

Decision No. 18176

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

In the Matter of the Investigation on the Commission's own motion into the practices and rules and regulations and operations of P. E. Tibbetts, operator of an automobile freight line between Los Angeles and San Jacinto and intermediate points.

Case No. 2306.

H. J. Bischoff, for Respondent Tibbetts.
Richard T. Eddy, for Hemet Transfer and Storage Company, Intervenor.
Reginald L. Vaughan, for Railroad Commission.

BY THE COMMISSION:

O P I N I O N .

In this proceeding, instituted on motion of the Railroad Commission to inquire into the practices, rules, regulations, and operations of P. E. Tibbetts, operating, under the fictitious name of W. & S. Truck Company, an automobile freight line between Los Angeles and San Jacinto and certain intervening points, inquiry was made at a hearing conducted by Examiner Williams at Los Angeles as to whether the said business had been abandoned for a period and the operations conducted without authority by Motor Service Express, a corporation.

By his application No. 13359, respondent Tibbetts sought authority to sell his certificated rights to Motor Service Express, a corporation, which joined in the application. Transfer of the certificates was protested by F.E.Kelly, H.E.Kelly, and L.N.Kelly, co-partners, operating under the fictitious name of the Hemet Transfer & Storage Company, under Decision No.17540,

on an Application No. 11319, dated October 29, 1926, on the ground that applicant Tibbetts had abandoned service in July, 1926. When the protest was filed, the present proceeding was initiated by the Commission and was set for hearing at the same time as the application to transfer. When this hearing was called on January 15, 1927, the parties to the application moved to dismiss the application. The application was submitted for dismissal upon said motion, and thereafter dismissed according to Decision No. 18020, dated February 23, 1927. Thereupon, protestant asked leave to intervene in Case No. 2306, the Commission's instituted inquiry, and such intervention was permitted.

According to the testimony of Paul E. Tibbetts, he is the owner of the certificate rights for transportation of freight between Los Angeles, Hemet, and San Jacinto, and points east of Riverside, exclusive of Riverside. In brief, respondent testified that the terminal occupied by him at Los Angeles was partly burned in the spring of 1926, doing considerable injury to his property and destroying a great deal of his records, including billing and shipping forms. He testified that the only recovery was \$700.00 insurance upon a loss, approximately, of \$2500.00; that the impaired condition of the terminal and other reverses made it difficult for him to maintain operations, and that similar difficulty was experienced by Los Angeles-Newport freight line and Zimmerman Brothers' line to Compton and Long Beach, which occupied the same terminal.

Negotiations were begun by Motor Service Express which resulted in the three lines being moved to the Motor Service Terminal for pick-up service, terminal facilities, garage service, bookkeeping, and billing, each carrier paying \$225.00 a month for all services rendered by Motor Service Express.

Tibbetts further testified that during the succeeding

months and until October, he had great difficulty in maintaining operation, and at times used vehicles of Motor Service Express when his own were either insufficient or incapable of operation, due to breakdowns. In addition to this, the arrangement made with the Motor Service Express included billing, and it appears that the Motor Service Express used its own bill-heads for freight charged to, or collectible from, Tibbett's lines, and also from the other lines. In addition, Tibbetts testified that in order to insure payment of the monthly charge against him for terminal service, he had assigned certain accounts of shippers at Hemet and San Jacinto to Motor Service Express. This resulted in many of Tibbetts' customers making checks payable to Motor Service Express, which checks were endorsed for both Tibbetts and Motor Service Express by Tibbetts' agent at Hemet, and deposited to his account at Hemet. It appears, however, that all the income was properly credited to the separate carriers.

A great many instances of such shipments and such billings in the name of the Motor Service Express were produced in evidence and made exhibits; and, unexplained, would support the assumption that Motor Service Express was conducting the service. The definite times, however, when vehicles of the Motor Service Express were actually used to make delivery in Hemet were not given; nor for long periods, except in the month of January, 1927, during which period a Motor Service truck made many deliveries at Hemet and elsewhere. During this period, Tibbetts' equipment was not in efficient operating condition.

