

Decision No. 53262**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into)
 the operations, rates and practices of)
 DONALD S. PRAEGER, an individual,)
 doing business as Modern Van & Storage)
 Co., and A. Abel Moving & Storage Co.)

Case No. 5648

Scott Elder for Donald S. Praeger, respondent.
Wm. B. Roche and A. J. Lyon, Jr., for the
 Commission's staff.

O P I N I O N

On May 3, 1955, the Commission, upon the recommendation of its staff, instituted an investigation into the operations, rates and practices of Donald S. Praeger, an individual doing business as Modern Van & Storage Co., General Transfer & Storage Co., and A. Abel Moving & Storage Co., for the purpose of determining:

- (1) Whether the respondent has violated Sections 5313 and 5193 of the Public Utilities Code by charging, demanding, collecting or receiving a lesser and different rate and compensation for the transportation of personal property as a household goods carrier than the applicable rates and charges specified and required by Minimum Rate Tariff No. 4-A;
- (2) Whether any or all of the operating authority of said respondent should be canceled, revoked or suspended; and
- (3) Whether said respondent should be ordered to cease and desist from charging less than the established minimum rates.

Public hearing was held February 19, 1956, before Examiner J. E. Thompson at San Francisco.

The evidence presented by the staff and by the respondent shows that in July or August, 1954, a solicitor engaged by respondent learned that the Chrysler Corporation was relocating its Dodge Plant from San Leandro to Maywood, California and that a number of employees

were intending to move to southern California so as to continue to work for the company. The solicitor called at the offices of the Chrysler Corporation and was informed that the United Automobile Workers' Union, C.I.O., Local 844, was negotiating with household goods carriers on behalf of its members respecting the moving of Chrysler Corporation employees. The solicitor and the respondent met with the officials of the union. The union officials informed the respondent that they had received quotations from a number of household goods carriers of rates which provided for a percentage discount from the going rates. The respondent stated that he would bid one per cent less than the lowest quotation provided the transaction had the approval of the Commission. The union then by letter submitted the plan to the Commission for its approval. The Commission in its reply informed the union that household goods carriers are required to charge no less than the established minimum rates. The union's attorney thereupon informed the respondent that the plan was not approved but that new plans were being formulated and considered by the union officials. Several weeks thereafter, the attorney in a telephone conversation with the respondent asked him whether he would be interested in performing the transportation under a plan whereby the household goods would be fully insured by the respondent at no cost to the union members. The respondent stated that if the plan was acceptable to the Commission he would agree to provide the insurance. Some days later the respondent received a letter dated September 25, 1954, signed by union officials and addressed to members of the union (Exhibit No. 4). The letter stated that it would introduce the solicitor of respondent "who has guaranteed to provide full insurance coverage at no cost to the members." The union officials furnished the solicitor with a list of the names and addresses of approximately 400 members. As a result of solicitation the respondent obtained approximately 19 shipments on which insurance was provided

at no cost to the shipper.

The Commission's staff presented evidence with respect to ten shipments which were transported during the months of September, October and November, 1954, from the San Leandro area to Los Angeles and vicinity for employees of the Chrysler Corporation. In the case of each of the ten shipments, insurance on the cargo was provided by the respondent and the insurance premiums were not charged to the shippers. The amount of the insurance premiums involved is \$112.01. The evidence shows that in all other respects the respondent charged the applicable minimum rate and charge.

On May 5, 1955, two days after the institution of this proceeding, the respondent sent letters to the shippers involved requesting remittance in the amount of the insurance premiums. With respect to the ten shipments, at the time of the hearing the respondent had effected collection of the amounts from three shippers, had obtained judgments in the small claims courts against four shippers, and had proceedings pending in the courts with respect to the remaining three shippers.

The respondent testified that at the time the shipments were transported he had assumed, in light of prior events respecting the original plan, that the attorney for the union had obtained the approval of the Commission.

A representative of the Commission's Field Section testified that he had examined the records of the respondent covering transportation performed during the period July 1, 1954, to December 31, 1954, and had found a total of 19 shipments on which the respondent had provided insurance coverage without making a charge therefor. These shipments were transported for employees of the Chrysler Corporation.

In all other respects, the witness stated, he found no indication of the respondent charging or collecting less than the applicable minimum rates.

