Decision No. 21816

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Investigation upon the Commission's own motion into the rates, charges, classifications, rules, regulations, operations, practices and contracts, or any of them, of JOSEPH K. HAWKINS, operating between Los Angeles and San Bernardino and other points.	)	Case No. 2718

Frank M. Smith and Richard T. Eddy,
for Respondent.

BY THE COMMISSION:

O P I N I O N

By its order of June 26, 1929, this Commission instituted an inquiry into the rates, charges, classifications, rules, regulations, operations, practices and contracts, or any of them, of Joseph K. Hawkins, operating as a common carrier truck line between Los Angeles and San Bernardino and other points in the State of California. Citation therein was served upon respondent Hawkins, who appeared personally and by counsel at the hearing before Examiner Williams on July 9, 1929, at Los Angeles and at continuances thereof.

The record herein presents three matters of irregularity, which we believe deserve serious consideration. The first is the failure of respondent to pay taxes due the State of California on his operation for the year 1928. The second is the manner in which respondent conducted his business subsequent to the seizure of his equipment by the state authorities or repossession by the legal owners. The third is certain

rates charged the members of the California Milk Producers Association by respondent. For convenience, these matters will be taken up in the order named.

Respondent operates a special service between Pomona, Ontario, Chino and Los Angeles, transporting milk and dairy products and serving incidentally El Monte and Pasadena, delivering milk to creameries at those places. The district in which he operates is intensively devoted to dairying and he transports approximately 2100 ten-gallon cans of milk and cream daily. On this service scores of dairymen depend for transportation of their daily products to the markets of Los Angeles, Pasadena and El Monte. Two trips, morning and evening, are made daily with the volume of traffic about evenly divided. Respondent is permitted to perform back-haul service in the matter of specified dairy supplies, but this volume, according to his testimony, is meager. In the conduct of this business respondent requires eleven trucks and three trailers.

The record shows that in July 1928, respondent owed the State of California $18,893.53 taxes on his gross receipts for 1926-7-8. Of this amount, $6,323.37 was for years previous to 1928, which respondent disputed on legal grounds, and as to which actions to collect are pending in Sacramento County. The 1928 tax (computed on the 1927 gross revenue) amounted to $12,570.00. When respondent herein failed to pay this tax the state, through the Controller's Office, exercised its lien on the equipment of respondent, sold the same and realized $2,975.00. Much of the equipment of respondent had been repossessed previously by its legal owners. This seizure occurred in July 1928, and left respondent without equipment to transport shipments offered. According to his testimony, which was

not disputed, he met this emergency by hiring trucks and conducting his service according to schedule.

In 1929, when the State Board of Equalization found that respondent had (in June) but one truck and two trailers registered in his own name, though operating nine other trucks under "lease" from drivers, the Railroad Commission was asked to make an investigation of respondent's methods and practices to determine whether such methods and practices were designed to avoid the tax payments on his gross receipts. The facts hereinbefore related were testified to by C. E. Cooper, Deputy State Controller. He also testified (July 9, 1929) that respondent had not paid his 1929 taxes, amounting to $7,204.12. Subsequently (August 10), respondent testified that the full amount had been paid by him on July 30. This was later confirmed by Mr. Cooper.

It appears, therefore, that of $26,097.61 taxes duly assessed against respondent and unpaid, the state has received payment of only $10,179.00, leaving a balance unpaid (including $6,323.37 in litigation) of $15,918.61. Respondent testified that low rates, due to competition prevented his earning enough to pay taxes. The explanation does not do credit to respondent, as his present certificate, granted in 1925, and rates of his own selection fixed therein, are unchanged by his tariff filings with this Commission (C.R.C. No. 11, Dec. 10, 1928)

After several weeks of conducting business through hired equipment, respondent herein, on August 18, 1928, entered into an arrangement with L. C. Krandall for the furnishing of ten trucks to be used by respondent in his business. By this arrangement, Krandall became the partner of each of nine drivers of respondent, and new trucks were supplied by the Euclid Finance

Company of Pomona, their legal owner. The arrangement further provided that each truck was to receive $15 a trip, which included pick-up around Pomona, deliveries to Los Angeles and return. This method subsequemtly was modified, the payment of fifteen cents per can being substituted for the fixed amount. Thereafter each truck was credited with its earnings on the basis of fifteen cents for each can hamled and out of this amount was paid operating and maintenance expenses of the truck and the contract payments on account of the purchase of the truck. The excess, if any, was divided equally between Krandall and his driver partner. Mr. Hawkins received the difference between the fifteen cents per can allowed the truck, and the rate collected for the transportation of the can. No leases or writtem agreements were executed or entered into upon this basis. Upon this basis the operations continued until February 1929, when Hawkins broke the arrangement with Krandall, became the guarantor on the purchase contracts with the Finance Company and took over four of the trucks, the remaining five being operated in a similar manner as before with Hawkins as a partner of each.

