

ORIGINAL

Decision No. 29891

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 L. N. SMITH.) Case No. 4420

L. N. SMITH, in propria persona

CRABMER, COMMISSIONER:

O P I N I O N

This proceeding was instituted by the Commission on its own motion to determine whether respondent Smith transported a shipment of used uncrated household goods and personal effects in the City of Alhambra on or about January 24, 1939, at a rate less than the minimum rate for such transportation established by the Commission in Decision No. 29891, as amended by Decision No. 30482, in Case No. 4086; and without issuing to the shipper a freight bill substantially in the form prescribed by said Decision No. 29891.

Public hearing was held at Los Angeles on June 9, 1939, and the matter submitted. Thereafter, by order dated September 5, 1939, the submission was set aside and the matter reopened for further hearing which was held at Los Angeles on September 22, 1939, at which time respondent appeared and participated in the hearing. Further evidence was received, the case was again submitted, and it is now ready for decision.

The record shows that respondent holds city and radial highway common carrier permits, issued by this Commission on November 23, 1937, which since that date have been and are now in effect. Prior radial and city carrier permits held by respondent were revoked because he failed to maintain adequate insurance or other protection against liability for injuries to persons and property as required by the Highway and City Carriers' Acts.

On January 24, 1939, Inspector Fred L. Hughes of the Railroad Commission saw respondent and two helpers move a shipment of household goods and personal effects for Mrs. J. Haworth from 1232½ Second Street to 1836 South Garfield Avenue, Alhambra. The time consumed for this service, as observed by the witness, was as follows:

Commenced loading	2:10 p.m.
Finished loading	3:18 p.m.
Driving time	7 minutes
Commenced unloading	3:25 p.m.
Finished unloading	<u>4:10 p.m.</u>
Total time	2 hours, 7 minutes.

Hughes stated that, in addition to supervising his two helpers, respondent himself loaded a vanity, part of a chest of drawers, a small table, and miscellaneous pieces of furniture, and assisted his helpers in loading a large kitchen range.

On arrival at 1836 South Garfield Avenue, respondent not only unpacked the pieces and placed them on the rear end of the van, so that his assistants were enabled to more readily carry them into the house, but himself unloaded and carried several small articles.

After the completion of the move, Hughes was shown a drayage slip by Mrs. Haworth, a copy of which is in evidence, indicating that respondent had charged and received \$7.00, at the rate of \$3.50 per hour for 2 hours. This dray slip is far from being substantially in the form required to be issued to the shipper pursuant to Decision No. 29891, and furthermore fails to show either the name of the shipper, the commodity transported, or any information by which it would be possible to properly rate the shipment in the absence of a continuous observation thereof.

On the same day, a little later in the afternoon, Hughes called on respondent, who admitted moving Mrs. Haworth's furniture at the rate of \$3.50 per hour. At this time the inspector measured Smith's van, and found it to have an available loading area of 98 square feet.

Mrs. Ferry, the mother of Mrs. Haworth, testified that she made arrangements with respondent over the telephone for the movement of her daughter's furniture. She was, she said, in the house while the furniture was being loaded, and observed Smith not only directing his helpers, but himself moving several of the articles.

Mrs. Haworth testified that she also was present in the house while respondent and his two helpers loaded her furniture. She saw Smith help in the actual lifting and carrying of several pieces. When the job was completed she paid respondent \$7.00 cash, for which he gave her a receipt. The witness was unable to produce this receipt because, she said, she had lost it.

The lawful minimum rate provided by Decision No. 29891, as amended by Decision No. 30482, in Case No. 4086, for the transportation of used property having the characteristics herein mentioned, including two helpers in addition to the driver of the van, is \$5.00 per hour. A statement showing the computation of this rate, prepared by Edwin Lake, an assistant rate expert for the Commission who

testified at the hearing, is in evidence. Respondent's charge of \$7.00 was therefore \$5.00 under the minimum lawful charge.

