

Decision No. 33668

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-) Case No. 4552
tracts and practices, of CHARLES S.)
DEAN, an individual, doing business)
as UNEEDA VAN & STORAGE.)

Charles S. Dean, in propria persona

BAKER, Commissioner:

ORIGINAL

O P I N I O N

This proceeding was instituted by the Commission on its own motion to determine if Charles S. Dean, doing business as Uneeda Van and Storage, hereinafter called respondent, transported uncrated, used, household goods¹, furniture and personal effects, on April 12, 1940, at a rate less than the minimum rate established by the Railroad Commission in Decision No. 32325 in Case No. 4086, or failed to issue to the shipper a freight bill in substantially the form prescribed by the Railroad Commission in said Decision No. 32325, Appendix "B" therein.

Public hearing was held in Los Angeles, on October 21, 1940, at which time the respondent appeared in his own behalf. Evidence was received, the matter was submitted, and the same is now ready for decision.

The evidence is undisputed and shows that respondent was engaged in the trucking business on April 12, 1940, as a Radial Highway Common Carrier, as the term is defined in the Highway Carriers' Act, and as a City Carrier, as said carrier is defined in the City Carriers' Act.

¹ From 118 East 94th Street, Los Angeles, to 2617 Gladys Avenue, Monterey Park, California.

Witness, Ernest MacCallison, testified that he witnessed the loading of household goods and personal effects onto respondent's truck at 118 East 94th Street, Los Angeles; that the loading started at 9:50 a.m. and was completed at 11:05 a.m.

Witness, Helmer MacCallison, testified he followed respondent's truck from 118 East 94th Street, Los Angeles, to 2617 Gladys Avenue, Monterey Park; that said truck arrived at said address at 11:55 a.m. at which time unloading was commenced and was completed at 12:55 p.m. Witness then followed respondent's truck to 925 East 39th Street, Los Angeles, where respondent maintains an office for the conduct of his transportation business. The transportation service was performed by a driver and a helper.

Witness, A. J. Vial, testified that he employed respondent, to transport his furniture from 118 East 94th Street, Los Angeles, to 2617 Gladys Avenue, Monterey Park; that respondent transported said furniture for which Vial paid respondent in full the sum of \$8.00 or \$9.00; that he was uncertain as to the exact amount paid but was positive that the sum did not exceed \$9.00.

E. O. Blackman, Commission inspector, testified that he measured the truck in which respondent performed said transportation services as above set out and that said truck had a loading area of 107 square feet.

Said transportation service was performed in 235 minutes. The minimum rate established by the Commission is \$3.50 per hour. The total minimum charge which respondent should have collected was \$14.00, in accordance with said aforementioned Commission decisions.

The record also shows that respondent was served with the proper notices and had knowledge of the minimum rates established by the Commission for said transportation services.

At the conclusion of the presentation of evidence, respondent after being duly admonished as to his constitutional rights, stated: "In the first place, I want to plead guilty of this charge." He then proceeded to state in effect that he did not authorize his driver or helper to perform said transportation service; that it was done without his knowledge; that when he learned what had occurred he felt there was nothing he could do.

The record shows that this is the first time the Commission has instituted any formal proceeding against this respondent.

In view of respondent's attitude, it appears that he is entitled to leniency. However, respondent should be ordered to cease and desist from performing any transportation in the future at rates less than minimum rates established by the Commission.

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 Bell and Hayes, 37 C.R.C. 407; Wermuth v. Stemper, 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, Charles S. Dean, did on April 12, 1940, engage in the transportation of uncrested household furniture and personal effects for compensation as a business over the public highways of the State of California between 118 East 94th Street and 2617 Gladys Avenue, Monterey Park, both in the City of Los Angeles, State of California, by means of a motor vehicle as a carrier, as the term is defined in Section 1-(2) 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 Decision No. 32325, issued in Case No. 4086, in violation of said decision and said City Carriers' Act.

IT IS HEREBY ORDERED that Charles S. Dean 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).

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 *19th* day of *November*, 1940.

Ray C. Riley
Frank P. Williams
Carl K. ...
...
Justice G. ...
Commissioners