

Decision No. 17088

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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BAKERSFIELD AND LOS ANGELES FAST FREIGHT
COMPANY, a corporation, and LOS ANGELES
AND WEST SIDE TRANSPORTATION COMPANY, a
corporation,

Complainants

vs.

MIKE LANG, MIKE LANG TRANSPORTATION CO.,
WM. P. SHIELDS, KATE B. SHIELDS, SHIELDS
TRUCK CO., JOHN DOE, JANE DOE, JOHN ROE
and JANE ROE,

Defendants

.....)

Case No. 2006

ORIGINAL

Messrs. Hugh Gordon and George Clark, for Complainants,
Messrs. Sanborn & Roehl and DeLancy C. Smith, by

A. B. Roehl, for Mike Lang, Mike Lang Transportation
Company, Defendants.

Messrs. Dave F. Smith and Walter T. Casey, for Wm. P.
Shields, Kate B. Shields, Shields Truck Company,
Defendants.

J. F. Vizzard, Esq., for California Truck Owners Ass'n.

Phil Jacobson, Esq., for Franchise Owners Ass'n.

Howard Robertson, Esq., for California Truck Company,

Pioneer Truck & Transfer Company, Star Truck Company,

Paul Kent Truck Company, Smith Bros. Motor Truck

Company, Belyea Truck & Transfer Company, and

Citizens Truck Company.

Richard T. Eddy, Esq., for Carkey Transfer Company.

BY THE COMMISSION:

O P I N I O N

The complaint herein alleges, among other things,
that the above-named defendants are and have been engaged in
the business of operating auto trucks in the business of
transporting property, or as common carriers, for compensation,
over the public highways of this state between fixed termini
or over regular routes as the term, "between fixed termini
or over a regular route", is defined in Chapter 213 of the
Statutes of 1917, of the State of California, as amended, and
more particularly between Los Angeles and Bakersfield over the

highway commonly known as the Ridge Route, and between Los Angeles and Taft, Maricopa, Fellows, McKittrick, Old River, Panama and the West Side Oil Field District in Kern County; also to, from, or between points between the territory immediately adjacent thereto or within a twenty (20) mile vicinity thereof; and also between points elsewhere within the state and not exclusively within the limits of an incorporated city or town, or of a city and county.

It is further alleged that the defendants have not heretofore obtained from this Commission, nor have they otherwise acquired, nor do they now own, hold or possess the right, franchise or permit to operate a transportation company between said points as the term "transportation company" is defined in Chapter 213 of the Statutes of 1917, as amended; and that the operations of said defendants and each of them, of said transportation companies, or as common carriers of property for compensation between said points, is in violation of the provisions of the said Chapter 213, Statutes of 1917, as amended, and more particularly of Sections 2 and 5 thereof, and of the rules and regulations of this Commission.

The complaint further alleges that defendants are also operating as "common carriers and transportation companies", as those terms are defined in Section 22 of Article XII of the Constitution of the State of California, between the same points and along the same routes as above set forth; and that the complainants and their predecessors in interest have been operating for several years as transportation companies between the same points and along the same routes as above set forth under certificates of public convenience and necessity obtained from this Commission. The prayer of the complaint is that this

Commission make its order directing said defendants to cease and desist from the aforesaid violations of said acts; and to discontinue transporting freight for compensation between the above named points and along the above named routes.

The defendants by separate and special answers deny that their companies are transportation companies or common carriers or have operated as transportation companies or common carriers in violation of Section 22 of Article XII of the Constitution of the State of California, or of Chapter 213, Statutes of 1917, or of any other of the Statutes of the State of California. Defendants further deny that they are in any way subject to the jurisdiction of this Commission or that they are required to secure certificates from this Commission.

