

Decision No. 311430

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 ROLAND S. FRANK, an)
individual doing business as ROLAND'S)
TRANSFER.)

ORIGINAL

Case No. 4523

ROLAND S. FRANK, in propria persona

BAKER, COMMISSIONER:

D E C I S I O N

I

O P I N I O N

The above entitled cause came on regularly to be heard in the court room of the Railroad Commission in the City of Los Angeles, State of California, on the 7th day of June, 1940, at which time and place the above named Roland S. Frank personally appeared and participated in the hearing. And evidence, both oral and documentary, having been offered and received, the said matter was duly submitted for decision.

The said proceeding was instituted by the Commission on its own motion whereby to determine whether or not the said Roland S. Frank, hereinafter referred to as respondent, doing business as Roland's Transfer, transported certain specified shipments of household goods at less than the minimum rates established by the Commission therefor.

It appears that respondent is engaged in the business of transporting property for compensation over the public highways in this State by means of motor vehicles under the authority of city carrier permit No. 19-9554, radial highway common carrier permit No. 19-365, and highway contract carrier permit No. 19-6708.

The record shows that respondent transported four shipments of used household goods between points in the City of Long Beach and one shipment of household goods from Long Beach to Los Angeles. On September 12, 1939, respondent transported a shipment of more than five pieces of used household goods, uncrated, for Mrs. M. G. Randall from 442 Cedar Street, Long Beach, to 438 Atlantic Street, Long Beach; on September 14, 1939, a similarly described shipment for G. A. Bjorkstrom from 1309 East Broadway, Long Beach, to 955 East Second Street, Long Beach; on September 19, 1939, a similarly described shipment for W. A. Heiser from 3436 Vista Street, Long Beach, to 650 Euclid Avenue, Long Beach; on September 22, 1939, a similarly described shipment for H. Dale Porter from 650 Newport Street, Long Beach, to 11673 Idaho Avenue, Los Angeles; and on September 30, 1939, a similarly described shipment for Mrs. Della Dixon from 1839 Pine Street, Long Beach, to 1863 Oregon Avenue, Long Beach. In each instance a 1931 Chevrolet truck with van body was used, to which the respondent assigned a driver and one helper. Respondent's charges for each shipment were based on a rate of \$3.50 per hour and amounted to \$8.75, \$12.25, \$9.50, \$16.00, and \$5.25, respectively. The record shows that in each instance such rate was less than the applicable minimum rate established by the Commission.

By its order in Decision No. 29891, as amended in Decision No. 30482, both in Case No. 4086, the Commission established

minimum rates to be charged and collected by radial highway common carriers, highway contract carriers, and city carriers for the transportation of household goods and effects. Such minimum rates for the transportation in question, when performed by the driver and one helper, are \$3.50 per hour for trucks having a loading area of less than ninety square feet (commonly referred to as "small vans") and \$4.00 per hour for trucks having a loading area of ninety or more square feet (commonly referred to as "large vans"). The term "loading area" is defined in the rate order in question as "the total space available for loading, including tailgate and overhead (loading space above driver's compartment)."

The 1931 Chevrolet truck used by respondent for transporting each of the shipments in question had a tailgate measuring seven feet four inches by two feet eight inches, a van body having floor space seven feet wide and ten feet six inches long, and overhead space six feet six inches wide and three feet ten inches long. Thus the total available loading area was 117.98 square feet, consisting of 19.56 square feet tailgate area, 73.5 square feet floor space, and 24.92 square feet overhead area. The applicable minimum rate for such truck, with driver and helper, was, therefore, \$4.00 per hour instead of the \$3.50 per hour charged by respondent.

