

Decision No. 41576

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations and practices)
of D. L. ALLEN, DON E. KEITH, H. C. MARTIN,)
JOSEPH MILLS, LEONARD SILVEY and WALTER FUCHSLIN)
(VALLEY LIVESTOCK TRANSPORTATION) to determine) Case No. 4943
whether permits should be suspended for failure)
to mark livestock equipment as required by)
Decision No. 37694 in Application No. 4293.)

J. T. Phelps, for Field Division, California Public
Utilities Commission.
D. L. Allen, Don E. Keith, H. C. Martin, Joseph Mills,
Leonard Silvey, and Walter Fuchslin, in propria
persona.

POTTER, Commissioner:

O P I N I O N

This is a companion case to the investigation of Batteate Livestock Transportation Co., Case No. 4942, in which a decision has today been issued. The respondents in the present case have all been engaged in livestock transportation in California for more than five years under radial highway common carrier permits. No certificated or prior rights are involved.

Respondents are severally charged in the order instituting this investigation with having failed to mark their equipment to show the carrying capacity of each unit for transportation of cattle, hogs and sheep, as required by Decision No. 37694, issued February 27, 1945, in Case No. 4293⁽¹⁾. A copy of the order was mailed

(1) The decision also directed the carriers to file equipment lists showing the carrying capacity of each vehicle. That provision of the order is not involved here.

to each respondent on March 23, 1945. On December 9 or 10, 1947, the Commission sent a letter to all highway carriers of livestock directing full compliance with the decision. The record shows that each of the respondents except D. L. Allen received a copy of the letter. The investigation order directs respondents to appear and show cause why their permits should not be revoked or suspended for failure to comply with the equipment marking provisions of Decision No. 37694.

A public hearing was held at San Francisco on April 12 and 13, 1948, at which evidence concerning each respondent was separately introduced. Each of the respondents also testified in his own behalf. The evidence in connection with each carrier will be discussed separately.

D. L. ALLEN

This operator lives in Yuba City and owns two combination truck-trailer units. Both units were closely observed by Commission investigators on February 17, 1948, at the South San Francisco Packing Company plant on Evans Avenue, San Francisco, loaded with sheep from the Westmoreland area. None of the vehicles bore marks indicating its carrying capacity.

Allen admitted that the equipment belonged to him. He stated that one of the combination units had been painted in February, 1948, but had not been stencilled with loading marks. The other unit, he said, was stencilled in December, 1947. He offered no explanation as to why the marks were not visible to the Commission's inspectors on February 17.

Although Allen did not receive the Commission's warning letter mailed in December, 1947, it is apparent that he was acquainted

with the stencilling provision of Decision No. 37694, since he had made an effort to place marks on his trucks. The freight bills covering the livestock movements observed show weights of 30,230 pounds and 30,165 pounds, respectively, which are well over the minima of 14,000 and 23,000 pounds established for truckload rates on sheep.

The Commission's order requires that load marks be stencilled or prominently displayed on livestock equipment. It is clear from the evidence that D. L. Allen failed to comply with that order. His operations, however, do not appear to be extensive and the record does not disclose any necessity for severe measures. A three-day suspension of his permit is recommended.

DON E. KEITH

This carrier lives in Corcoran. On February 16, 1948, he owned ten combination truck-trailer units used for hauling livestock in interstate and intrastate commerce. On that day representatives of the Field Division stationed at the South San Francisco Packing Company plant on Evans Avenue, San Francisco, saw three of the combination units arrive loaded with steers from Tulare. None of the vehicles bore capacity marks. The loads consisted of thirty steers each, weighing 31,280, 32,290 and 32,400 pounds, respectively.

On March 29, 1948, a member of the Commission's Rate Division called at Keith's office in Corcoran and inspected the vehicles there at the time. All but one were stencilled with capacity marks for cattle only.

Keith testified that all his equipment was stencilled during the last week of December, 1947, and that he had also done some stencilling during the three weeks prior to the hearing. The

equipment, however, was stencilled only for cattle when observed by the Commission's representative on March 29.

This respondent appears to be a substantial operator. His failure to have his trucks properly marked on February 16 was not explained. It is possible, of course, that the marks placed on the equipment in December, 1947, were obliterated by weather or road conditions. The requirement of the stencilling order, however, is that the marks be prominently displayed. Non-compliance by Keith with the Commission's order, under the circumstances here shown, warrants a short suspension of his radial highway common carrier permit. A three-day suspension is recommended.

H. C. MARTIN

This respondent is engaged in the livestock transportation business at Inverness under a radial highway common carrier permit issued in 1935. He operates one Chevrolet truck of 8,000 pounds carrying capacity. This truck was observed at the Union Stockyards, South San Francisco, on February 16, 1948, loaded with seven cows weighing 5,220 pounds, consigned to the Valley Market Association at South San Francisco. Martin was driving the truck. The vehicle did not bear any mark indicating its carrying capacity.

On March 31, 1948, a Commission representative called on Martin to examine his shipping records. At that time the truck was found to be marked with the word "weight" in yellow crayon. According to the witness the figures appeared to be washed out.

Martin testified that prior to receiving the Commission's warning letter of December 8, 1947, he was called on the telephone by a member of the Field Division staff and told to be sure to stencil his truck. He then got a crayon, he said, and wrote the

words "Maximum Weight Cattle - 8,000, Maximum Weight Sheep - 8,000" on the vehicle. Thereafter he had the weights stencilled on a piece of board which he intended to place on the truck, but had not done this at the time the equipment was seen on March 31.