This compliaated arrangement continued until May 1929, when the five drivers executed leases to respondent, dated February 1st, which were filed with the Railroad Commission. These are the only leases ever filed by respondent.

At the time of the hearings Hawkins claimed possession of four trucks, and that the remainder were the "partnership-leased" trucks alluded to, and one or two additional leased trucks in which Hawkins claimed no interest. It was disclosed at the hearings, however, and admitted by respondent, that there had been no change in the registration of any of the trucks, and that neither he nor his partner drivers were legal owners of any of the equipment.

In this manner respondent met the loss of his former equipment and continued his operations as a public carrier without interrupting his service. During all the hearings no complaint was received from any shipper or consignee that the service had not been satisfactory. However, investigation of his books and accounts pertaining to this transaction satisfies us that respondent's actions were not in conformance with the Commission's rules and general orders. Respondent urged, however, that he was in a desperate situation and that his main effort was to maintain the service without a breakdown.

As to the third matter, involving the discrepancy in rates charged for shipments to members of the California Milk Producers Association, Exhibit No. 8 introduced by the Commission discloses that between September 1928, and April 1929, there was collected from the California Milk Producers Association, shippers, $1,566.00 less than, apparently, should have been collected at the rates established between Pomona and Los Angeles. Respondent explained this discrepancy as due to the refusal of Thomas H. Brice, Secretary of the California Milk Producers Association, to authorize any greater payment for the milk transported. Respondent further stated that he had disputed this rate with Brice but was informed that Brice could get another person to haul the milk for the fifteen cent rate and that respondent would have to take that rate or abandon the business to another. Hawkins testified that as Brice controlled twenty-two per cent of his business he felt forced to accept the rate rather than permanently lose the business. He further testified that he had made an investigation among shippers and found that the shippers had been charged the full tariff rate by the Association, and that the difference between the legal rate and the fifteen cent rate had inured to the benefit of the Association.

During all this discussion of the rate respondent did not make known the fact that the movement of the milk was not from Pomona to Los Angeles but from Pomona to San Bernardino, a considerably less distance. The fact that the delivery of this milk was at San Bernardino was disclosed by the testimony of Mr. Brice, who stated that the milk so transported had been allocated for delivery at Los Angeles creameries, but that it had been necessary to re-allocate these shipments to San Bernardino creameries. Hence, he contended that there should be a reduction in the rates as the market in San Bernardino did not pay as high a price for the same quality of milk as was received at Los Angeles. Therefore, Mr. Brice testified he had charged the Los Angeles rate for the shipments to San Bernardino and had paid Hawkins a lesser rate in order that the difference might, in a measure, equalize for the association the low price at which this milk had to be sold at San Bernardino. Mr. Brice further testified that he did not know of any public carrier who was authorized to transport milk to San Bernardino from this region and that he did not know that respondent possessed no certificate from this Commission for such transportation service. In all shipments by members of California Milk Producers Association the milk is transported by the carrier to the creamery, which pays the Association for it, and the latter then redistributes this sum between the carrier and the producer, so that the carrier deals only with the Association office.

It appears from the record that the question of discrimination in rates is not real and that respondent instead of rebating or refunding or accepting less than the tariff rate between Pomona and Los Angeles, operated without authority between Pomona and San Bernardino. It cannot be found, therefore, that respondent violated the law in charging a greater or less

or different amount for transportation between Pomona and Los Angeles than was fixed by law, but it can be found that from September 1928, to April 1929, he conducted between fixed termini and over a regular route, for compensation, a transportation service between Pomona and San Bernardino without a certificate therefor.

Upon the presentation of the facts respondent was asked why he never brought any of the matters related to the attention of the Railroad Commission, particularly the difficulties with Mr. Brice, and the respondent's reply was: "I considered Mr. Brice had more control over it than the California Railroad Commission."

This attitude of respondent seems to be reflected in many of the matters presented at this investigation, and presents him in a rather contumelious position deserving of the most severe reproof under the circumstances.

