Decision No. 31016

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, of RAY W. STRUEBING and ELMER H. STRUEBING, doing business as WESTLAKE TRANSFER COMPANY.	Case No. 4521

ORIGINAL

Ray W. Struebing, in propria persona

Elmer H. Struebing, in propria persona

BAKER, COMMISSIONER:

O P I N I O N

This proceeding was instituted by the Commission on its own motion to determine whether or not Ray W. Struebing and Elmer H. Struebing, hereinafter called respondents, either individually or as co-partners transported certain specified shipments of household goods at rates less than the minimum rates therefor established by the Commission.

Public hearing was held in Los Angeles on June 6, 1940, at which time and place respondents appeared personally and participated in the hearing, evidence was received, and the matter was submitted.

It appears that respondents are engaged as co-partners in the business of transporting property for compensation over the public highways by means of motor vehicles under the authority of Radial Highway Common Carrier Permit No. 19-1053 and City Carrier Permit No. 19-1054. Their business is conducted under the fictitious name of Westlake Transfer Company.

The evidence of record pertains to the transportation by respondents of three shipments of used household goods between points in the City of Los Angeles, as follows: On August 5, 1939, a shipment of more than five pieces of used household goods, uncrated, for E. Frazier from 10360 Ilona Street, Los Angeles, to 12535 Sarah Street, Los Angeles; on August 10, 1939, a similarly described shipment for O. C. Koenemann from 5019 Seventh Avenue, Los Angeles, to 5212 Maywood Street, Los Angeles; and on August 28, 1939, another similar shipment for Mrs. F. La Motte from 6147 Alcott Street, Los Angeles, to 5314 Tenth Avenue, Los Angeles. In each instance a 1935 G.M.C. truck with van body was used and respondents' assigned a driver and one helper to perform the work. Respondents' charges for each shipment were based on a rate of $3.50 per hour, amounting to $18.40, $14.00 and $16.50, respectively. The record shows that in each instance such rate was less than the applicable minimum rate.

By its order in Decision No. 29891, as amended in Decision No. 30482, both in Case No. 4086, the Commission established minimum rates to be charged and collected by Radial Highway Common Carriers, Highway Contract Carriers, and City Carriers for the transportation of household goods and effects. Such minimum rates for the transportation in question, when performed by the driver and one helper, are $3.50 per hour for trucks having a loading area of less than 90 square feet (commonly referred to as "small vans") and $4.00 per hour for trucks having more than 90 square feet loading area (commonly referred to as "large vans"). The term loading area is defined in the rate order in question as "the total space available for loading including tailgate and overhead (loading space above driver's compartment)."

The 1935 G.M.C. truck used by respondents for transporting each of the shipments in question has a tailgate measuring 7 feet, 9 inches wide and 4 feet long, a van body having floor space 7 feet, 3 inches wide and 15 feet, 8 inches long, and overhead space in the form of an isosceles trapezoid 4 feet, 9 inches wide at the front, 7 feet wide at the back, and 4 feet long. Thus the available loading area is 168.06 square feet, consisting of 31 square feet of tailgate area, 113.58 square feet floor space, and 23.48 square feet overhead area.

Respondents both testified to their familiarity with the minimum rates established by the Commission for the transportation in question, and sought to justify the application of the "small van" rate of $3.50 per hour by stating that they had temporarily blocked off a portion of the van, thereby, they contend, temporarily reducing the loading area of the van from over 90 square feet to under 90 square feet. They testified that in each instance a plywood "bulkhead" was placed across the interior of the van approximately 12 feet in front of the back end of the truck. This bulkhead was held in place by ropes attached to the sides of the van, and was installed and removed freely from one shipment to the next.

Respondents' contention is not sound. Whatever might be the effect of a wall permanently constructed across the interior of a van, it is clear that a board temporarily placed therein in such a manner as to be easily removable cannot be considered an effective means of reducing the available loading area. The rate order in question refers to the "total space available for loading," not to the space actually used, and any space which can readily be used if necessary is manifestly available for loading. A further difficulty with respondents' theory is that even if the portion of the truck in front of the "bulkhead" were removed from consideration, the available loading area would still exceed 90 square feet. Assuming the "bulkhead" to have been placed exactly 12 feet from the rear of the truck, the available floor space would be 87 square feet which, when added to the 31 square feet of tailgate area, makes a total available space of 118 square feet. Furthermore, it is not clear that the available space to the read of the "bulkhead," even excluding the tailgate, was under 90 square feet, because respondents never accurately measured the area. Instead, respondent Elmer Struebing testified that in each instance he merely stepped off four strides from the rear of the truck in determining where to place the "bulkhead". In view of the 7 feet, 3 inch width of the van, any section of the truck in

excess of 12 feet, 5 inches long would contain over 90 square feet. Since Elmer Struebing is six feet tall, his four strides might well have exceeded that distance.

