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Decision No. 14061

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

HODGE TRANSPORTATION SYSTEM, LOS ANGELES and OXNARD DAILY EXPRESS,

Complainants,

-vs-

W. J. TEBO,

Defendant.

Case No. 1956.

ORIGINAL

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E. N. Blair and Phil Jacobson, for Complainants.

Elmer P. Bromley, for Defendant.

BY THE COMMISSION:

O P I N I O N

Hodge Transportation System and Los Angeles and Oxnard Daily Express, authorized carriers of freight by auto truck, complain that defendant, W. J. Tebo, is operating automobile trucks for the transportation of property for compensation as a common carrier over the public highways and over a regular route between places within Ventura, San Bernardino and Riverside counties and Los Angeles Harbor points, and also between places "elsewhere within the state," without having obtained a certificate of public convenience and necessity, and in violation of Chapter 213, Statutes of 1917, as amended.

Defendant, by answer, admits his operation of trucks for transportation of property for compensation over the highways without a certificate of public convenience and necessity, but denies that he is a common carrier or a transportation com-

160

pany, that he operates over a regular route, that he operates between the termini alleged in the complaint, or that he operates in violation of law. Defendant alleges that he is, and for 30 years has been, transporting property for compensation over the highways; that he has no fixed or regular route, no schedule of time or rates, no fixed termini, carries no mixed loads, makes no back-hauls, and does not hold himself out to accept goods for transportation from all persons; but that for more than 30 years he has made individual contracts with various persons for the transportation of property to any point whenever and wherever required, and that his business is, and has been, a transfer business.

Upon the issues thus joined, public hearings were held at Los Angeles, the matter was duly submitted following the receipt of briefs from all parties, and is now ready for decision.

No evidence was offered by complainants in support of their allegation that defendant is operating in violation of law between points in Riverside and San Bernardino counties and Los Angeles Harbor points, nor in support of their allegation that he was operating illegally "elsewhere within the State." As to these allegations the complaint must, therefore, be dismissed. Testimony offered at the hearing was confined to the operations of defendant between the Town of Oxnard in Ventura County, and the City of Los Angeles in Los Angeles County, and concerned wholly the transportation of sugar from the plant of the American Beet Sugar Company at Oxnard to the several wholesale grocery houses in the City of Los Angeles. This transportation of the commodity named is fairly constant throughout the year, but somewhat irregular as to frequency and quantity. Defendant admitted the transportation of said property, and in justification thereof offered in evidence (Defend-

ant's Exhibit "A") an instrument termed "Lease of Trucks."

The transportation admitted by defendant clearly comes within the provisions of Chapter 213, Statutes 1917, as amended, unless the alleged "lease" removes it from the operation of that act.

The principal question for determination by this Commission under the pleadings and evidence, therefore, is whether this so-called "lease" removes the operations conducted thereunder from the jurisdiction of the Commission as conferred by Chapter 213, Statutes 1917, as amended.

By the terms of this instrument, dated September 22, 1923, defendant, Tebo, agrees to "lease" to the American Beet Sugar Company a "sufficient number of motor trucks to handle any and all shipments of sugar from Oxnard, California, to Santa Barbara, Los Angeles and Chino, California," and to furnish trucks for hauling sugar in any quantity at any time called for by said Sugar Company between September 22, 1923, and September 1, 1924. Defendant, Tebo, agrees to furnish trucks that are in good mechanical condition and to pay all expenses of repairs and operation, and that the Sugar Company "shall not be responsible for ordinary or extraordinary wear and tear, depreciation or obsolescence on any of said trucks." The Sugar Company agrees to furnish and pay competent drivers, and to pay Tebo "$2.90 per ton for all sugar hauled from Oxnard to Los Angeles, California, or to Santa Barbara, California, and the sum of $5.50 per ton for all sugar hauled from Oxnard, California, to Chino, California." The instrument is subject to cancellation upon ten days' written notice by either party.

It appears from the evidence that for a considerable time prior to September, 1923, the defendant has hauled over the public highways from Oxnard to Los Angeles all the sugar produced by the American Beet Sugar Company for Los Angeles

consumption, and has delivered same to the several wholesale warehouses in the City of Los Angeles as directed. On September 22, 1926, some question having arisen as to the legality of this operation, defendant and the Sugar Company entered into the agreement above outlined.

