

Decision No. 32413

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Peter H. Muller to charge less) Application No. 22850
than established minimum rate.)

Peter H. Muller, Applicant, in propria persona

CRAEMER, Commissioner:

OPINION

ORIGINAL

By this application, Peter H. Muller, 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. 28836, as amended, on certain Works Progress Administration projects. He specifically proposes to perform such transportation service at a rate of \$1.00 per hour, employing a 2 cubic yard dump truck. The rate set forth in Decision No. 28836, supra, is 70 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 \$1.45 per hour.

The application sets forth that the applicant proposes to transport material from various W. P. A. projects within the Los Angeles Metropolitan Area; that he is the owner and driver of a 1932 Ford truck; that the truck is fully depreciated; that expenses involved with the 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.

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 2-cubic yard dump truck; that he does all of the repair work on the vehicle except certain specialized work which is done by outside garages. The applicant submitted no cost study. However, upon cross-examination, he indicated that the vehicle traveled approximately 25 miles per day; that he used three to four gallons of fuel per day; that the vehicle averages 10 miles per gallon of fuel consumed; that the tire performance was 15,000 to 20,000 miles per tire; that his vehicle insurance was \$57.00 per year; and that the Motor Vehicle License and Tax expense was \$11.40 per year. The applicant furnished no data regarding the number of hours worked during a specific period of time. The testimony disclosed that if the applicant paid himself as a driver the rate of 75 cents per hour as set forth in the agreement with the Treasury Department of the United States for such labor, the remaining 25 cents per hour would not compensate him for all of the expenses involved in the operation of the truck, exclusive of the driver's wages.

The wage rate provision in the agreement with the shipper 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 the driver the wage rate specified. A dump truck owner who drives his own vehicle 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.

Exhibit "A-1" of Decision No. 28836 reads:

"The minimum hourly rate shall be determined by adding to each of the amounts set forth in the following table an amount equal to the general prevailing hourly wages of driver and/or helper for work of a similar character in the locality in which the work is performed."

The table referred to above indicates that the hourly rate for a vehicle having a capacity of 2-cubic yards or less is 70 cents, * * * when loaded by hand and the average mileage of each truck does not exceed 8 miles per hour per day during the hours such truck is operated".

In defining the term "general prevailing hourly wage for a driver", Exhibit "A-1" in Decision No. 28836 reads:

* * * 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 considered the 'general prevailing rate of wages' to be used in determining the minimum rates for transportation in dump trucks of the commodities herein mentioned in connection with said work."

The Commission's Decision No. 28836, supra, establishes minimum rates for the transportation of property in dump truck equipment by combining the vehicle rate and the driver's wage rate. In the matter involved herein the latter rate is specifically prescribed in the agreement 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 ⁽¹⁾ 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,

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

the vehicle rate portion is not compensatory, it is obvious that discrimination will exist to the damage of the carrier hiring the driver of his equipment.

CONCLUSIONS

The record does not convincingly show that the proposed rate will produce sufficient revenue to cover the cost of this operation. I am of the opinion, therefore, that the proposed rate is not compensatory when the driver's wage rate per hour specified in the agreement with the shipper is deducted from the hourly rate sought in this application.

Section 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, I am 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.

I recommend that the application be denied by the following form of order.

O R D E R

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

IT IS HEREBY ORDERED that Application No. 22850 be and it is hereby denied.

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 13th day of August, 1940.

Arthur J. Riley
Frank R. Murphy
Walter J. Craven
Commissioners