

Decision No. 33630

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, con-
tracts and practices, of MARVIN G.
MILES, an individual, doing business
as MILES TRANSFER COMPANY.

ORIGINAL

Case No. 4537

Marion G. Miles, in propria persona

Henry Kearney, for Marion G. Miles and
League of Highway Carriers.

RILEY, Commissioner:

O P I N I O N

This proceeding was instituted by the Commission on its own motion into the operations of respondent, MARION G. MILES, who was named in the order instituting investigation as MARVIN G. MILES, who holds City Carrier Permit No. 19-8697, for the purpose of determining whether or not respondent as a carrier as that term is defined in Section 1-(f) of the City Carriers' Act (Stats. 1935, Chap. 312, as amended), engaged in the transportation of uncrated used household goods and personal effects, or any of them, on or about the dates and between the addresses as follows:

- July 19, 1939 - From 626 So. Alvarado St., Los Angeles, Calif.,
to 2300 Beverly Boulevard, Los Angeles, Calif.
- July 21, 1939 - From 232 So. Benton Way, Los Angeles, Calif.,
to 814 South Irolo Street, Los Angeles, Calif.
- July 25, 1939 - From 2925 W. Avenue 35, Los Angeles, Calif.,
to 2476 South Bundy Street, Los Angeles, Calif.
- July 25, 1939 - From 152 No. Rosemont St., Los Angeles, Calif.,
to 263 No. Rosemont St., Los Angeles, Calif.

July 26, 1939 - From 664 No. Occidental St., Los Angeles, Calif.,
to 2531 West Third St., Los Angeles, Calif.

July 26, 1939 - From 3634 Beverly Blvd., Los Angeles, Calif.,
to 5425 Hollywood Blvd., Los Angeles, Calif.,

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 said Act.

Public hearing in this matter was held at Los Angeles on
August 16, 1940, at which time and place respondent appeared,
evidence was received, the matter submitted and the same is now
ready for decision.

Respondent admitted each and every allegation contained in
the order instituting investigation, save and except the trans-
portation alleged on July 25, 1939, between 2925 West Avenue 35,
Los Angeles, California, and 2476 South Bundy Street, Los Angeles,
California, which move, upon motion of counsel for the Transporta-
tion Department of the Railroad Commission, was stricken from
said order instituting investigation. The record shows that
four of the rate violations resulted from the application of the
rate of \$3.50 per hour, which is the rate for a vehicle of less
than 90 square feet, with a driver and helper, instead of the
rate of \$4.00 per hour, which is the lawful minimum rate under
said Decisions Nos. 29891 and 30482 for a vehicle of not less than
90 square feet, with driver and helper. The remaining move on
July 21, 1939, was performed at the rate of \$3.75 per hour instead
of at said lawful rate of \$4.00 per hour. The undercharges result-
ing from these moves were 50¢, 25¢ 50¢, 60¢ and 50¢, respectively.

It is clear from the record that respondent was quite familiar
with the minimum rates prescribed and established by this Commission

in the decisions above mentioned, and knowingly performed the above transportation in violation thereof. He attempted to justify the above violations on the ground that said Decisions Nos. 29891 and 30482 were faulty because they provided charges based upon the available loading area of the vehicle instead of upon the quantity of furniture transported. Respondent, however, seems inconsistent in that he does not now view the method of computing rates based upon the available loading area of a vehicle as necessarily faulty in Decision No. 32325, effective January 1, 1940. Respondent also attempted to justify said rate violations on the ground that the rates established by said Decisions Nos. 29891 and 30482 were too high and that the Commission itself realized this when it reduced said rates in its Decision No. 32325. That a carrier believed Commission rates to have been too high is no excuse for violating such rates. A proper means is provided for modifying established rates by open hearings before the Commission in which all carriers may appear and participate. Respondent's permit should accordingly be suspended and he should be directed to desist from operating as a city carrier 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. 224;
Re Ball & 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 be noted that under Section 13 of the City Carriers' Act (Stats. 1935, Chap. 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.

Upon full consideration of all the facts of record, I hereby find that respondent, MARION G. MILES, doing business under the fictitious name of Miles Transfer Company, has engaged in the transportation of property for hire as a business over the public highways in the City of Los Angeles, State of California, by means of motor vehicles, as a carrier as defined in Section 1-(f) of the City Carriers' Act, and in the course of said business has transported five (5) 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:

ORDER

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 the true name of respondent, MARION G. MILES, be and it is hereby substituted for the erroneous name of MARVIN G. MILES.

IT IS HEREBY FURTHER ORDERED that MARION G. MILES be and he is hereby directed to immediately 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

Chap. 312, as amended).

IT IS HEREBY FURTHER ORDERED that City Carrier's Permit No. 19-2697, issued to and held by said respondent, MARION G. MILES, be and the same is hereby suspended for a period of seven days; that said seven-day period of suspension shall commence on the 18th day of November, 1940, and continue to the 24th day of November, 1940, both dates inclusive, if service of this order shall have been made upon said respondent more than 20 days prior to the 18th day of November, 1940, otherwise said seven-day 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, MARION G. MILES, shall desist and abstain from engaging in the transportation of property as a carrier, as defined in the City Carriers' Act (Stats. 1935, Chap. 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 said carrier.

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

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 22nd day
of October , 1940.

Ray L. Allen
John D. Smith
Raymond J. ...
Justin D. Casner
COMMISSIONERS.