

Decision No. 33111

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
of K. C. Hengen to charge less) Application No. 23242
than established minimum rate.)

K. C. Hengen, Applicant, in propria persona

BY THE COMMISSION:

O P I N I O N

By this application, K. C. Hengen, an individual, seeks authority to transport property in dump truck equipment at a lesser rate than the minimum rate set forth in the Commission's order in Decision No. 32566, as amended, on certain Works Progress Administration projects. He specifically proposes to perform such transportation services at a rate of 90 cents per hour, employing a 1-1/2 cubic yard dump truck. The rate set forth in Decision No. 32566, supra, is 65 cents per hour, plus the rate per hour for the driver's wages, which the record in this matter discloses to be 75 cents per hour, or a total of \$1.40 per hour.

The application sets forth that the applicant proposes to transport material on various W. P. A. projects; that he is the owner and driver of a 1931 Ford dump truck; that the truck is fully depreciated; that expenses involved in connection with transportation of property on W. P. A. projects are lower than those encountered in normal operations; that the loads are light and the number of miles run is generally very small.

A public hearing on this application was had before Examiner Jacobsen at Los Angeles on February 10, 1940.

The record in this proceeding other than the application itself consists only of the oral testimony of the applicant that

he is the driver of his 1-1/2 cubic yard dump truck; that he does all repair work on the vehicle except certain specialized work done by outside garages. He presented estimated cost data as shown in the following tabulation, covering a twelve months' period.

Fuel	\$ 144.00
Oil	6.00
Tires	40.00
Repairs	40.00
Insurance	43.00
Licenses	11.85
Board of Equalization	23.00
California Railroad Commission	4.00
Miscellaneous	<u>48.15</u>
Total	\$ 360.00

The above cost data, as will be noted, makes no provision for overhead expenses, return on investment, allowance for repair and maintenance, labor performed by owner or driver's labor. The record shows that applicant's gross annual earnings from dump truck operations amounted to \$1,560.00. Applying the proposed rate of 90 cents per hour to the annual revenue, an annual use factor of 1,733 hours is developed. With the omission of the last mentioned items, the cost of \$360.00 applied to this use factor produces an hourly cost of 20.8 cents. If these expense items, omitted by the witness, were included in the total, the hourly cost would obviously be somewhat greater.

In the procedure of developing costs of transportation of property by motor vehicles ⁽¹⁾ upon which to predicate minimum rates, it is recognized as proper to include such items as were omitted by the witness in his testimony.

The witness testified that if he paid himself as a driver the rate of 75 cents per hour as prescribed in the contract with

(1) Cost studies introduced as exhibits by the Commission engineers in Commission hearings pertaining to establishment of minimum rates include the items of overhead expense, return on investment, return on working capital, rent, drivers' wages, all repair labor costs and depreciation, in addition to those items mentioned by the witness.

the Treasury Department of the United States Government for such labor, the remaining 15 cents per hour would not compensate him for the expenses of operating the truck, exclusive of driver's wages.

The wage rate provision in the contract referred to herein appears to be for the purpose of establishing a minimum scale of wages to be paid the driver of the truck equipment by the contractor; therefore, a carrier who employs a driver and who contracts with the United States Government for the transportation of property on W. P. A. projects is required to pay his driver the wage rate specified. A dump truck owner who drives his truck while operating under a similar contract and who does not set aside for the item of driver's wages the amount specified in the contract, obviously has a definite bidding advantage over the operator who is required to hire a driver.

Item No. 330, Highway Carriers' Tariff No. 7, of Decision No. 32566, supra, reads,

"The hourly rates are constructed by combination of the vehicle hourly rates shown in Item No. 360 series and the Drivers' and Helpers' wage rate shown in Item No. 340 series."

Item No. 340 of said tariff reads,

"The drivers' and helpers' wage rate shall be the general prevailing rate of wages per diem (converted, however, to an hourly basis) last determined as such pursuant to the provisions of Chapter 397, Statutes of 1931, as amended, for drivers and/or helpers of dump trucks employed on public work of a similar character in the locality in which the work is performed; provided, however, that whenever the Federal Government, the State of California, or any political subdivision thereof shall have fixed or determined the rate of wages to be paid dump truck drivers and/or helpers in connection with any work performed for or on behalf of the Federal Government, the State of California, or any political subdivision thereof, then said rate of wages so fixed and determined shall be the 'general prevailing rate of wages' to be used in determining the minimum rates for transpor-

tation by dump trucks of the commodities here-
in mentioned in connection with said work."
(Emphasis added)

Under Item No. 360 the vehicle hourly rate for a vehicle having a "Level capacity of Dump Truck Body in Cubic Yards" of "over 0 but not over 2" is 65 cents per hour, " * * * where the loading is performed by hand and where the average mileage of the vehicle does not exceed eight (8) miles per hour for the period of time the vehicle is in use each day." The record shows the wage rate for drivers of equipment involved herein to be 75 cents per hour.

The Commission's Decision No. 32566, supra, establishes minimum rates for the transportation of property in dump truck equipment by combining the vehicle rates and the drivers' wage rates. In the matter involved herein the latter rate is specifically prescribed in a contract in which a governmental agency is the shipper. It seems apparent that where relief from the established rates is sought under Section 11 of the Highway Carriers' Act (Stats. 1935, Chap. 223 as amended), it should be shown that the vehicle rate sought⁽²⁾ by itself, is reasonable, whether the carrier hires the driver of his equipment or drives the truck himself. To grant relief under circumstances where, of the total rate sought, the vehicle rate portion is not compensatory, upon admission of the applicant, it is obvious that discrimination will exist to the damage of the carrier hiring the driver of his equipment.

CONCLUSIONS

The record is clear upon the admission of the applicant that the proposed rate is not compensatory when the driver's wage rate per hour specified in the contract is deducted from the total

(2) The vehicle rate sought is considered to be the total rate sought, less the driver's wage rate specified in the Commission's decision.

hourly rate sought in this application.

Section No. 11 of the Highway Carriers' Act provides that " * * * The Railroad Commission shall upon finding that the proposed rate is reasonable * * * authorize such rates less than the minimum rates established." Upon consideration of all the facts and circumstances of record, the Commission is of the opinion that the proposed rate has not been shown to be a "reasonable" rate within the meaning of Section 11 of the Highway Carriers' Act. The application will therefore be denied.

O R D E R

Public hearing having been held in the above entitled proceeding, the matter having been submitted, and the Commission being fully advised,

IT IS HEREBY ORDERED that Application No. 23242 be and it is hereby denied.

Dated at San Francisco, California, this 21st day of May, 1940.

Ray L. Riley
James D. Deane
Raymond W. Wainwright
H. B. Smith
Justin F. Casner
Commissioners.