Respondent testified that he, his son, and a helper all worked on the job of moving Mrs. Haworth's furniture. He also stated that while his van formerly had an available loading area of over 90 square feet, he had, since the move in question, cut down its size to less than 90 square feet upon being informed by Inspector Hughes that he could not lawfully move property at the \$3.50 per hour rate with a larger van. However, as far back as July 12, 1938, and on at least two occasions thereafter, respondent was advised by Commission investigators to charge \$4.00 per hour for moving with his van with driver and one helper, or to reduce its size. The record further shows that respondent was served with copies of both rate decisions hereinabove referred to. His failure to observe the requirements of the orders respecting both rates and the issuance of freight bills merits the suspension of his permit. An order will therefore issue suspending respondent's city carrier permit and directing respondent to cease and desist from his operations as such city carrier during the period of suspension.

An order of the Commission directing the suspension of an operation is in 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 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 not exceeding \$500.00, 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 \$500.00, 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 evidence of record, I am of the opinion, and therefore find:

I.

That respondent L. N. SMITH, on or about the 24th day of January, 1939, did engage in the transportation of property, to-wit, household goods, furniture and personal effects for Mrs. J. Haworth for compensation or hire, as a business, by means of a motor vehicle over the public highways from 1232½ Second Street to 1836 South Garfield Avenue, in the City of Alhambra, California, at a rate less than the lawful minimum rate for such transportation provided by Decision No. 29891, as amended by Decision No. 30482, in Cases Nos. 4086 and 4099, in violation of said decisions and of Section 9 of said City Carriers' Act.

II.

That respondent L. N. SMITH, on or about said 24th day of January, 1939, did engage in the transportation of property as described in Finding No. I herein, without issuing to the shipper for the shipment so received for transportation a freight bill in substantially the form prescribed in Appendix "B" of Decision No. 29891 aforesaid, in violation of the order contained in said decision and of Section 20 $\frac{1}{2}$ (b) of the Highway Carriers' Act.

The following form of order is recommended:

O R D E R

The above-entitled matter having been duly heard and submitted for decision, and the foregoing opinion having been duly considered with reference to the findings and conclusions set forth therein, together with the law in the premises,

IT IS HEREBY ORDERED that respondent L. N. Smith shall immediately cease and desist and thereafter abstain from charging, demanding, collecting or receiving any charges for the transportation of any of the property described in Decision No. 29891, as amended, in Cases Nos. 4086 and 4099, less than those prescribed as minimum in and by said decision, as amended by Decisions Nos. 30482, 32325, 32628, and by Decision No. 32629 in Cases Nos. 4246 and 4434.

IT IS HEREBY FURTHER ORDERED that said respondent shall immediately cease and desist and thereafter abstain from the transportation of any of the property described in said Decision No. 29891, and as amended, without issuing to the shipper, for each shipment received for transportation, a shipping order or freight bill in substantially the form prescribed in Appendix "B" attached to and made a part of said Decision No. 32325.

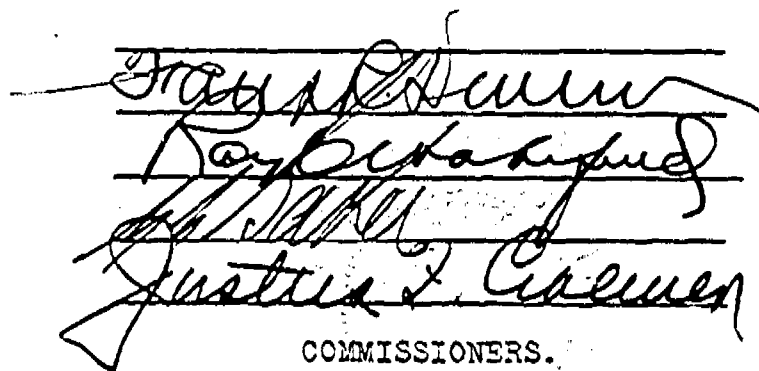
IT IS HEREBY FURTHER ORDERED that city carrier permit No. 19-6976, now held by said respondent be and it is hereby suspended for a permit of seven (7) days; that said seven-day period of suspension shall commence on the 23rd day of August, 1940, and continue to the 29th day of August, 1940, both dates inclusive, if service of this order shall have been made upon respondent L. N. Smith more than twenty (20) days prior to the 23rd 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 days thereafter.

IT IS HEREBY FURTHER ORDERED that during said period of suspension said respondent shall desist and abstain from engaging in transportation of property for compensation or hire as a business over any public street in the City of Alhambra, California, or over any public highway 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.

The effective date of this order shall be twenty days after service hereof upon 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.