The evidence concerning this respondent indicates that he failed to comply with the Commission's order to stencil or otherwise prominently display capacity markings on his truck. It may be observed that the truck was not of sufficient size to handle shipments taking truckload rates as prescribed by Decision No. 37694. The record does not show, however, that Martin ever applied to the Commission for authority to charge a truckload rate commensurate with the capacity of his equipment. Moreover, the stencilling requirement, by its terms, applied to all highway carriers of livestock irrespective of the size of their vehicles. Martin's attempted compliance, while indicating a desire to abide by the order, was not effectual to carry out the Commission's regulatory purpose.

Respondent's operations are not extensive, but the record shows that he is an experienced carrier and presumably was well aware of the necessity for either complying with regulatory orders affecting rates or securing appropriate relief. A three-day suspension of Martin's operating permit is recommended.

JOSEPH MILLS

Respondent Mills operates one Chevrolet truck of 8,000 pounds carrying capacity for the transportation of livestock. He lives in Turlock. On February 17, 1948, the Commission's District Transportation Representative for the Stockton District visited the Turlock Livestock Commission Yard and there saw Mills driving the truck which was not loaded at the time. It bore no capacity marks.

On March 24, 1948, the investigator called at Mills' home to examine shipping records and again saw the truck. This time it carried the notation "Capacity 8,000" written on the headboard in red crayon. Freight bills in evidence indicate that on February 16 and 17, 1948, Mills had hauled seven local shipments of cows and horses weighing from about 2,000 to 5,000 pounds per shipment.

Mills testified that his truck was not stencilled because he interpreted the Commission's order as not applying to equipment incapable of meeting the minimum weights specified for truckload rates. The record does not show that respondent ever attempted to ascertain from the Commission whether his interpretation of the decision was correct.

It is clear that Mills' truck did not bear capacity marks on February 17, when it was first observed. The crayon markings seen on the headboard on March 24 were not sufficient to indicate the capacity for various kinds of livestock, as required by the order, nor were the marks themselves of a durable nature. Under the circumstances, a brief suspension of Mills' permit appears to be warranted. It is recommended that his permit be suspended for three days.

LEONARD SILVEY

This carrier is engaged in livestock hauling at Hayward. On February 16, 1948, a Field Division representative observed a truck and trailer at the Union Stockyards in South San Francisco, loaded with sixty hogs from the vicinity of San Lorenzo. The driver stated to the investigator that the truck belonged to Silvey, but that the trailer was owned by the Silver Belgian Farms, of Hayward, and was not ordinarily used with that truck. Neither vehicle bore

marks indicating its carrying capacity. Copies of Silvey's shipping records covering this movement are in evidence. The records do not show the weight of the shipment.

Silvey stated that his truck had been stencilled in 1945 by placing the marks on a block of wood 8" x 10" in size, bolted to the side of the vehicle. He explained that the marks were probably washed off by road and weather conditions, and that he now has them stencilled higher up where they are visible.

On February 16, 1948, when his truck was observed, it is clear that Silvey was not in compliance with the Commission's order. He is an experienced operator, and should be aware of the necessity for taking adequate steps to effectuate regulatory directions. Suspension of his operating permit for three days is recommended.

WALTER FUCHSLIN

This operator conducts a livestock transportation business at Dixon under the name of Valley Livestock Transportation Service. His permit has been outstanding since 1940. The Commission's records indicate that in January, 1948, Fuchslin had five combination truck-trailer units.

On October 10, 1947, a member of the Commission's Rate Division called on Fuchslin in Dixon to inspect his equipment for capacity marks. Two trucks were observed, both in a condition indicating recent use. Respondent admitted to the investigator that the trucks were his. He also stated that on the previous day he had been instructed by the Commission's Field Division representative at Vallejo to stencil the trucks, but had not yet done so.

Fuchslin testified that he had stencilled his equipment about three weeks before the hearing, following discussions with

representatives of the Commission as to whether the marks should indicate maximum weights or not. He said that he had tried to get stencils made and had also tried to procure metal numbers. He was finally able, he stated, to get two sets of letters and numbers.

It is evident that this respondent was not in compliance with the Commission's order on October 10, 1947, and for a period of some five months thereafter, and that only after considerable urging did he make a real attempt to correct the situation. It is recommended that Fuchslin's permit be suspended for three days.

The following form of order is submitted.

O R D E R

A public hearing having been had in the above entitled proceeding, evidence having been received and considered, the matter having been submitted, the Commission now being fully advised, and basing its order on the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED:

(1) That the radial highway common carrier permits held by respondents herein, as indicated below, be and each of them is hereby suspended for a period of three days, commencing at 12:01 a.m. of the effective date of this order and continuing to 12 midnight of the second day thereafter:

RESPONDENT
D. L. Allen
Don E. Keith
H. C. Martin
Joseph Mills
Leonard Silvey
Walter Fuchslin

PERMIT NO.
R-51-543
R-16-402
R-21-17
R-50-1069
R-1-6377
R-34-788

(2) That during said period of suspension it shall be unlawful for any of said respondents to engage in the transportation of property, including livestock, for compensation over any public highway in the State of California as a radial highway common carrier as defined in Section 1(h) of the Highway Carriers' Act. (Stats. 1935, Chap. 223, as amended.)

The effective date of this order shall be the twentieth day after service thereof upon the respective respondents.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Public Utilities Commission of the State of California.

Dated at San Francisco, California, this 11th day of May, 1948.

A. E. Anderson
James J. Craemer
Irving H. Kavelle
Harold P. Kuto
Kenneth Foster
COMMISSIONERS