Respondent urged several reasons in palliation of his failure to meet state taxes. One reason advanced is that he had disputed the amount assessed against him, intended to litigate it but did not do so, and that the business he conducted was not profitable enough to meet the tax bill. Hence, he had no other option but to let his equipment go. Respondent further testified that he had paid the taxes for 1929 in full, amounting to $7,204.18 and that there were no further accruals of taxes during this year. The rates at which respondent operates include provision for the payment of taxes. Respondent should in the conduct of his business set aside a reserve out of the income of those rates to meet such charges. While the list of vehicles seized by the State or repossessed by the legal owners was not presented at the hearing, it was conceded by respondent that the equipment was old. By his irregular

manoeuvering with Krandall and others respondent came into possession of entirely new equipment. The State of California, however, did not get the tax money due it for 1928, receiving only $2,975.00 through the sale of old equipment, while the tax amounted to $12,570.16.

This proceeding discloses a public servant enjoying certification from this Commission for the conduct of a large transportation business who admittedly recognized, not only by his acts, but by his admissions, an authority in individuals patronizing his service, superior to that of the regulatory body. Such an attitude can in no wise be condoned.

Nor will the Commission be a party to or sanction any violations of its general orders relating to the ownership and leasing of automotive equipment. General Order No. 67, approved in 1923, provides in part that all transportation companies shall either own their equipment (proprietary control being deemed ownership) or lease such equipment for a specified amount on a trip or term basis. Leasing of equipment shall not include the service of a driver or operator. Employment of drivers or operators shall be made on the basis of a contract by which the driver or operator shall bear the relation of an employee to the transportation company. The practice of leasing equipment or employing drivers on the basis of compensation on a percentage basis and dependent on gross receipts per trip or for any period of time is specifically prohibited. True copies of such leases must be filed with the Commission. It does without saying that operators are expected to abide by the terms of said leases.

On October 16, 1929, the Commission issued its order suspending certificates granted to respondent by the following

decisions, Decision 9213 in Application 6955; Decision 9770 in Application 7259; Decision 11022 in Application 8125; Decision 15775 in Application 11240, Decision 18526 in Application 13431; Decision 18906 in Application 14068; together with its order to show cause why the operative rights authorized by said decisions should not be revoked and annulled, and said Joseph K. Hawkins ordered to cease and desist all common carrier operations thereunder.

At the first hearing on the order to show cause on October 22nd, respondent raised certain procedural objections and requested an extension of time within which to answer. This request was granted, and a further hearing held on November 9, 1929. At the final hearing respondent testified that the State of California had brought suit for the 1926-1927 taxes and that the 1929 taxes had been paid. He also testified that operations were now being conducted in accordance with the terms of the five leases on file with the Commission, although he was still operating three pieces of equipment not registered in his name, and as to which no leases were on file.

The Commission is of the opinion and it is hereby found as a fact that respondent has failed to comply with the terms of the several decisions authorizing common carrier operation; that respondent has unlawfully rendered common carrier service between Pomona and San Bernardino; that respondent has failed to comply with the provisions of General Order No. 67; that respondent has failed to abide by the terms of such leases as have been filed with the Commission under the terms of said General Order; that respondent has failed to pay certain taxes due the State of California, and that good cause appears for the revocation of the certificates heretofore granted respondent.

O R D E R

The Commission having instituted an investigation on its own motion into the operations, etc., of Joseph K. Hawkins, hearings having been held on said investigation, the Commission having issued its order suspending certificates and ordered respondent to show cause why any and all operative rights should not be revoked and annulled, hearings having been held on said order to show cause, and the matter now being under submission,

IT IS HEREBY ORDERED that the certificates heretofore granted said Joseph K. Hawkins by Decisions Nos. 9213, 9770, 11022, 15775, 18526 and 18906 be and the same are hereby revoked and annulled, and said Joseph K. Hawkins ordered to cease and desist all common carrier operations thereunder within thirty (30) days from the date hereof.

IT IS HEREBY FURTHER ORDERED that that portion of our order suspending certificates and order to show cause, which, as amended, suspends said certificates from and after the 25th day of November, 1929, be and same is hereby set aside, and

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission serve or cause a certified copy of this opinion and order to be served upon said Joseph K. Hawkins.

For all other purposes the effective date of this opinion and order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 25th day of November, 1929.

Commissioners