Respondent seeks to justify the application of the small van rate of \$3.50 per hour by stating that at the time each shipment was transported the overhead space was temporarily blocked off by a veneer board which was placed in slots made for that purpose, thereby, he contends, temporarily re-

ducing the loading area of the van to less than ninety square feet. This contention is unsound. The identical question was presented in Investigation of Streubing, Case No. 4521, Decision No. 33238, dated June 18, 1940, and was there disposed of in the following language, which is equally applicable here:

"Whatever might be the effect of a wall permanently constructed across the interior of a van, it is clear that a board temporarily placed therein in such a manner as to be easily removable cannot be considered an effective means of reducing the available loading area. The rate order in question refers to the 'total space available for loading,' not to the space actually used, and any space which can readily be used if necessary is manifestly available for loading."

Furthermore, the respondent's said expedient would be of no avail even if it were sanctioned by the Commission as a valid or lawful mode of reducing the loading area of his truck; for, as will be noted, the available loading area of the said van or truck, exclusive of the overhead space and considering only the tailgate and floor space area, aggregates 93.06 square feet, by virtue whereof the applicable rate is the sum of \$4.00 per hour. In view of the facts thus set forth, the respondent should be ordered to cease and desist from further violations, and also his said permits should be suspended for a period of ten days, pursuant to the provisions of Section 13 of the City Carriers' Act and Section 14 $\frac{1}{2}$ of the Highway Carriers' Act.

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:

applies to 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. 244; Re Ball & Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Co. v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 13 of the City Carriers' Act and Section 14 of the Highway Carriers' Act a person who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine of 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 permits are 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 facts of record I hereby find that respondent, Roland S. Frank, doing business as Roland's Transfer, has engaged in the transportation of property for hire as a business over the public highways in the State of California by means of a motor vehicle as a carrier as

defined in Section 1(f) of the City Carriers' Act and as a highway carrier other than a highway common carrier as defined in Section 1 of the Highway Carriers' Act, and in the course of his said business has transported five 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:

II

O R D E R

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 Roland S. Frank be, and he hereby is, directed immediately to 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 established therefor by the Commission for the transportation of property over the public highways of this State.

IT IS HEREBY FURTHER ORDERED that city carrier permit No. 19-9554, radial highway common carrier permit No. 19-365, and highway contract carrier permit No. 19-6708, heretofore issued to Roland S. Frank, doing business as Roland's Transfer, be, and they are, and each of them is, hereby suspended for a period of ten (10) days commencing on the 7th day of April, 1941, and continuing to and including the 16th day of April, 1941.

IT IS HEREBY FURTHER ORDERED that during said period of suspension the respondent, Roland S. Frank, shall desist and abstain

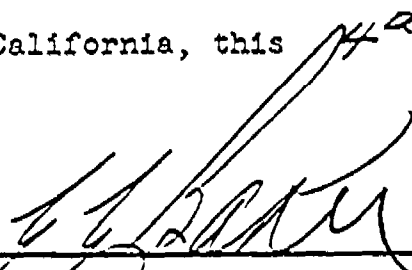
from engaging in the transportation of property for compensation or hire as a business over any public highway in this State, in the capacity of a carrier as defined in Section 1(f) of the City Carriers' Act, as a radial highway common carrier as defined in Section 1(h) of the Highway Carriers' Act, or as a highway contract carrier as defined in Section 1(i) of the Highway Carriers' Act.

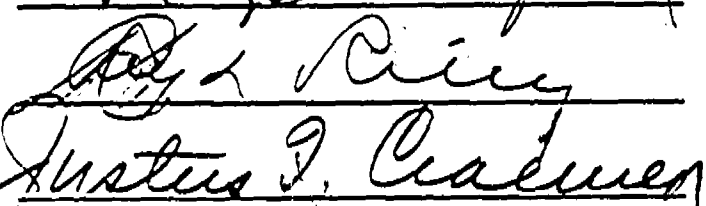
IT IS HEREBY FURTHER ORDERED that the Secretary of the Commission shall cause a certified copy of this decision to be served upon respondent, the said Roland S. Frank.


This opinion and order shall become effective twenty days after the date hereof.

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 14th day of March, 1941.



Raymond A. Rice


Justus J. Calmes


Frank W. Havener

Commissioners.