

Decision No. 36200

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, contracts,)	Case No. 4669
and practices of W. M. SMITH, an in-)	
dividual, doing business as MOBLEY)	
TRANSFER.)	

WYMAN C. KNAPP, for Transportation Department.

MRS. ETTA SMITH, for Respondent

BY THE COMMISSION:

O P I N I O N

This proceeding, instituted by the Commission on its own motion, involves an investigation into the operations of respondent, W. M. Smith, doing business as Mobley Transfer, to determine whether he had engaged, as a city carrier (as defined by Section 1(f) of the City Carriers' Act (Statutes 1935, Chapter 312, as amended)), in the transportation of property within the city of Los Angeles at rates lower than those established as minimum by the Commission. A public hearing was had before Examiner Austin at Los Angeles on February 1, 1943, when the matter was submitted. The Transportation Department was represented by counsel, and respondent's wife, Mrs. Etta Smith, appeared in his behalf. For the Transportation Department, evidence was offered by the supervising inspector and by an inspector of the Division of Investigation at Los Angeles; by the Commission's assistant rate expert and by two of respondent's patrons. Mrs. Smith testified on the part of respondent.

Specifically, it is charged that on September 1, 1942, respondent, as such city carrier, transported two shipments of used household furniture between points within the city of Los Angeles, the charges upon which were predicated on rates below the minimum rates established by Decision No. 32629, as amended. The record shows that on the date mentioned respondent handled two such shipments. One was transported for E. L. Culkin from 6810 Cahuenga Terrace to 2337 Merrywood Drive, Hollywood, in the city of Los Angeles. The other, which was handled for Mrs. C. F. Grant, moved from 740 North Cahuenga Boulevard to 516 $\frac{1}{2}$ North Westmoreland Avenue, Los Angeles. Each comprised more than five pieces of used furniture.

To transport these shipments respondent, in each instance, used a van having a carrying capacity exceeding 70 square feet, and employed two men to perform the work. For the shipment first mentioned, respondent collected a total charge of \$28.00, and for that last described he exacted a charge of \$5.25. The over-all time consumed for the two movements, including loading and unloading, and transportation, was eight hours and one and one-half hours, respectively.

The minimum rates applicable on September 1, 1942, to the transportation of used household goods within the city of Los Angeles were established by Decision No. 32629, rendered December 7, 1939, in Cases Nos. 4246 and 4434, as modified by Decision No. 35240, rendered in the same proceedings, which became effective May 20, 1942. They appear in City Carriers' Tariff No. 3, Item No. 200(b). Where the van used has a capacity exceeding 70 square feet, and two men are employed, the established minimum rate then in effect was \$4.00 an hour. Under this rate the minimum charge

applicable to the Culkin shipment was \$32.00, and that applicable to the Grant shipment was \$6.00.

Respondent admitted his failure to observe the minimum rates upon each of these shipments. He points, however, to the Commission's circular letter of July 30, 1942, as justifying the observance of rates lower than those actually charged. There is nothing in this letter, as we read it, that would authorize such a conclusion. Moreover, it was directed to and applies to highway contract carriers only, and the record convincingly shows that respondent operated solely as a common carrier.

Under the circumstances a suspension of respondent's city carrier permit would be justified. However, in view of the pressing need for transportation facilities to accommodate existing emergency requirements, it is not advisable that such a step should now be taken. The Commission's attorneys will be directed to institute an action against respondent to recover appropriate penalties for such violation of the City Carriers' Act.

O R D E R

The Commission having instituted an investigation as above entitled, a public hearing having been had, the matter having duly been submitted, and the Commission now being fully advised:

IT IS ORDERED that the above-entitled proceeding be and it hereby is dismissed, without prejudice, however, to the institution of an action, at the instance of the Commission, to

recover appropriate penalties, under the terms of the City Carriers' Act, for respondent's violation of the provisions of said Act.

The effective date of this order shall be twenty (20) days after the date of service hereof upon respondent.

Dated at San Francisco, California, this 9th day of March, 1943.

James R. Stevenson
H. H. BARK
Justin F. Casper
Richard L. Jackson
Francis W. Lewis
COMMISSIONERS