It is the testimony of both Tibbetts and L.T. Fletcher, president of Motor Service Express, that the use by each of the other's equipment at various times was an accommodation, and that the only compensation between the parties was credits upon the gasoline account which Motor Service made monthly to Tibbetts

for the gasoline used. No charge was made for the use of the vehicles delivered. During this period, no leases were made between the parties for equipment. It was further shown that during all the period since June, 1926, Tibbetts had continued his relationship with Motor Service Express and the billing had been conducted upon Motor Service Express stationery, although at times other bills were sent out under the name of the W. & S. Truck Company.

Tibbetts testified that after he had agreed to sell to the Motor Service Express, he thought it unnecessary to provide separate shipping bills for his own service, as he believed the transfer would not be disputed. While this parlous situation continued, Tibbetts testified he lost the haul of milk from the Hemet region to Los Angeles, and thus was deprived of approximately 50 percent of his revenue.

There seems to be little dispute about the facts as detailed above, most of which were produced by examination of Tibbetts and L. T. Fletcher. In behalf of the intervenor, Alfred V. Hoyt, bookkeeper for Motor Service Express and Tibbetts from July 15 to November 30, 1926, testified that the books showed no charges between the parties for truck rent. F.E. Kelley testified that he had made a check of the trucks used in the operation of Tibbetts into Hemet, and this check (Intervenor's Exhibit No. 19) shows that during the months of October and November, 1926, and January and February, 1927, a large number of the trips to Hemet were made with vehicles registered in the name of the Motor Service Express or its predecessor, Service Motor Express. It was explained by Tibbetts that he transferred three of his trucks to Motor Service Express when the agreement to sell his line was made with this corporation, and that his

reason for so transferring them was to avoid entangling his operations in threatened personal litigation. Later, when it had been determined to abandon the transfer, these trucks were restored to his possession.

The record herein presents a situation which makes it obvious that the inter-relation of these two carriers has been of such an irregular character, and if intended by the parties to permit one carrier without authority to perform duties imposed upon another, would justify revocation of one carrier's certificate, at least. Both Tibbetts and Fletcher deny any other purpose than to maintain the operation which it was the duty of Tibbetts to maintain. The irregular manner in which vehicles were borrowed and used and transferred among the parties is improper and reprehensible. The record, however, does not seem to indicate bad faith on the part of either Tibbetts or Fletcher. But when we consider that Tibbetts was embarrassed by losses due to a fire and loss of a considerable portion of his revenue, the question of good faith becomes important in deciding what discipline, if any, the Commission should impose. The fact remains that however irregular and reprehensible the practices may have been, respondent herein made every effort to conduct his public service, and there is no testimony in the record that at any time he failed in his duty under his certificate. The sole question is as to whether the acts committed by him are sufficient, assuming errors in good faith on his part, to justify this Commission in revoking this certificate. It is our judgment that the record does not justify revocation of the certificate, but the Commission feels that Tibbetts should be disciplined by requiring him forthwith to provide proper independent accounting, billings, and collection, and proper leasing of vehicles where

necessary, according to the rules established by this Commission, and to cease any other practice or operation shown to be irregular by this proceeding. Tibbetts indicated at the hearing his willingness to do this. An order accordingly will be entered.

O R D E R.

In this proceeding, initiated upon motion by the Railroad Commission, respondent and all other parties have submitted the matters at issue to the Commission, and the Commission being fully advised in the premises, and good cause appearing,

IT IS HEREBY ORDERED that P. E. Tibbetts, operating under the fictitious name of the W. & S. Truck Company, cease and desist using any other bills of lading, shipping bills, or other bills that do not bear the title of the W. & S. Truck Company; that in all other respects said Tibbetts conduct his operation strictly according to the rules and regulations of this Commission; and

IT IS FURTHER ORDERED that in all other respects the proceeding herein be dismissed.

Dated at San Francisco, California, this 6th day of April, 1927.

Ernest J. [Signature]

[Signature]

Thos. S. [Signature]
Commissioners.