

Decision No. 73868**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates, charges, and practices of)
 CHARLES W. LANDIS, an individual,)
 doing business as LINCOLN VAN &)
 STORAGE CO. }

Case No. 8738
 (Filed December 27, 1967)

Richard G. Reinjohn, for respondent.

Jackson W. Kendall, in propria persona,
 interested party.

Donald M. Grant, Counsel, for the
 Commission staff.

O P I N I O N

This proceeding is an investigation on the Commission's own motion into the operations, rates, charges and practices of Charles W. Landis, an individual, doing business as Lincoln Van & Storage Co., for the purpose of determining whether in the operation of his transportation business respondent violated Sections 5285, 5286 and 5132 of the Public Utilities Code by willfully failing to comply with certain provisions of Item No. 130 of Minimum Rate Tariff No. 4-B relating to documentation, by transporting shipments of used household goods and personal effects during a period of suspension of his permit to operate as a household goods carrier and by failing to display on each vehicle operated an identification symbol as required by the Commission. The investigation regarding compliance with Item 130 of Tariff No. 4-B is to determine whether respondent failed to quote rates on freight bills, complete time factors on freight bills, complete addresses of points of origin and destination on freight bills, describe the number of helpers on

freight bills and provide such other information on freight bills as may be necessary to an accurate determination of the applicable minimum rate and charge as required by paragraphs (j), (i), (g), (k) and (p), respectively, of said item.

Public hearing was held before Examiner Mooney in Los Angeles on January 17, 1968, on which date the matter was submitted.

Respondent was issued Radial Highway Common Carrier Permit No. 19-10138, City Carrier Permit No. 19-39599 and Household Goods Carrier Permit No. 19-45174. Respondent has a terminal in North Hollywood and a warehouse in Los Angeles. He is primarily a household goods carrier. He operates one unit of equipment and has several units in reserve. He employs a part-time driver. His gross operating revenue for the year ending with the third quarter of 1967 was \$30,169. Respondent was served with Minimum Rate Tariffs Nos. 4-B, 5, 11-A and 15 and Distance Tables Nos. 5 and 6, together with all supplements and additions to each.

On various days during September 1967, a representative of the Commission's Field Section visited respondent's place of business and reviewed his records for the period from March 1, 1967 through September 20, 1967. A total of 259 freight bills were reviewed. Eleven of said freight bills are listed in the order instituting investigation. The eleven freight bills purportedly include violations of the type here under investigation.

The attorney representing respondent stipulated that the violations under investigation did in fact occur and that respondent had, prior to investigation herein, been placed on written notice by the Commission staff for failure to comply with the provisions of Item 130 of Tariff No. 4-B and for failure to display required identification symbols on each vehicle operated. He alleged, however, that the violations were technical.

Respondent's attorney asserted that although respondent's operating authority was under suspension during the period September 15, 1967 through October 2, 1967, for failure to have an insurance certificate evidencing the required amount of cargo and liability insurance on file with the Commission, respondent believed in good faith that he was covered with adequate insurance during said period. The attorney explained that respondent received a notice from the Commission that he would be suspended on September 15, 1967, if he did not file a certificate of insurance; that at that time he had a policy paid up to November 1, 1967; that he checked with his insurance company and was informed by it that it had canceled his policy; that it was respondent's understanding that said policy could not be canceled until November 1, 1967; that he was further informed by the insurance company that in accordance with a clause in the policy it had a right to cancel the policy and need only return one-third of the unused premium, which it did; that respondent filed a civil action, which is now pending, contesting this; and that as soon as a replacement policy was obtained from a new insurance company, a certificate of insurance was immediately filed with the Commission.

With respect to the violations of Item 130 of Tariff No. 4-B, respondent's attorney alleged that the volume of respondent's business has dropped off substantially during the past year and a half because of increased competition from the larger household goods carriers; that because of the financial difficulties resulting therefrom, respondent has reduced the number of personnel employed by him from eight to several part-time employees; that respondent has been required to devote most of his time to the physical operations of the business and has had little time for

administrative detail; and that much of the administrative work, including documentation, has been taken over by his wife and daughter who are not experienced in such matters.

The attorney asserted that the proper identification symbols were shown on all of respondent's equipment except one truck. In this connection, he explained that respondent had received a new identification symbol from the Commission and through oversight had failed to stencil the new number on the vehicle in question.

Counsel for the Commission staff argued that the record establishes that the violations stipulated to herein were willful. He recommended that respondent's permits be revoked. In answer thereto, respondent's attorney argued that the violations were not intentional; that respondent is dependent on the income from his trucking business for the support of his wife and seven children; that the facts do not warrant the severe penalty recommended by the staff; and that if a penalty is to be imposed it be in the form of a fine commensurate with respondent's financial position and which respondent could pay in installments.

The record shows that respondent was placed on written notice by the Commission staff on March 10, 1965, for violating Item 130 of Tariff No. 4-B and on May 4, 1967 for failure to display correct identification symbols on equipment; that respondent's permits were suspended between October 20, 1966, and December 6, 1966, for failure to maintain a certificate of cargo insurance on file with the Commission; and that the Burbank Municipal Court on March 26, 1967, found respondent guilty of operating during said period of suspension.

Discussion

Respondent has stipulated that the violations under investigation did in fact occur. The only issue remaining for our consideration, therefore, is the penalty, if any, that should be imposed.