At the hearing respondent's counsel objected to any testimony or evidence regarding insurance or charges for insurance on the ground that the order of investigation specified the charge of failing to assess or collect the established minimum rates and the Commission's Minimum Rate Tariff No. 4-A does not prescribe rates or charges for providing insurance. The examiner deferred ruling until the Commission's staff had presented its case in chief whereupon he overruled the objection and informed the respondent that he would grant any reasonable continuance the respondent might require to prepare a defense. The respondent's counsel stated that a continuance would not be necessary. He made a motion that the case be dismissed on the ground that the facts presented by the staff did not show a violation of the minimum rates as specified in the order of investigation.

Conclusions

With the exception of a mathematical error in extension of charges resulting in an undercharge of one cent, the respondent assessed and collected the charges prescribed as minimum in Minimum Rate Tariff No. 4-A for the transportation of household goods and effects released at a valuation of 10 cents per pound per article. Higher minimum rates are prescribed when the goods are released at a higher valuation. The evidence shows that with respect to each shipment involved herein the shipper released the goods at a valuation of 10 cents per pound per article.

The respondent did purchase and procure insurance coverage on the shipments, such insurance accruing to the benefit of the shippers. He did not, until this investigation was instituted, attempt to recover from the shippers the amounts of money expended for the insurance coverage.

The Commission is of the opinion and finds that respondent is a household goods carrier as defined in Section 5109 of the Public Utilities Code and was required at all times during the period September 1, 1954, to November 30, 1954, both dates inclusive, to charge and collect for the transportation of household goods, rates no lower in volume or effect than the minimum rates established by the Commission in Minimum Rate Tariff No. 4-A; that with respect to ten shipments transported on September 23 and 30, October 5, 8, 15, 28 and 30 and November 12 and 24, 1954, the respondent did provide to the shippers, without charge, insurance coverage on said shipments and thereby did violate Section 5197 of the Public Utilities Code by permitting said shippers, through the device of providing insurance without charge, to obtain transportation of household goods and effects between points in this state at rates less than the minimum rates established by the Commission in Minimum Rate Tariff No. 4-A.

The motion of the respondent for dismissal is denied. While the evidentiary facts upon which the violation of law, here found to have been committed, is based, were not set out specifically in the order of investigation, such specification was unnecessary for the reason that the gravamen of the offense was the charging of less than the minimum rate. Under such allegation of ultimate fact, any relevant evidence tending to show the commission of the offense in question was admissible. The fact that the charging of less than the minimum rate was accomplished through the device of the respondent furnishing insurance coverage at no cost to the shipper does not vary the rule that only the ultimate facts need be pleaded. After the facts were placed in evidence, the respondent was given full opportunity by the presiding officer to prepare a defense to the charges disclosed by the facts. In light of the offer and the respondent's rejection thereof, the Commission is of the opinion that, if respondent was taken by surprise, he was accorded a fair and

reasonable opportunity to answer and refute the violation disclosed by the evidence.

The evidence respecting the sequence of events leading to the violations together with the fact that all of the transactions were clearly reflected upon the respondent's freight bills, records and accounts, indicating no attempt to conceal the transactions, mitigates against the cancellation or revocation of the respondent's operating authority at this time. The mitigating circumstances, however, do not make the offense less serious. Violations of this character have an adverse economic impact upon transportation as a whole and frustrate regulation. They prevent other carriers which are cognizant and observant of the rules and regulations from competing on a fair and equal basis. While the respondent may not have knowingly and willfully intended to violate the law, he was nevertheless clearly negligent in not determining for himself the applicable rules and regulations. In such circumstances, negligence closely approaches willfulness. Such conduct will not be condoned. The respondent's permit to operate as a household goods carrier will be suspended for five days.

The respondent already having collected or having taken legal action to collect from the shippers the amounts of money advanced as insurance premiums, an order requiring him to undertake the collection of said amounts is not necessary.

So as to allow respondent opportunity to arrange his affairs to comply with the requirements of the order herein, it will be made effective thirty days after service of the order upon respondent.

C R D E R

Based on the evidence of record and on the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED that Household Goods Carriers' Permit No. 1-8351 issued to Donald S. Praeger be and it is hereby suspended for five consecutive days starting at 12:01 a.m. on the day following the effective date hereof.

The Secretary is directed to serve this order by causing a certified copy to be personally served upon said respondent, and the effective date of this order shall be thirty days after the date of such service.

Dated at San Francisco, California, this 19th day of June, 1956.

John E. Mitchell
President

Justus J. Calmes

Raymond A. ...

[Signature]

Commissioners

Commissioner Rex Hardy, being necessarily absent, did not participate in the disposition of this proceeding.