

Decision No. 32292

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 CLYDE WEBSTER, doing
business under the fictitious name of
WEBSTER'S VAN & STORAGE COMPANY.

Case No. 4522

CLYDE WEBSTER, in propria persona.

ORIGINAL

BY THE COMMISSION:

O P I N I O N

This is an investigation on the Commission's own motion into the operations, rates, charges, contracts and practices of Clyde Webster, hereinafter referred to as respondent, operating under the fictitious name and style of Webster's Van & Storage Company, as a radial highway common carrier (38-110) and as a city carrier (38-111).

Specifically, this complaint charges respondent with the transportation of uncrated household goods and personal effects between points within the city and county of San Francisco, at rates less than the minimum rates prescribed by the Commission, and also for failure to issue to shippers and retain for his own records freight bills or other shipping documents substantially in the manner and form prescribed and set forth, respectively, by the Commission in its Decision No. 29891, as amended, in Case No. 4086.

A public hearing in this proceeding was had before Examiner McGettigan in San Francisco on May 29, 1940, where testimony was taken, exhibits filed, the matter duly submitted and it is now ready for decision.

Respondent appeared and participated in the proceedings.

The record shows that four distinct and separate furniture hauls are herein involved, each employing at least two men and all of which had point of origin and destination within the corporate limits of the city and county of San Francisco. For the purpose of assessment of minimum rates, the city and county of San Francisco is included in the territory designated as Territory "A" in Commission decisions hereinabove referred to. The record further shows that the vehicle used in effecting the transportation services involved had a loading area in excess of 90 square feet.

Minimum rates within the area described for the particular size of vehicle and number of men involved required the assessment of an hourly charge of \$4.50, which includes the services of a driver and one helper. Additional man power must be charged for at the rate of \$1.25 per hour per man. In computing the time for assessing such hourly rates, the following factors are to be utilized: loading time plus double the driving time from point of origin to point of destination, plus unloading time. Fractional hours are to be disposed of in accordance with the following table:

Less than 8 minutes--omit.

8 minutes or more but less than 24 minutes shall be counted as $\frac{1}{4}$ hour.

24 minutes or more but less than 38 minutes shall be counted as $\frac{1}{2}$ hour.

38 minutes or more but less than 54 minutes shall be counted as $\frac{3}{4}$ hour.

54 minutes or more shall be counted as 1 hour.

Referring directly now to the four specific furniture hauls involved, two of the Commission's staff ⁽¹⁾ testified as to the time consumed in these moves and the corresponding lawful minimum rates.

The specific moves involved herein are as follows:

(1) Moving uncrated household goods and personal effects of Mrs. Marian Lewis on September 11, 1939 from 1965 Page Street to 1555 Oak Street. Three men were employed for a total of 3-3/4 hours, at \$5.75⁽²⁾ per hour, or a minimum lawful charge of \$21.56.

(2) Moving uncrated household goods and personal effects of Mrs. Estelle Stern on November 29, 1939 from 3318 Broderick Street to 1800 Lawton Street. Two men employed for a total of 5 hours at \$4.50 per hour, or a minimum lawful charge of \$22.50.

(3) Moving uncrated household goods and personal effects of Mrs. J. Werhan on November 29, 1939 from 1867 - 17th Avenue to 1125 Geary Street, Apt. 10. Two men employed for a total of 1-1/2 hours at \$4.50 per hour, or a minimum lawful charge of \$6.75.

(4) Moving uncrated household goods and personal effects of Mrs. N. Reardon on September 15, 1939 from 587 - 22nd Avenue to 2142 - 32nd Avenue. No rate violation apparent in this movement.

Defendant Webster, testifying in his own behalf, disputed the time consumed in making the various moves, which differs materially from the testimony of the Commission's witness on this subject. No dispute appears of record as to the man power used. Respondent admitted that he was unaware of and had paid no attention to that portion of the Commission's rate order requiring the doubling of driving time. It also appears that little, if any, attention was paid to the Commission's rule in regard to disposition of fractional hours.

(1) Jack Walker, one of the Commission's investigators, testified as to the results of his time checks on various movements. Edwin Lake, Assistant Rate Expert, testified to the minimum lawful rate assessable, computed upon the time involved in carrying out these movements.

(2) Driver and helper at \$4.50 and extra man at \$1.25.

The following tabulation shows a comparison between the time and rate, as testified to by the various witnesses, in each movement.

