

Decision No. 34433

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, contracts,) Case No. 4446
and practices, or any thereof, of)
HERMAN J. SAUVE, doing business as)
SAUVE TRANSFER.)

Herman J. Sauve, in propria persona

CRAEMER, COMMISSIONER:

O P I N I O N

This proceeding was instituted by the Commission on its own motion into the operations of respondent, HERMAN J. SAUVE, 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 (Stats. 1935, Ch. 312, as amended), engaged in the transportation of uncrated used household goods, furniture, and personal effects in the City of Inglewood, on or about February 2, 6, 24, and March 13 and 15, 1939, between the addresses set forth in the order instituting investigation, 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 of 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 September 29, 1939, at which time respondent appeared, evidence was received, and the matter submitted. It is now ready for decision.

The evidence shows that respondent has been and now is, and on March 15, 1939, was, 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 said day as such carrier he transported such commodities from 6625½ Crenshaw Boulevard, Inglewood, California, to 793 North Cedar Avenue, Inglewood, California, and 1122 Maple Street, Inglewood, California, by means of a motor truck having a loading area of approximately 111 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.

The evidence was not sufficient to establish violations on any day except March 15, 1939. Fred Hughes, an Inspector of the Railroad Commission, testified relative to the transportation by respondent on that date as follows: That loading commenced at 1 P.M. and was completed at 2:10 P.M.; that the driving time from 6625½ Crenshaw Boulevard, Inglewood, California, to 793 North Cedar Avenue,

Inglewood, California, was 10 minutes; that unloading commenced at 2:20 P.M. and was completed at 2:40 P.M.; that respondent's truck was then driven from 793 North Cedar Avenue to 1122 South Maple Street, Inglewood, California, arriving at the latter address at 2:48 P.M., 8 minutes being consumed for said transportation; that unloading at 1122 South Maple Street commenced at 2:48 P.M. and was completed at 3:30 P.M.; and that 2 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 2 hours and 48 minutes, which is adjusted to 2-3/4 hours under said Decision No. 30482. The minimum charge collectible under said decisions for the 2-3/4 hours worked was \$11.00. Respondent charged and collected the rate of \$3.50 per hour or \$7.88. It is apparent, therefore, that there was an undercharge in the sum of \$3.12.

Respondent has not failed to issue to the shipper for this shipment a freight bill in substantially the form prescribed and established by order of the Railroad Commission in Decision No. 29891, Appendix "B" thereof.

It is evident from the record that Decision No. 29891 in Case No. 4086 was served upon respondent on July 20, 1937, and that Decision No. 30482 in said case was served upon him on January 13, 1938. It is further evident that by letter dated April 27, 1939, respondent was apprised of the proper rates to charge as prescribed and established in said decisions, and of the penalties to which he would be subject if he did not comply with said rates. It is thus evident that respondent had knowledge of the minimum rates established and prescribed 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 as 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. 244; Re Ball & Hayes, 37 C.R.C. 407; Wermath v. Stamper, 36 C.R.C. 458; 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, 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 \$500.00 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 engages 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 (6) months, or to both such fine and imprisonment.

The following form of finding and order is recommended:

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, HERMAN J. SAUVE, did, on March 15, 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 6625 $\frac{1}{2}$ Crenshaw Boulevard, Inglewood, 793 North Cedar Avenue, Inglewood, and 1122 South Maple Street, Inglewood, 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 ORDERED that respondent HERMAN J. SAUVE 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 City Carrier's Permit No. 19-526, dated November 1, 1935, issued to and held by said respondent Herman J. Sauve 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 19th day of August, 1940, and continue to the 25th day of August, 1940, both dates inclusive, if service of this

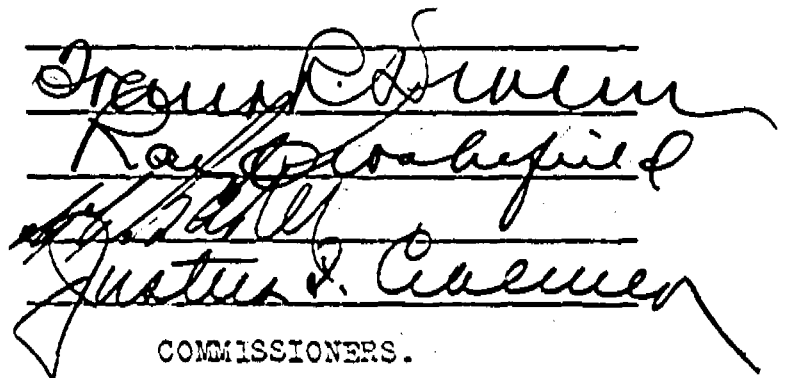
order shall have been made upon said respondent more than twenty (20) days prior to the 19th day of August, 1940; otherwise said seven-day period of suspension shall commence on the effective date of this order and continue for a period of six (6) days thereafter.

IT IS HEREBY FURTHER ORDERED that during said period of suspension said respondent Herman J. Sauve, his 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 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 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 16th day of July, 1940.



COMMISSIONERS.