45 per hour, plus an amount equal to the general prevailing hourly wages for work of a similar character in the locality in which the work is performed.

The evidence shows that the general prevailing rate per hour for drivers' wages under the circumstances in which the operations involved herein were performed is \$1.00. This sum, added to the sum of \$2.45 per hour, determines the minimum rate of \$3.45 per hour.

The respondent testified that the capacity of the bodies of the four dump trucks used in this operation was between three

and one-half (3-1/2) and four (4) cubic yards, and that the addition of five and one-half (5-1/2) inch wooden side boards increased this capacity to five (5) cubic yards.

Inspector Liersch testified that he took the inside measurements of the bodies of the four dump trucks while they were on the job, and calculations of these measurements showed three bodies were of 5.03 cubic-yard capacity and one measured 5.01 cubic-yard capacity, with the side boards in place.

That the respondent was cognizant of the fact that his bid was at rates less than those prescribed by this Commission as minimum rates was brought out in the testimony of witness Evans, Assistant District Maintenance Engineer, District II, in his statement that he advised J. Volpa by telephone that his bid was at rates less than the minimum rates according to the order of the Railroad Commission and asked if he (Volpa) wished to withdraw his bid. With this knowledge the respondent signed the service agreement and performed the transportation service. Considering all of the circumstances in the case, it appears to us that an order should be issued directing respondent to cease and desist such unlawful operations. In addition, an appropriate penalty should be sought for the unlawful operations which the record in this case reveals respondent to have been conducting between September 5 and November 30, 1939. The attorney for the Commission will therefore be directed to institute proceedings for the imposition of civil penalties under the provisions of the Highway Carriers' Act.

#### FINDINGS

Upon consideration of all the evidence of record, we find:

That respondent A. Volpa and J. Volpa, doing business as VOLPA BROS. did, between September 5 and November 30, 1939, engage in the transportation of property in dump trucks for compensation as a business over the public highways of the State of California in Shasta County, between Olney Creek and Redding Subway, as a highway carrier, as that term is defined in Section 1(f) of the Highway Carriers' Act (Stats. 1935, Ch. 223, as amended), and did charge and collect therefor rates less than the minimum rates prescribed therefor in and by virtue of Decision No. 28836 in Case No. 4087, in violation of said decision and of the Highway Carriers' Act.

O R D E R

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

IT IS HEREBY ORDERED that respondent A. Volpa and J. Volpa, doing business as Volpa Bros., immediately cease and desist and hereafter abstain from charging, demanding, collecting and receiving for the transportation of property as a radial highway common carrier or highway contract carrier, as those terms are defined in Section 1(f) of the Highway Carriers' Act (Stats. 1935, Ch. 223, as amended), rates less than the minimum rates prescribed and established by the Railroad Commission in said case or by subsequent decisions of the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that for all other purposes the effective date of this order shall be twenty (20) days from

and after service hereof upon said respondent.

Dated at San Francisco, California, this 21<sup>st</sup> day  
of May, 1940.

Ray L. Riley  
Francis DeLeon  
Robert W. Higgins  
M. J. [unclear]  
Justin J. Casner

Commissioners.