

Decision No. 40937

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,)
rates and practices of Market Street) Case No. 5133
Van & Storage, Inc., a corporation.)

Harold J. McCarthy, for the Field Division.
Frank Loughran, for respondent.

O P I N I O N

This proceeding was instituted, upon the Commission's own motion, by the service of an order of investigation upon respondent on October 24, 1949, to determine whether (1) respondent has violated Sections 10, 12(a) and 13-5/8 of the Highway Carriers' Act; (2) respondent's operating authority or any part thereof should be cancelled, revoked or suspended; (3) respondent should be ordered to collect any or all undercharges for shipments transported by it; (4) respondent should be ordered to cease and desist from assessing and collecting less than minimum rates and from issuing shipping documents in form other than prescribed by the Commission. The order recites that respondent, holder of Radial Highway Carrier Permit No. 38-2240 and City Carrier Permit No. 38-2241, appears to have failed, during the periods October 1, 1948, to October 31, 1948, and December 1, 1948, to December 31, 1948, to set forth on freight bills and shipping documents such information as is required by Highway Carriers' Tariff No. 4. A public hearing was held in San Francisco on January 9, 1950, before Commissioner Potter and Examiner Gillard and the matter submitted for decision.

The testimony showed that respondent has been engaged since 1928 practically exclusively in the transportation of used household goods. It operates with 17 units of equipment, regularly employs 25 persons and upon occasion 35 to 40. James Cummins, the president of respondent testified that its gross income for 1948 (the most recent period for which a breakdown was then available) was \$181,571.95, \$65,111.75 being attributed to intra-city movement of goods and \$21,370.05 to intercity movements, the balance remaining being business in interstate commerce and storage.

The respondent handled 74 intercity shipments during October and December, 1948. Twenty-five of these shipments are analyzed on a document introduced in evidence as Exhibit 1 pursuant to stipulation that the case would be confined to the matters therein set forth. Respondent further stipulated that the exhibit correctly reflects the information contained on all but one of the 25 freight bills⁽¹⁾. It was also stipulated that Highway Carriers' Tariff No. 4, City Carriers' Tariff No. 3 and Distance Table No. 3 were served on respondent on September 23, 1947.

Exhibit No. 1 shows that ten types of required data were omitted from the freight bills involved. Seven of these occurred not more than twice each. Of the remaining three, failure properly to describe the commodity occurred 24 times. In all

(1) This was freight bill No. 39306. At the hearing it was shown that it involved a deep freezer purchased by respondent for a friend, and was not intended to be property transported for hire. The friend insisted upon making payment for the transportation, so a freight bill was made up merely to reflect the income to the company. Exhibit No. 1 noted six violations relative to this transaction.

cases this resulted from failure to describe the goods as "used". Failure to name the consignee occurred 24 times, and in all cases this happened where the consignor and consignee were the same. Failure to designate the point of origin occurred 17 times, and in all cases this resulted from failure to insert "San Francisco" after the address given. In each of these instances the order confirming shipping instructions gave the complete address of the consignor.

When a representative of the field division called at respondent's office and examined the freight bills, respondent's office manager was asked to and did supply information that was missing from the freight bills. A representative of the rate division testified that in the instances wherein the additional information given enabled him to rate the freight bills, no violation of minimum rates was disclosed. Respondent's president testified that subsequent to January 26, 1949, the date of the above-mentioned office visit, and prior to October 24, 1949, the date of service of the order herein, he spoke with a representative of the field division who informed him that respondent was incorrectly assessing rates, failing to indicate point of origin, and failing to use the proper commodity description; that as a result of such conversation respondent has attempted to eliminate such conditions by institution of a more efficient record and filing system and obtaining increased cooperation upon the part of its drivers in preparation of freight bills. He further testified that respondent had not charged below the minimum rates. Respondent feels that as a result, the errors disclosed by investigation have been corrected.

The evidence shows and respondent concedes that there were substantial deficiencies in the data supplied on the freight bills involved.

We find from the evidence that respondent herein during the calendar months of October and December, 1948, failed to keep shipping documents as prescribed by the Commission in Highway Carriers' Tariff No. 4, as more particularly set forth in the order instituting investigation herein, and by so doing violated Sections 10 and 13-5/8 of the Highway Carriers' Act.

While respondent's infractions of the Commission's rules and regulations appear to be serious enough to justify a short suspension of its radial permit, we have concluded, on the basis of the entire record, that outright suspension should not be invoked at this time. Instead, respondent should be given an opportunity to demonstrate that it will comply with applicable statutes and with outstanding orders of the Commission. Accordingly, the order to follow, although imposing a five-day suspension of the radial permit, will also provide that such suspension be stayed for approximately eight months, unless the Commission, within that period, reopens the proceeding and, after notice to respondent and an opportunity to be heard, for good cause deems imposition of the suspension appropriate. Otherwise, the proceeding will automatically terminate at the end of the eight-month period. ✓

O R D E R

Public hearing having been held in the above entitled and numbered proceeding, the matter having been submitted for decision, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED:

(1) That Radial Highway Common Carrier Permit No. 38-2240, held by Market Street Van and Storage, Inc., respondent herein, be and it is hereby suspended for a period of five (5) consecutive days; provided, however, that such suspension shall not become effective unless and until, on or before December 15, 1950, the Commission shall have reopened this proceeding for receipt of further evidence, and thereafter, upon notice to respondent and an opportunity to be heard, shall otherwise order.

(2) The Secretary is hereby directed to cause personal service of a certified copy of this decision to be made upon respondent, and this decision shall become effective upon the twentieth day after the date of such service.

Dated at San Francisco, California, this 14th day of March, 1950.

R. Z. [Signature]
Justus F. [Signature]
[Signature]
Harold P. [Signature]
[Signature]
COMMISSIONERS