Public hearings were held before Examiner Satterwhite at Los Angeles. The issues thus framed by the pleadings resolve themselves into the following propositions:

1. Are the defendants "common carriers" or "transportation companies" as those terms are defined in Section 22 of Article XII of the Constitution of the State of California.
2. Are the defendants engaged in the "business of transportation" of property over the highways for compensation as defined in Chapter 213, of the Statutes of 1917, as amended? and
3. If so, do the defendants, in the conduct of such business "usually or ordinarily" operate their trucks "between fixed termini or over a regular route", as those terms are defined in Chapter 213, of the Statutes of 1917, as amended.

As to the first proposition there is not sufficient evidence in the record to hold these defendants common carriers at the present time. The second is easily disposed of by the fact that the answers of the defendants either admit or disclose that each is engaged in the business of transporting property over the highways for compensation. This

fact is further borne out by the record. The last proposition ~~was the subject of considerable testimony and as will therefore discuss it~~ is, therefore, the only one which need now be considered in ~~any detail.~~ ^{briefly.}

In view of the fact that the character of the operations of these defendants differ it is necessary to discuss the evidence dealing with each separately. As to Mike Lang and the Mike Lang Transportation Company, the record discloses that the operations are two-fold in character. First, that of constructing oil and gas lines for oil production companies and of constructing oil pipe lines to pipe line locations; and, second, that of transporting oil well equipment between gas and oil locations and of transporting materials between divers points for the Southern California Edison Company.

Witnesses for this defendant testified that the oil pipe line construction business was the main business of the company, and that the transportation business was a separate and distinct feature of this main operation. The record shows that this transportation business necessitates the continuous employment of more than forty men, involving the expenditure of \$8,000.00 to \$10,000.00 per month, and that thirty-one trucks are kept busy practically all the time.

Witness Howard M. Lang, Manager of the Lang Transportation Company, testified that of the 16,697 tons moved by the concern during the first six months of 1924, 3,186 tons were moved from the Southern California Oil Fields to the West Side Oil Fields, Bakersfield, and the several other oil fields located in the San Joaquin Valley to the north, and that all of this was moved over the Ridge Route.

This witness further testified that during the year preceding the filing of the complaint herein the following shipments were made for the following persons or companies:

Bell Ridge Oil Company: between 10 and 20 trips were made over the Ridge Route from Los Angeles to Bell Ridge or McKittrick, and the West Side Oil Fields.

Associated Supply Company: more than 20 shipments were made for this company from points in Los Angeles over the Ridge Route to Bakersfield and the West Side Oil Fields.

C. R. Gallagher and Co: between 3 and 10 hauls were made from Santa Fe Springs over the Ridge Route to points in the West Side Oil Fields.

Associated Oil Company: between 20 and 40 shipments were made from Los Angeles to the West Side Oil Fields over the Ridge Route.

Standard Oil Company: shipments were made between points in Los Angeles district to points in the West Side Oil Fields over the Ridge Route.

Western Pipe and Steel Company: shipments were made from several points in Southern California to points in the West Side Oil Fields, and Lost Hills and Coalinga over the Ridge Route.

E. J. Miley: shipments were made from points in Los Angeles to Kettleman Hills.

Hughes Tool Company: shipments were made from Los Angeles to the West Side Oil Fields over the Ridge Route.

International Derrick & Equipment Co.: about 5 hauls were made from Los Angeles to the West Side Oil Fields over the Ridge Route.

Pacific Pipe and Supply Co: on more than one occasion hauls were made for this company over the Ridge Route.

Chas. M. Woods Co.: At least 5 shipments were made from different locations in the West Side Oil Fields, Lost Hills and Coalinga over the Ridge Route.

In addition Mr. Roehl, Counsel for the Mike Lang Transportation Company, admitted that the hauling done by the company from Southern California to the West Side Oil Fields was over the Ridge Route, and that many shipments and a great deal of tonnage had gone over that route.

