

Decision No. 33637

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 W. C. MANLEY,
an individual doing business as
MANLEY TRANSFER.

Case No. 4528

ORIGINAL

Donald A. Odell, for respondent

CRAEMER, Commissioner:

OPINION

This proceeding was instituted by the Commission on its own motion into the operations of respondent, W. C. MANLEY, who holds City Carrier Permit No. 19-2437, for the purpose of determining whether or not respondent, on or about September 20, 1939, engaged in the transportation of uncrated used household goods, furniture, and personal effects, or any of them, between 2319 East 2nd Street, Los Angeles, and 603 Sunset Avenue, Los Angeles (Venice), California, as a carrier, as that term is defined in Section 1-(f) of the City Carriers' Act (Stats. 1935, Chap. 312, as amended), 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 the City Carriers' Act; and whether or not said respondent failed to issue to the shipper for said shipment a freight bill in substantially the form prescribed and established by order of the Railroad Commission in Decision No. 29891, Appendix "B" thereof, in violation of said order and said City Carriers' Act.

Public hearing was held at Los Angeles on August 28, 1940, at which time respondent appeared and was represented by counsel, evidence was received, the matter submitted and the same is now ready for decision.

The evidence shows that respondent has been, now is, and on September 20, 1939, engaged in the business of transporting used uncrated household goods, furniture and personal effects for compensation as a carrier as that term is defined in Section 1-(f) of said City Carriers' Act; and that on the above mentioned date as such carrier he transported over five pieces of such property between the addresses above set forth, by means of a motor truck having a loading area of not less than 90 square feet.

It is further evident that respondent and one helper performed the transportation, taking 95 minutes to load, 75 minutes to drive from 2319 East 2nd Street, Los Angeles, to 603 Sunset Avenue, Los Angeles (Venice), and 65 minutes to unload. The total time taken on this move after doubling the driving time, as required by Decision No. 29891, was 310 minutes, or five hours, ten minutes, which, under Rule 30-(d) of Decision No. 30482, is counted as five and one-quarter hours. The above mentioned transportation having been performed in Los Angeles, which is in "Territory B", referred to in Item No. 200 of Decision No. 30482 and specifically defined in said Decision No. 29891, takes a rate of \$4.00 per hour for a vehicle of not less than 90 square feet, with driver and helper. The minimum charge collectible therefor was \$21.00, whereas respondent charged for three hours' work at \$3.50 per hour, collecting only \$10.50. It is apparent, therefore, that there was an undercharge in the sum of \$10.50.

Respondent also failed to issue to the shipper for the transportation performed on September 20, 1939, a freight bill in

substantially the form prescribed and established by order of the Railroad Commission in Decision No. 29291, Appendix "B" thereof.

Respondent made no contention that he was not familiar with the rates and requirements established and prescribed by said decisions but on the contrary it appears he was conversant therewith. He attempted to justify his violations on the grounds that his helper was inexperienced and the tires on his truck were in poor condition, both of which reasons resulted in more time being taken for the job than otherwise would have been required. Application of Commission rates to the time taken for the job would, in respondent's contention, result in penalizing the shipper. Respondent's contentions are without merit and he should accordingly be ordered to cease and desist the above mentioned violations, and his permit should be suspended.

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 and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 371.)

It should also be noted that under Section 13 of the City Carriers' Act (Chap. 312, Stats. 1935, 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.

The following form of 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, W. C. MANLEY, did on September 20, 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 2319 E. 2nd Street, Los Angeles, and 603 Sunset Avenue, Los Angeles, (Venice) 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, Chap. 312 as amended) at rates less than the minimum rates prescribed therefor in and by virtue of Decisions No. 29891 and 30482, in Case No. 4086, in violation of said decisions and the City Carriers' Act.

IT IS HEREBY FURTHER FOUND that respondent, on September 20th, 1939, engaged in the transportation of uncrated household goods, furniture and personal effects as said carrier, between 2319 E. 2nd Street, Los Angeles, and 603 Sunset Avenue, Los Angeles, (Venice) California, and failed and neglected to issue to the shipper a freight bill in substantially the form prescribed and established in and by said Decision No. 29891, Appendix "B" thereof.

IT IS HEREBY ORDERED that W. C. MANLEY immediately cease and desist and hereafter 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 that term is defined in the City Carriers' Act (Stats. 1935, Chap. 312, as amended); and from issuing any freight bill or freight bills in a form not

substantially in accordance with the form of freight bill or freight bills therefor, established by the Commission for said transportation as said carrier.

IT IS HEREBY FURTHER ORDERED that City Carrier's Permit No. 19-2437, issued to and held by said respondent, W. C. MANLEY, be and the same is hereby suspended for a period of ten (10) days; that said ten-day period of suspension shall commence on the 18th day of November, , 1940, and continue to the 27th 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 ten-day suspension shall commence on the effective date of this order and continue for a period of nine days thereafter.

IT IS HEREBY FURTHER ORDERED that during said period of suspension, said respondent, W. C. MANLEY, shall desist and abstain from engaging in the transportation of property as a carrier, as that term is 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.

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 29th day of October, 1940.

Ray A. Diney
Walter J. ...
Ray ...
...
Arthur J. ...
COMMISSIONERS