

Decision No. 12907

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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MOTOR TRANSIT COMPANY, a corporation,  
Complainant,

-vs-

ED. LINGO and CHARLES LINGO, co-partners,  
doing business under the fictitious firm  
name and style of "LINGO BROTHERS",  
Defendants.

ORIGINAL

CASE NO. 1789

Kidd and Hardy, by H. W. Kidd, for Complainant

Leonard, Surr and Hellyer, by Geo. W. Hellyer,  
for Defendants.

BY THE COMMISSION,

O P I N I O N

Motor Transit Company, a corporation, complains of defendants and alleges that said defendants have since March, 1922, and are now, operating an automobile transportation company between the termini of Colton and Arrowhead Lake, and between San Bernardino and Arrowhead Lake, all in the County of San Bernardino, and in the said operation have been operating over the public roads and highways for compensation and have been, and now are, hauling freight between the above termini and over the above mentioned routes; that defendants were not, or either of them so operating on May 1, 1917, the date prescribed in Chapter 213, Laws of 1917, as that upon which transportation companies operating in good faith were not required to secure a certificate of public convenience and necessity from the Railroad Commission nor permits from the governing bodies of the various political subdivisions through which a route passed; that said

defendants, or either or them, have never applied for or received from the Railroad Commission a certificate in accordance with the provisions of Chapter 213, Laws of 1917, as amended, and that the operations of said defendants are in violation of the statutory law; that complainant is adversely affected by the alleged illegal operations for the reason that same are being carried on between San Bernardino and Arrowhead Lake over the same route over which complainant regularly hauls freight as an authorized carrier for compensation. Complainant prays for an order of the Railroad Commission determining whether or not the operations of defendants are in compliance with the statutory law and if it be found that the alleged operation is in violation of such statute that defendants be required to desist from further operation.

Defendants filed their answer denying the material allegations of the complaint and alleging that the transportation of freight as complained of was not such as was under the jurisdiction of the Railroad Commission by the provisions of the statutory enactment and that the complaint should be dismissed as requiring a decision upon issues not under the jurisdiction of the Commission.

A public hearing was conducted by Examiner Handford at San Bernardino, the matter was duly submitted and is now ready for decision.

We will first give consideration to the defendants' position that the issues herein presented are not such as fall within the jurisdiction of the Railroad Commission.

Subsection (c) of Section 104 of Chapter 213, Statutes of 1917 and effective amendments defines a "transportation company" as

"every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any automobile, jitney bus, auto truck, stage or auto stage used in the business of transportation of persons or property, or as a common carrier, for compensation, over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within

the limits of an incorporated city or town or of a city and county."

Subsection (e) of Section 1 of the above mentioned enactment contains the following provision:

"Whether or not any automobile, jitney bus, auto truck, stage or auto stage is operated by a transportation company 'between fixed termini or over a regular route' within the meaning of this act shall be a question of fact and the finding of the railroad commission thereon shall be final and shall not be subject to review."

Section 5 of the abovementioned enactment requires transportation companies to first secure certificate of public convenience and necessity from the railroad commission before beginning operation for the transportation of persons or property for compensation, on any public highway within this state.

Under the statutory law hereinabove referred to the Railroad Commission is empowered and required by legislative mandate to take jurisdiction over the matters which are issues in this proceeding and to decide such issues upon the facts as ascertained from the record.

Mr. C. G. Comstock, Jr., President of Comstock & Harris, Inc., and Lakewood Lumber Company, testified that his concerns had been solicited for business by one of the Lingo Brothers and that rates had been quoted. No hauling was done for Comstock & Harris, Inc., but lumber was hauled by defendants from the yard of Lakewood Lumber Company to Arrowhead Lake points. This witness had observed trucks of defendants operating during the months of May and June, 1923.

Mr. L. A. Atwood, now Service Manager for the Arrowhead Lake Company, and formerly with the Atwood Construction Company, testified that defendants had hauled material from Colton and San Bernardino to Arrowhead Lake during the construction of 18 or 20 houses being built under the supervision of the witness; that a rate of \$8.40 per ton was charged for the hauling; that the hauling was to individual construction jobs and that mixed loads for different

consignees were not handled. This witness also testified as to hauling being done by defendants for the firm of Deaver and Hart, operating as the "Rim of the World Construction Company" and of food supplies and groceries. A copy of an agreement between Lingo Bros. and Atwood Construction Company was filed as an exhibit. This agreement dated July 22, 1922, covers the transportation of freight, building material and lumber from Colton, San Bernardino or Arrowhead Sub-station to Atwood Camp at Lake Arrowhead at the rate of 42 cents per cwt. from San Bernardino or Colton and 40 cents per cwt. from Arrowhead Substation. Hauling around the lake to be at hourly rates, \$3.00 per hour for 2½ ton capacity truck and \$3.50 per hour for each 5 ton capacity truck.