With respect to the defendants, Kate B. Shields, William B. Shields, and the Shields Truck Company, practically the same situation exists. The record shows that 12 trucks are kept busy practically all the time; that during the first six months of the year 1924 a total of 15,000 tons of material of various kinds was hauled over the highways, and from the company's Exhibit No. 2 it appears that from January to July 1924, 2430 tons were hauled from points in the Southern California Oil Fields to the West Side Oil Fields, Elk Hills, Lost Hills and San Joaquin Oil Fields; while during the same period a total of 140 tons were hauled south bound from points in the West Side Oil Fields to points in the Southern California Oil Fields. The record further discloses that the company regularly hauls for five, six and possibly eight shippers between points in the vicinity of Los Angeles to points in the vicinity of West Side Oil Fields over the Ridge Route, and that within the year preceding the filing of the complaint herein the company hauled for seven or eight different shippers between points in the vicinity of Los Angeles, and the West Side Oil Fields or Bakersfield over the Ridge Route.

From the foregoing and other similar evidence it seems clear to us that both of these defendants are in the business of usually and ordinarily transporting property over the highways for compensation between points in the vicinity of Los Angeles and points in the vicinity of the West Side Oil Fields and Bakersfield over the Ridge Route. It follows, therefore, that

defendants are and have been operating usually and ordinarily between fixed termini or over a regular route.

In the brief filed by the Mike Lang Transportation Company it is contended that the statutes in question must be construed in the conjunctive with respect to the words "between fixed termini or over a regular route," - in other words that a transportation company within the meaning of that chapter must be a person or corporation which operates both between fixed termini and over a regular route. We cannot agree with this construction. Heretofore in the case of Highway Transport Company v. Holmes, et al., Decision No. 14,369, dated December 17, 1924, we held that a person or corporation was a transportation company within the meaning of the act when operating either between fixed termini or over a regular route; and this construction has been sustained by the Supreme Court of California in the case of Holmes v. Railroad Commission, et al., 70 C.D.752. In the present instance whatever might be contended as to fixity of termini, there can be no serious question as to the regularity of route.

A defense urged by defendants was that, even assuming they were in the business of transportation of property over the public highway for compensation, usually and ordinarily, between fixed termini, or over a regular route, nevertheless, Chapter 213 of the Statutes of 1917, as amended, is inapplicable to them because they haul under private contract only, and not as common carriers. This defense was based on the ground that the statute applies only to common carriers and not to contract carriers.

In the case of Happe v. Frost and Frost Trucking Company, Decision No. 13,945, rendered on August 20, 1924, this Commission held that, by the 1919 amendment to the Auto Stage and Truck Transportation Act (Statutes 1919, Chapter 280), the Legislature impressed upon this Commission the duty of requiring a certificate of public convenience and necessity from private contract carriers as well as from those whose operations fall strictly within the category of common carriers. This decision was sustained by the State Supreme Court in the case of Frost and Frost v. Railroad Commission, 70 C. D. 457, but on June 7, 1926, the State Court's decision was reversed by the United States Supreme Court upon the ground that the State Court had interpreted this statute as forcing upon such contract carriers the status of common carriers against their will.

In view of the determination of the matter, which has been made by the United States Supreme Court in the case above cited, we have no other alternative at this time but to hold that the present case should be dismissed.

O R D E R

Public hearings having been held in the above entitled proceeding; the matter having been submitted, and the Commission being now fully advised in the premises, it is hereby found as a fact that the defendants above named have each of them been, and now are engaged in the business of transporting property over the public highways, for compensation, usually and ordinarily between fixed termini or over a regular route; and further that neither of said defendants has obtained from

this Commission a certificate declaring that the public convenience and necessity requires such operation. It appearing, however, that the United States Supreme Court has determined that jurisdiction over such service does not inhere in this Commission;

IT IS HEREBY ORDERED that the within Complaint be and the same is hereby dismissed.

Dated at San Francisco, California, this 3d
day of July, 1926.

H. B. Brundage
C. J. Seaver
Samuel M. Roberts
Leon A. Whitell
Commissioners