

Decision No. 32625

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Ed. W. Davis to charge less) Application No. 24245
than established minimum rates.)

APPEARANCES

Ed. W. Davis, Applicant,
Tremaine & Knox, by
Raymond Tremaine, Protestant

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted on the application by Ed. W. Davis, an individual, seeking authority under the provisions of Section 11 of the Highway Carriers' Act, (Statutes 1935 - Chapter 312), to charge less than the minimum rate established by Highway Carriers' Tariff No. 7, (Appendix "A" of Decision No. 32566, as amended), for the transportation of asphaltic concrete in dump truck equipment.

The application refers specifically to movements from the plant of the Vernon Paving Company, located in Production Area "S", to the vicinity of 93rd Street and Western Avenue, Los Angeles, in Delivery Zone No. 36.

The application further states that applicant carrier entered into an agreement with the Vernon Paving Company in June of 1940 for the transportation of approximately 9,000 tons of asphaltic

(1) As defined on Third Revised Page 21-G, Highway Carriers' Tariff No. 7.

(2) As defined on First Revised Page 17, Highway Carriers' Tariff No. 7.

concrete at the rate then in effect of 37¢ per ton. Effective February 1, 1941 by Decision No. 33775 the zone rate between these two points for the transportation of this commodity was increased to 45 cents per ton. The applicant requests that he be permitted to charge a rate of 40 cents per ton for the transportation of this tonnage, which proposed rate is 3 cents per ton higher than the rate in effect prior to February 1, 1941, but 5 cents per ton less than the rate now in effect.

A public hearing on this application was had before Examiner Jacobsen at Los Angeles on July 10, 1941.

The testimony offered by the applicant was to the effect that he had agreed to transport the tonnage referred to above at the rate in effect at that time: namely, 37 cents per ton, and owing to the extremely heavy rainfall in the winter of 1940-41 this material could not be delivered to the street paving job; that the trucks employed are of two axle construction, hauling approximately seven tons per trip; that the increase in cost of operation for the carriers involved in this operation was not as great as that experienced by the industry as a whole.

The applicant introduced no cost data other than to state that the cost of fuel was the same to the sub-haulers now as it was when the agreement was entered into; that cost of tires had increased approximately 7%; that cost of other parts had increased generally, and that the general increase in drivers' wages did not apply to his sub-haulers, as they drove their own equipment and are not subject to labor wage rates in effect for non-owner drivers. He stated that such owner-drivers, however, were subject to the present increases in cost of living which has its effect on the amount of wages necessary to compensate the carrier for his services.

The record contains two tabulations showing one day's operation on the movement involved herein and one day's operation on a similar job, showing the time elapsed and the tonnage hauled during

12 trips in the former case and 13 trips in the latter, and the average revenue per day, when the proposed rate is applied. No cost data was shown to compare with this average revenue.

Applicant indicated that approximately one thousand tons remain to be delivered and this should require not more than two or three days where approximately twelve to thirteen trucks are used.

The granting of this application was opposed by the California Dump Truck Owners Association, an organization of which the applicant is a member, composed of some 170 carrier members. A director of the association testified that the Board of Directors of this organization had gone on record as opposing the granting of this application, because of the precedent it might establish encouraging other applications of this nature.


The record does not indicate in what respect the applicant proposes to reduce the cost of his operations, or that the proposed rate will produce sufficient revenue to cover the cost of this operation. When the above facts are considered, together with the fact that but a small tonnage of material remains to be delivered, it is not convincingly shown that the proposed rate is compensatory. Section 11 of the Highway Carriers' Act provides "****the Railroad Commission shall upon finding that the proposed rate is reasonable**** authorize such rate less than the minimum rate established." Upon consideration of all the facts and circumstances of record the Commission is of the opinion that the proposed rate has not been shown to be "reasonable" within the meaning of Section 11 of the Highway Carriers' Act. The application will therefore be denied.

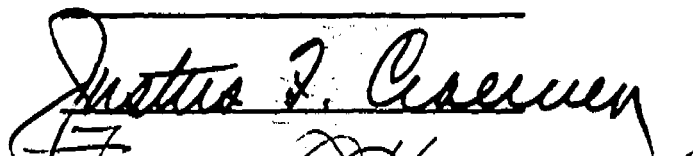

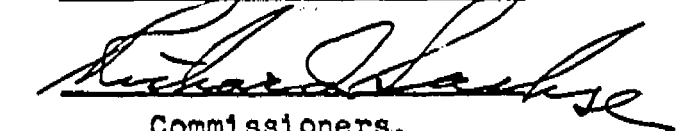
ORDER

Public hearing having been held in the above entitled proceeding, the matter having been submitted, and the Commission being fully advised,

IT IS HEREBY ORDERED that Application No. 24245 be and it is hereby denied.

Dated at San Francisco, California, this 21st day of July, 1941.



Commissioners.