Respondents also testified, as evidence of their good faith, that they understood J. Lane Barbour, Supervising Investigator in the Commission's Division of Investigation, to state while addressing a meeting of carriers that a partition could be used to reduce the loading area of a truck.(1) They also stated that they did not think it necessary to include the tailgate area unless the tailgate was actually used. It appears that the tailgate was not used to transport two of the shipments in question, but was used in transporting the La Motte shipment. Respondent Elmer Struebing stated that he nevertheless charged Mrs. La Motte the $3.50 rate because only a portion of the tailgate was used and because he had originally quoted a $3.50 rate and "didn't want to get into an argument" by charging $4.00 per hour. Thus, accepting respondents' contentions and statements at face value, it nevertheless appears that with respect to at least one of the three violations in question they charged $3.50 per hour when they knew $4.00 to be the applicable minimum rate. In view of these facts they should be ordered to cease and desist from further violations and their City Carrier permit should be suspended, pursuant to Section 13 of the City Carriers' Act, for a period of seven days.

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

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(1) According to Barbour, however, his statement was that such a partition could not be considered as reducing the available loading area unless permanently installed by the use of screws and bolts.

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. 244; re Ball and 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 also be noted that under Section 13 of the City Carriers' Act (Stats. 1935, Ch. 312, as amended), a person who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine of not exceeding $500.00, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment.

Respondents are 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 their permit is suspended, unless they shall first obtain the license required by the Motor Transportation Broker Act (Stats. 1935, Ch.705) for such operations as a broker. It is to be noted that under Section 16 of that act one who engages in business as a Motor Transportation Broker without the required license 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.

Upon full consideration of all the facts of record I hereby find that respondents, Ray W. Struebing and Elmer H. Struebing, co-partners, doing business under the fictitious name of Westlake Transfer Company, have engaged in the transportation of property for hire as a business over the public highways in the city of Los Angeles by means of a motor vehicle as a carrier as defined in Section 1 (f) of the City Carriers' Act, and in the course of their said business have transported three shipments of property as more particularly described in the foregoing opinion at rates less than the minimum rates therefor established by the Commission.

The following form of order is recommended:

O R D E R

Public hearing having been held herein, evidence having been received, the matter having been submitted, and the Commission now being fully advised in the premises,

IT IS HEREBY ORDERED that Ray W. Struebing and Elmer H. Struebing, individually and as co-partners, be and they are, and each of them is, hereby directed immediately to cease and desist, and thereafter abstain, directly or indirectly, or by any subterfuge or device, from charging or collecting any rate or rates less than the minimum rates therefor established by the Commission for the transportation of property for compensation or hire by means of a motor vehicle over the public highways in any city or city and county in this State, as a carrier as defined in the City Carriers' Act (Stats. 1935, Ch. 312, as amended).

IT IS HEREBY FURTHER ORDERED that City Carrier Permit No. 19-1054, heretofore issued to Ray W. Struebing and Elmer H. Struebing, co-partners, doing business under the fictitious name of Westlake Transfer Company, be and it is hereby suspended for a period of seven days, commencing on July 17, 1940 and continuing to and including July 23, 1940.

IT IS HEREBY FURTHER ORDERED that during said period of suspension respondents, Ray W. Struebing and Elmer H. Struebing, and each of them, shall desist and abstain from engaging in the transportation of property for compensation or hire as a business over any public highway in any city or city and county in this State by means of a motor vehicle or motor vehicles, and from performing any other service as a carrier as defined in Section 1 (f) of the City Carriers' Act.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Commission shall cause a certified copy of this decision to be served upon each of said respondents.

This opinion and order shall become effective 20 days after the date hereof.

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 18th day of June, 1940.

Commissioners