

Decision No. 20949

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

L. A. THORNHILL,

Complainant,

- vs -

C. W. GREGORY and R. C. GREGORY,

Defendants.

Case No. 2584

Wyckoff & Gardner, by Hubert Wyckoff, Jr. and
Douglas Brookman, for Complainant.

Rittenhouse & Snyder, by Bert B. Snyder,
for Defendants.

W. S. Johnson, for Southern Pacific Company,
as Interested Party.

BY THE COMMISSION:

O P I N I O N

Complainant herein alleges that defendants have been, and now are, operating motor trucks as common carriers for compensation between Santa Cruz and San Francisco without first having obtained a certificate of public convenience and necessity from the Railroad Commission. It is further alleged that such operations of defendants have caused irreparable damage to complainant in that customers heretofore served by him have taken their business away and given it exclusively to said defendants. Wherefore complainant

prays that defendants be adjudged guilty of contempt of the Railroad Commission and be otherwise penalized as provided by law.

Defendants duly filed their answer, in which they make a general denial of each and every allegation in the complaint, and aver that their operations are not those of a common carrier.

Upon the issues thus joined a public hearing was held before Examiner Gannon on November 20, 1928, at which time the matter was submitted and is now ready for decision.

The operations of these defendants have been heretofore the subject of an inquiry by this Commission in Case 2484. Following hearings in that case on March 6, 7, and 26, and April 26, 1928, and in Decision No. 19,860, dated June 6, 1928 (51 CRC 843) we held such operations to be those of a common carrier and ordered C. W. Gregory and R. C. Gregory, the defendants herein, to cease and desist from such operations. An examination of the facts as they appear of record in this proceeding will disclose whether or not the order of the Commission has been complied with.

Complainant called some sixteen witnesses, all of them patronizing the service of the defendants. The testimony of these witnesses was uniformly to the effect that there had been no change in the character of the service rendered by defendants since the rendition of our previous order, though, with two or three exceptions, each of them had signed what purported to be a contract. These so-called contracts merely set forth that R. C. Gregory, one of the defendants, was able to perform certain hauling, and that

the customer, having need for such hauling, there naturally followed a meeting of minds. There is no reference to rates, or commodities to be hauled, and the duration of the agreement was until "reasonable notice of termination shall have been given by either party."

Defendant, R. C. Gregory, testified he had effected certain changes in the conduct of his business in order to conform with the Commission's order. Among such changes he specified the following:

1. The lettering on his trucks reading "Gregory Truck Service" has been changed to "Gregory".
2. His billheads heretofore bearing the imprint "R. C. Gregory Truck Service" now read merely "R. C. Gregory".
3. The number of contracts with shippers has been decreased, and these have been reduced to writing, where heretofore such agreements were verbal.
4. He does not solicit new business but has, in fact, refused it.

This defendant testified further that his business is being conducted practically as it was at the beginning of the year, except for the minor changes noted above, and that he now has about fourteen so-called contracts, which is at least as many, if not more, as he claimed to have at the time of the prior hearing. He had increased the number of his trucks in this service by two, one of them being acquired since the issuance of the Commission's Order of June 6, 1928.

Five or six shippers, designated by the witness as "little fellows", had been dropped and other larger shippers had been added.

We have given careful consideration to the evidence in this proceeding, and find that defendants, C. W. Gregory, and R. C. Gregory, are operating in violation of the Commission's Order in Decision No. 19,860. We are not impressed by the gestures made by defendants to cloak themselves in the garments of contract carriers. We are of the opinion, and find as a fact that the alleged contracts brought to our attention are not "private contracts of carriage" within the meaning of Frost and Frost v. Railroad Commission, 271 U. S. 533, 70 L. ed. 1101. Defendants are just as much common carriers now as they were when the Commission made its order so declaring them. The form may be changed, but the substance is the same. The evidence conclusively points to a willful and flagrant disregard of this Commission's order.

O R D E R

Complaint as above entitled having been filed, a public hearing having been held, the matter submitted, and now being ready for decision, and basing its order upon the conclusions and findings in the opinion above;

The Railroad Commission of the State of California hereby orders said C. W. Gregory and R. C. Gregory, jointly and severally immediately to cease and desist from the

operations above described, and

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission mail a certified copy of the Opinion and Order herein to the District Attorneys of Santa Cruz and San Mateo Counties, and the City and County of San Francisco.

Dated at San Francisco, California, this 11th day of April, 1929.

Thos D. Lovitt
O. L. Seamy
Edward J. ...
Leon ...
W. H. ...
Commissioners.