Mr. A. J. Salisbury, Consulting Engineer and formerly Chief Engineer of Arrowhead Lake Company, testified as to hauling performed by defendants during the period March to November, inclusive, in the year 1922; that two-thirds of the material hauled was delivered to points on the southside of Arrowhead Lake.

Mr. W. A. Hart of the firm of Hart & Deaver, testified that defendants had hauled for his firm, principally from San Bernardino to San Bernardino mountain points, via Waterman Canyon. The hauling was done at a rate of 45 cents per cwt. and material was handled to about twenty jobs. A copy of a contract was filed as an exhibit, such contract being dated March, 1923, between Lingo Bros. and W.A. Hart and W. J. Deaver, copartners, covering hauling between Colton, San Bernardino and Lake Arrowhead. The contract also contains an endorsement by Lingo Bros. providing for a reduction in the rate per cwt. after a total of one thousand tons would have been hauled for the seasons of 1923 and 1924, and for a refund of sixty cents per ton at the expiration of the season.

Mr. H. E. De Nyse, an engineer employed by the Pacific Electric Railway Company and located at San Bernardino testified regarding hauling having been done for his company by defendants.

same consisting of lumber from San Bernardino to the Pacific Electric vacation camp in the San Bernardino mountains, the route followed being that via Waterman Canyon, full loads being hauled at a rate of 45 cents per cwt. and a total amount of \$399.13 having been paid for such hauling.

Ed F. Lingo, one of the defendant co-partnership, testified that he commenced hauling in the vicinity of San Bernardino in April, 1921.

Chas. P. Lingo, one of the partners in the defendant co-partnership, described the character of hauling, and that such was always done under contract, either verbal or written, although rates have not always been the same for specific commodities between the same points. This witness testified that the defendant co-partnership would not haul for any person offering business, and would not haul for some persons at all. It appears, however, that if the credit of any prospective customer was considered good by the defendants and there was any volume of freight to be moved that defendants did not refuse any business that was offered.

From the evidence and exhibits herein, the Commission is of the opinion, and hereby finds as a fact, that the transportation of property by auto truck by defendants between Colton, San Bernardino and Arrowhead Lake and other San Bernardino mountain points, both via the Waterman Canyon route and other routes and over the highway to points where divergence may be made to private roads or over private property to reach the points to which consignments were made, is operation for compensation over regular routes for which no certificate of public convenience and necessity has been applied for, or granted by this Commission. The Commission has no jurisdiction, under the statutory law, over any operation conducted over private roads or over private property, but is empowered and directed by the legislative enactment to exercise jurisdiction over this class

of transportation over any public highway in this state, and paragraph (e) of section 1 of the Auto Stage and Truck Transportation Act (Chapter 213, Laws of 1917, and amendments thereto) requires the Commission to determine whether stages or trucks operated "between fixed termini or over a regular route" by a transportation company is within the meaning of the statutory enactment. As stated above, the evidence in this proceeding shows that the transportation of property by defendants, insofar as such transportation is regularly conducted over the public highway either directly or to terminals which are reached by the use of private roads is over "regular routes," and that for such transportation no certificate of public convenience and necessity has been applied for or received, under the provisions Chapter 213, Laws of 1917, as amended. It therefore appears that the operations of defendants between Colton, San Bernardino and Lake Arrowhead and other points in the San Bernardino mountains over the public highways to points where divergence is made to private roads or over private property is in violation of said Chapter 213, Laws of 1917, as amended.

#### O R D E R

A public hearing having been held in the above-entitled proceeding and the matter having been duly submitted, the Commission, being now fully advised, hereby finds as a fact that the defendants, Edward F. Lingo and Charles P. Lingo, a co-partnership, doing business under the fictitious firm name and style of Lingo Brothers, have been and now are, engaged in the opera-

tion of auto trucks over the public highway, for compensation, between fixed termini and over regular routes; that neither said co-partnership nor said defendants, or either of them, has obtained from this Commission a certificate declaring that public convenience and necessity require such operation.

And basing its conclusion upon the findings of fact and statements of the within opinion, the Commission hereby concludes that the said operation should be discontinued pending the securing of a certificate as provided by Chapter 213, Statutes of 1917, as amended, and to that end:

IT IS HEREBY ORDERED that the said defendants be, and they are hereby directed to cease and hereafter to desist from any and all such transportation either individually or as a co-partnership, unless and until they shall have secured from this Commission a certificate that public convenience and necessity require the resumption or continuance thereof.

IT IS HEREBY ORDERED that the Secretary of this Commission be, and he is hereby directed to serve or cause to be served, by registered mail, upon the said defendants and each of them, a certified copy of this order; and

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be, and he is hereby directed to forward to the District Attorney of San Bernardino County a certified copy of this decision.

The effective date of this order shall be the 15th day of December, 1923.

Dated at San Francisco, California, this 7<sup>th</sup> day of December, 1923.

C. L. Seaver  
H. B. Bunnage  
Dwight Martin

7. J. T. Whittier  
COMMISSIONERS.