<u>Movement Involved</u>	<u>Time Consumed</u>		<u>Charges</u>	
	<u>Witness Walker</u>	<u>Witness Webster</u>	<u>Witness Lake</u>	<u>Witness Webster</u>
Job 1	3-3/4	2-1/2	\$21.56	\$15.00
Job 2	5	3 hr. 35 min.	22.50	17.00
Job 3	1-1/2	1	6.75	4.50

Respondent Webster, according to the record, had not, until approximately the first of the year 1940, supplied himself with or issued to shippers the freight bill form required by the Commission, pleading first, that he was not informed of this requirement, and secondly, alleging that his supply of said bills was unduly delayed. Specifically, no freight bills were issued in any of the four jobs involved in this proceeding.

Taking this record as a whole, it was shown that respondent has been operating under the jurisdiction of this Commission since October of 1935 and that he has been duly served with and fully apprised of all Commission decisions, rules and regulations affecting his operations. Despite such knowledge, respondent has, prior to 1940, not complied with this requirement of the Commission relative to the issuance of freight bills. Furthermore, respondent has not, on this record, been keeping a full, complete and accurate record of the time element involved in the performance of his various household goods movements here referred to. The conflict in the testimony, therefore, relative to the said time element cannot be resolved in favor of respondent.

In fact, upon further analysis of respondent's rather loose method of determining the proper minimum charges, the record is indicative that had respondent observed the Commission's orders

in all respects he would have been obliged to revise his figures, both as to hours and money, upward in order to comply with the minimum rate structure prescribed.

Based upon the foregoing, it is sufficiently clear upon this record that respondent Webster, therefore, has assessed charges not in consonance with and less than the minimum rates prescribed by the Commission, and has further failed to prepare and issue freight bills in substantially the form and manner required. Respondent having experienced approximately five years of operation pursuant to the statute herein involved, must be presumed to have had knowledge of Commission rules and regulations and should be held to strict account for any deflections therefrom.

An order directing respondent to immediately cease and desist from the unlawful practices herein disclosed and referred to appears to be warranted, and a further order suspending his city carrier permit for a period of 10 days should issue.

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 person is adjudged guilty of contempt, a fine may be imposed in the amount of \$500, 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 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 (Stat. 1935, Ch. 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, or by imprisonment in the county jail not exceeding three 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 suspended, unless he 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, or to imprisonment in the county jail for a term not to exceed six months, or to both such fine and imprisonment.

ORDER

Public hearing having been had in the above-entitled proceeding, the matter having been duly submitted, and the Commission now being fully advised in the premises,

IT IS HEREBY FOUND that respondent Clyde Webster did, on September 11, 1939 and November 29, 1939 engage in the transportation of uncreated household goods, furniture and personal effects, for compensation, as a business over the highways of the State of California, between points within the city and county of San Francisco, by means of a motor vehicle, as a carrier, as such 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 such carrier in said transportation on September 11, 1939, September 15, 1939 and November 29, 1939, failed and neglected to issue a freight bill in substantially the form as prescribed and established by order of the Railroad Commission in and by said Decision No. 29891, Appendix "B" thereof.

IT IS HEREBY ORDERED that Clyde Webster be, and he 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) and without also complying with the orders, rules and regulations regarding the form of shipping order or freight bill as required by said Decision No. 29891, in Case No. 4086, as modified and amended by Decision No. 30482 in said case, or as may be required by future decisions of the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that city carrier permit No. 38-111, dated October 22, 1935, issued to and held by said respondent, Clyde Webster, be and the same is hereby suspended for a period of 10 days; that said 10-day period of suspension shall commence on the 11th day of July, 1940, and continue to the 20th day of July, 1940, both dates inclusive, if

service of this order shall have been made upon said respondent more than twenty (20) days prior to the 11th day of July, 1940; otherwise, said 10 day suspension shall commence on the effective date of this order and continue for a period of ten days thereafter.

IT IS HEREBY FURTHER ORDERED that during said period of suspension, said respondent, Clyde Webster, 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 said Act for compensation or hire as a business over any public highway in any city in this State by means of a motor vehicle or motor vehicles and from performing any transportation service as such 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 date of service hereof upon said respondent.

The Secretary of the Railroad Commission is directed to cause personal service of a certified copy of this decision to be made upon said respondent, Clyde Webster, and to cause certified copies thereof to be mailed to the District Attorney of San Francisco County and to the Department of Motor Vehicles, Highway Patrol, at Sacramento.

Dated at San Francisco, California, this 18th day of June, 1940.

Ray & Kelley
Frank Sawyer
Ralph Webster
W. H. H. H.

COMMISSIONERS