The undisputed evidence shows that since the execution of said agreement defendant's operations with the Sugar Company have been conducted in the same manner as before except that the driver of each truck is now paid by the Sugar Company instead of by defendant, Tebo, as theretofore, and except also that the rate per ton has been reduced to conform to the new manner of paying the drivers. The method of operation as testified to by the witnesses was substantially as follows: Whenever the Sugar Company at Oxnard has had a shipment of sugar for Los Angeles, it has called the defendant at Chino by telephone stating the number of trucks needed. Defendant, from his place of business at Chino, has then dispatched to the Sugar Company at Oxnard the required number of trucks with his own drivers, which trucks have then reported to, and remained under orders from, the Sugar Company until the entire shipment has been transported to Los Angeles. The Sugar Company has paid to each driver $7.50 for each trip he made to Los Angeles, and to the defendant, Tebo, $2.90 for each ton of sugar hauled.

These demands of the Sugar Company for trucks were made at frequent intervals, and the number of trips required to transport each shipment depended entirely upon the tonnage to be moved--in some instances requiring almost daily trips for periods of a week or even a month at a time. When the Sugar Company had no sugar to be transported, the trucks were used by the defendant in

the regular course of his business in Chino.

It is apparent from the testimony that the intention of the parties in executing this alleged "lease" was to take these oporations of defendant out of the provisions of Chapter 213, Statutes 1917, as amended, but an examination of the instrument in the light of the evidence adduced at the hearing reveals that it bears none of the attributes of a true lease, but that on the contrary, it is rather a contract by defendant to transport the Sugar Company's output of sugar. No specific trucks are mentioned in the agreement, nor are any definite number of trucks allocated to the Sugar Company; all are used by defendant, Tebo, in his transfer business in Chino until he receives a call from the Sugar Company, whereupon sufficient number of trucks to fulfill the Sugar Company's needs are then dispatched to it, as above described. Upon the completion of a shipment, the Sugar Company has no possession or custody of the trucks, but they return to Chino and are used by defendant in his transfer business. The rental for the equipment under this agreement is not at a stated price for the term of the lease, nor even upon a per-trip basis, but at a certain rate per ton. The Commission is of the opinion that this agreement does not constitute a bona fide lease of trucking equipment, but that it is in fact merely a contract between the parties for a type of trucking service falling within the provisions of the Auto Stage and Truck Transportation Act (Statutes 1917, Chapter 213, as amended).

O R D E R

Complaint having been made against W. J. Tebo, as above-entitled, a public hearing having been held, and the matter having been duly submitted and the Commission being fully advised in the

promises, it is hereby found as a fact that the defendant, W. J. Tebo, has been, and now is, engaged in the operation of auto trucks over the public highways, for compensation, between the termini of Oxnard and Los Angeles, over a regular route, and that said defendant has not obtained from this Commission a certificate declaring that public convenience and necessity require such operation.

And basing its conclusions upon said findings of fact and upon the additional findings and statements included in the within opinion, the Commission hereby concludes that the said operations of W. J. Tebo should be discontinued pending the procuring of a certificate as provided by Chapter 213, Statutes 1917, as amended, and to that end

IT IS HEREBY ORDERED that the defendant, W. J. Tebo, be, and he is hereby directed to cease and hereafter to desist from any and all such transportation unless and until he shall have secured from this Commission a certificate that public convenience and necessity require the resumption or continuance thereof; and

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be, and he is hereby directed to serve, or cause to be personally served, upon said defendant, W. J. Tebo, a certified copy of this order; and

IT IS HEREBY FURTHER ORDERED that inasmuch as the allegations of the complaint as to illegal operations by defendant, W. J. Tebo, between points in Riverside and San Bernardino counties and Los Angeles Harbor points, and as to illegal operations by defendant, W. J. Tebo, "elsewhere within the State" were supported by no evidence, the complaint, as to those allegations, be, and the same is hereby dismissed.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be, and he is hereby directed to forward to the District Attorney of each of the counties in which such operations have been carried on, a certified copy of this decision.

Dated at San Francisco, California, this 16th day of September, 1924.

C. A. Seavey

H. M. Bramdige

Irving Martin

Commissioners.