

Decision No. 34288

ORIGINAL

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 S. O.
ECKSTEIN.

Case No. 4581

L. M. Phillips, for respondent

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by the Commission on its own motion into the operations of respondent, S. O. ECKSTEIN, for the purpose of determining, inter alia, whether or not respondent, as a highway carrier, as that term is defined in Section 1(f) of the Highway Carriers' Act (Stats. 1935, Chap. 223, as amended), other than a highway common carrier, as that term is defined in Section 1(g) of said Act, on either or both of the following two shipments of used household goods, failed to issue to the shipper or shippers a freight bill or freight bills in substantially the form prescribed and established by Decision No. 32325, Appendix "B" thereof, and without showing thereon such information as is required by the eleventh ordering paragraph of said decision, in violation of said decision and Decision No. 32629, and the Highway Carriers' Act. The two shipments in question were:

- (1) a shipment on July 8, 1940, from 6627 California Avenue, Bell, California, to 3415 West Washington Boulevard, Los Angeles, California;
- (2) a shipment on September 19, 1940, from 3415 West Washington Boulevard, Los Angeles, to 1317 Poppy Street, North Long Beach, California.

Public hearings were held at Los Angeles on March 10th,

April 3rd, and April 16th, 1941, before Examiner Gorman, 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 transported uncrated used household goods on the dates and between the addresses hereinabove set forth.

A copy of the shipping document issued for the move on July 8, 1940, did not disclose sufficient information thereon to be in conformity with, and meet the requirements of, said Decision No. 32325, in the following particulars: (1) It failed to show whether the available loading area of the vehicle used in the transportation was less than 70 square feet or was 70 square feet or over; (2) It failed to show an adequate point of destination in that the city of destination was omitted.

A copy of the shipping document issued for the move on September 19, 1940, did not disclose sufficient information thereon to be in conformity with, and meet the requirements of, said Decision No. 32325, in the following particulars: (1) It failed to show whether or not the available loading area of the vehicle used in the transportation was less than 70 square feet or was 70 square feet or over; (2) It failed to show an adequate point of origin in that the city of origin was omitted; (3) It did not contain a description of the property transported; (4) It failed to show separately the time consumed in loading, the time consumed in driving, or the time consumed in unloading. Although it did show the total time taken for such acts such total record of the time is not in compliance with said decision.

It was unequivocally established that the transportation of property for compensation on July 8, 1940, was for-hire transportation. In this instance respondent issued the same

type or character of shipping document which he generally issues for his for-hire transportation.

Respondent contended that the move on September 19, 1940, was not for-hire transportation but was a rental of equipment to the shipper on a "U-drive" basis. The facts, however, clearly establish the transportation to be for-hire. The shipper had her household goods in storage at the place of business of respondent and telephoned respondent to transport said goods to her home. In compliance with that request respondent's truck arrived at her home with the furniture, and the driver with an assistant proceeded to unload said furniture and place it in the home of the shipper. Upon completion of the job the driver handed the shipper a shipping document (identified as Exhibit No. 10 in this case) and departed. There was no conversation whatsoever between respondent, the driver, the helper, or anyone, and the shipper in reference to the rental of the truck. The document mentioned is the type which the respondent uses in conjunction with his rentals on "U-drive" operations. Although it states thereon, in substance that there is a hiring of a certain automobile without driver to the rentee (shipper), it is obvious that here respondent furnished the driver and the truck and no rental resulted.

Respondent is hereby placed upon notice that for each move which he performs under the Highway Carriers' Act or City Carriers' Act, a shipping order or freight bill should be issued showing thereon such information as required by the pertinent Commission's rate orders.

There were not sufficient facts in the record to establish proof of the other matters set forth in the order instituting investigation and amendments thereto, and to that extent it will be dismissed.

An order of the Commission directing the suspension of an

operating right and directing an illegal practice to cease and desist 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 also that under Section 14 of the Highway Carriers' Act, one who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding three (3) months, or by both such fine and imprisonment.

Upon a full consideration of all the facts, it is hereby found that respondent S. O. ECKSTEIN, engaged in the transportation of property by motor vehicle for hire as a business over the public highways of the State of California as a highway carrier, as that term is defined in Section 1(f) of said Highway Carriers' Act, other than a highway common carrier, as that term is defined in Section 1(g) of said Act, and in the course of said business transported uncrated used household goods and personal effects, as more particularly set out in the foregoing opinion, and issued freight bills therefor which failed to show thereon such necessary information as required by the eleventh ordering paragraph of Decision No. 32325 and were not in substantially the form prescribed by Appendix "B" thereof.

ORDER

Public hearing having been held herein, evidence having been received, the matter having been submitted and the Commission being now fully advised,

IT IS ORDERED that respondent S. O. ECKSTEIN shall immediately cease and desist from receiving shipments for transportation as a highway carrier, as the term "highway carrier" is defined in Section 1(f) of the Highway Carriers' Act (Stats. 1935, Chap. 223, as amended), other than a highway common carrier, as that term is defined in Section 1(g) of said Act, without issuing to the shipper for each shipment so received for transportation a shipping order or freight bill showing thereon such necessary information as is required by order of the Railroad Commission in its Decisions Nos. 32325 and 32629, or other decisions of the Railroad Commission.

IT IS FURTHER ORDERED that radial highway common carrier permit No. 19-679 and highway contract carrier permit No. 19-5263 issued to and held by said respondent S. O. ECKSTEIN be and the same are hereby suspended for a period of seven days; that said seven day period of suspension shall commence on the 27th day of June, 1941, and continue to the 3rd day of July, 1941, both dates inclusive, if service of this order shall have been made upon said respondent more than 20 days prior to the 27th day of June, 1941, otherwise said seven day suspension shall commence on the effective date of this order and continue for a period of seven days thereafter.

IT IS FURTHER ORDERED that during said period of suspension said respondent S. O. ECKSTEIN shall desist and abstain from engaging in the transportation of property as a highway carrier, as defined in the Highway Carriers' Act (Stats. 1935, Chap. 223,

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

IT IS 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.

Dated at San Francisco, California, this 27th day of May, 1941.

[Signature]
[Signature]
[Signature]

COMMISSIONERS