The record points out that respondent operates primarily as a household goods carrier and that all of the violations herein are concerned with said operations. In this connection, Section 5285 of the Public Utilities Code provides, in part, that the Commission may suspend, change or revoke the permit of a household goods carrier or may impose a fine not exceeding \$5,000 upon such carrier for willful failure to comply with any provision of the Household Goods Carriers' Act (Secs. 5101-5319 of the Pub. Util. Code) or with any lawful order, rule or regulation promulgated thereunder. The term "willful" contemplates that an act or omission was deliberate and intentional (In re Robert S. Kahn, et al., Decision No. 73402 dated November 28, 1967, in Case No. 8623). Before we can consider whether a penalty should be imposed, we must first determine whether the violations herein were in fact willful. The staff alleged that the violations were willful; whereas, respondent's counsel argued that they were unintentional. It is apparent that the stipulation by respondent's counsel was limited to an admission that violations did occur and did not include an admission of willfulness.

We concur with the staff that the violations of Item 130 of Tariff No. 4-B set out in the order instituting investigation and respondent's failure to display on each vehicle operated by him identification symbols in the form required by the Commission were willful. The record shows that respondent was admonished in writing

prior to the commencement of the investigation for similar violations. Having been warned and placed on notice of his obligation to comply with the aforementioned rules and regulations, the subsequent failure by respondent to comply therewith cannot be excused as unintentional or as an oversight or due to lack of knowledge of said regulations. Furthermore, the fact that many of the administrative duties, including the preparation of documents, were performed by respondent's wife and daughter, who were not familiar with the detailed requirements of Item 130, does not relieve respondent of any of his responsibility. Any such errors by his wife or daughter are, in accordance with the general rules of agency, imputed to respondent.

Although respondent did violate Section 5286 of the Public Utilities Code by operating during the period of suspension of his household goods carrier permit (September 15, 1967 through October 2, 1967), we are of the opinion that this resulted from confusion on the part of respondent regarding his insurance coverage, rather than a willful intent to violate said code section. According to his attorney, respondent sincerely believed he had the required amount of insurance in force during this period and has filed a civil suit to have his claim adjudicated. While we are mindful that respondent's operations were temporarily suspended during the latter part of 1966 for failure to have a certificate of insurance on file with the Commission, the record does not indicate whether the facts surrounding the earlier suspension were similar to those alleged by respondent's attorney herein.

Having determined that the element of willfulness is present in connection with the violations of Item 130 of Tariff

No. 4-B and the failure to display the required identification symbol on all equipment, we will now consider whether a penalty should be imposed. The record shows that respondent has disregarded prior warnings to refrain from violations similar to those listed above. This will not be tolerated. From a review of the entire record, we are of the opinion that a fine of \$750 should be imposed. In accordance with the request by respondent's counsel that if a fine is imposed it be payable in installments, the order which follows will provide that the fine may be paid in six monthly installments of \$125 each. The order will further provide that in the event of nonpayment of the fine or any portion thereof when due, the balance of the fine will immediately become due and payable, and if not paid within fifteen days after the date on which the delinquent payment was due, all permits held by respondent shall be revoked forthwith.

Findings and Conclusions

The Commission finds that:

1. Respondent operates pursuant to Household Goods Carrier Permit No. 19-45174, Radial Highway Common Carrier Permit No. 19-10138 and City Carrier Permit No. 19-39599.
2. Respondent was served with copies of Minimum Rate Tariffs Nos. 4-B, 5, 11-A and 15 and Distance Tables Nos. 5 and 6, together with all supplements and additions to each.
3. Respondent willfully violated Item 130 of Minimum Rate Tariff No. 4-B by failing to quote rates, complete time factors, complete addresses of points of origin and destination, show the number of helpers and include other information necessary for rating purposes on various freight bills.

4. Respondent willfully failed to display on each vehicle operated an identification symbol as required by the Commission.

5. Respondent transported shipments of used household goods and personal effects during a period of suspension of his household goods carrier permit; however, the element of willfulness in connection with said unlawful operations has not been established on this record.

The Commission concludes that:

1. Respondent violated Sections 5132, 5285 and 5286 of the Public Utilities Code.

2. Respondent should pay a fine of \$750 pursuant to said Section 5285.

3. Respondent should be authorized to pay said fine in six equal monthly installments.

4. In the event said fine is not paid in accordance with the requirements set out in the order which follows, all permits held by respondent should, without further order of the Commission, be revoked.

O R D E R

IT IS ORDERED that:

1. Respondent shall pay a fine of \$750 to this Commission on or before the twentieth day of the month following the effective date of this order, or as an alternative thereto, respondent may pay said fine in six monthly installments of \$125 each, with the first installment due on the twentieth day of the month following the effective date of this order and each succeeding payment due on the twentieth day of each month thereafter.

2. Respondent shall cease and desist from failing to comply with the lawful orders and rules of the Commission and is hereby directed to observe and obey the provisions of Minimum Rate Tariff No. 4-B.

3. In the event respondent should become delinquent in paying any installment of the fine referred to in paragraph 1 hereof, the entire unpaid balance of the fine shall immediately become due and payable, and if said balance is not paid in full within fifteen days after the due date of the delinquent payment, Household Goods Carrier Permit No. 19-45174, Radial Highway Common Carrier Permit No. 19-10138 and City Carrier Permit No. 19-39599 shall be revoked without further order of the Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 19th
day of MARCH, 1968.

[Signature] President
[Signature]
[Signature]
[Signature]
[Signature] Commissioners