

Decision No. 22118

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ROBT. V. HARDIE,  
Complainant,

vs.

CASE NO.2732

A. F. EICKERMAN, doing business  
as EICKERMAN TRANSFER SYSTEM,  
A. B. MOCKENHAUPT and  
L. I. MOCKENHAUPT, doing business  
as B. & L. TRUCK & TRANSFER COMPANY,

Defendants.

**ORIGINAL**

O. C. EMERY and PHIL JACOBSEN, for Complainant.

A. F. Eickerman, in propria persona, Defendant.

Rosecrantz & Emme, by Otto J. Emme, for A. B.  
Mockenhaupt and L. I. Mockenhaupt, Defendants.

BY THE COMMISSION -

O P I N I O N

Robert V. Hardie, operating freight truck service as a common carrier between Los Angeles and points in the Owens Valley, under the authority conferred by this Commission's Decision No.21195 on Application No.14544,by his amended complaint complains of defendants A. F. Eickerman, doing business as Eickerman Transfer System, and A. B. Mockenhaupt and L. I. Mockenhaupt, doing business as B. & L. Truck and Transfer Company, alleging that said defendants, and each of them, prior to June 10, 1929, have been and now are engaged in and are operating in the business of transporting property for compensation on the public highways of this state, and over a regular route, between the city of Los Angeles and Owens Valley, north of Mojave, to and including Bishop and intermediate points without first having secured a certificate of public convenience and necessity in

accordance with the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto; and that the operations of said defendants, and each of them are, and will continue to be, in direct competition with the operations of the complainant and have resulted and will continue to result in irreparable injury and damage to the complainant.

Complainant prays for an order of this Commission directing defendants, and each of them, to forthwith cease operating and/or engaging in the business of transporting property for compensation in auto trucks on said public highway.

Answers were duly filed by defendants denying the material allegations of the complaint.

Public hearings on this complaint were conducted by Examiner Handford at Los Angeles, the matter was duly submitted and is now ready for decision.

We will first consider the evidence and exhibits pertaining to the complaint against defendant, A. F. Eickerman.

Witnesses for complainant testified that shipments from Los Angeles to points in the Owens Valley had been observed on the loading platform of A.F.Eickerman at 1479 East Sixth Street, Los Angeles; that trucks of this defendant had been observed carrying shipments to Owens Valley points; and trucks had been observed making deliveries at various destinations in Owens Valley.

R. A. Hawkes, employed as shipping clerk for M. A. Newmark Company, wholesale grocers of Los Angeles, testified his employees had 12 to 15 customers in the Owens Valley; and that he had used the Eickerman Truck Service since June, 1929, making shipments weekly. Specific shipments identified by this witness from shipping receipts were as follows:

Date	Shipper	Consignee	Destination	Weight
June 5, 1929.	M.A.Newmark	Lee's Cash Grocery	Lone Pine	138 $\frac{1}{2}$
June 5, 1929.	M.A.Newmark	"	" "	1233 $\frac{1}{2}$

Date	Shipper	Consignee	Destination	Weight
June 20, 1929.	M.A. Newmark Co.	Morris Store	Lone Pine	1519½

I. B. Joseph, residing at Big Pine and operating a general merchandise store at that point, testified that he had used the service of defendant Eickerman and that he paid the transportation charges on such shipments. Seventy three freight bills were presented as an exhibit (Exhibit 3), showing shipments transported during the months of June and July, 1929, from 37 different consignors in Los Angeles, all shipments destined to the witness at Lone Pine, and transported by the trucks of defendant Eickerman, the weight of the shipments aggregating 60641 pounds.

A witness, employed as shipping clerk for the California Hardware Company of Los Angeles, testified that he made shipments by the Eickerman Truck Line to points in Owens Valley. An exhibit filed herein (Exhibit No.4), shows 9 shipments to have been forwarded from the California Hardware Company from July 1st to 19, 1929, both dates inclusive, by the Eickerman Truck to consignees in the Owens Valley at Big Pine, Lone Pine, Independence and Bishop, the aggregate total weight of these shipments being 1481 pounds.

The assistant traffic manager of the Western Wholesale Drug Company testified that his company served 5 or 6 customers in the Owens Valley and had made shipments via the trucks of defendant Eickerman. Shipping memoranda filed as an exhibit (Exhibit No.6), show 13 shipments to have been made during the period June 25th to September 4, 1929, both dates inclusive, to consignees at Big Pine and Bishop via the trucks of defendant Eickerman.

Geo. L. Wood, residing at Bishop, and employed as manager for Smith's Auto Line, testified that he knew of Eickerman transporting shipments to Owens Valley points, some of which were delivered to his company for transportation to points beyond Bishop and in Mono County.

W. J. Osborne, employed as shipping clerk for Haas, Baruch & Co., wholesale grocers of Los Angeles, testified that his company made shipments to 15 to 17 customers in Owens Valley by motor truck. Shipments have been made by the trucks of defendant Eickerman, pick-up being made at warehouse door of witness company. An exhibit filed herein (Exhibit 1), shows a record of 173 shipments forwarded by Haas, Baruch & Co. via the trucks of defendant Eickerman during the period June 2nd to September 4, 1929, both dates inclusive, to various consignees in Owens Valley, shipments totaling a weight of 112,525 pounds. These shipments were destined to Independence, Olancho, Bishop, Lake Mary, Mammoth Lakes, Lone Pine, Big Pine, Laws, Keeler, Manzanar, Little Lake and Keough Hot Springs.

A. S. Grocox, a motor vehicle inspector for the City of Los Angeles, testified regarding a check of the operations of the Eickerman operations as made on the evening of August 8, 1929. The result of this check as contained in a letter addressed to Capt. Gunn, Chief Motor Vehicle Inspector of the City of Los Angeles, under date of August 9, 1929, (Exhibit No. 7), shows 19 shipments moving on a truck from Los Angeles to Olancho, Lone Pine, Independence, Manzanar, Big Pine, Bishop, Keough's and Silver Lake, the aggregate weight of shipments being 12,413 pounds.

S. E. Locke, residing at Lone Pine and employed as Owens Valley representative for the High Sierra Motor Freight (operated by complainant), testified that he had observed the trucks of defendant Eickerman operating in the Owens Valley and delivering shipments. On August 20, 1929, this witness followed one of the

trucks of defendant Eickerman and observed the delivery of 14 shipments from Los Angeles to consignees in Lone Pine, Independence, Big Pine and Bishop.

H. F. Bassett, employed by the Board of Public Utilities and Transportation of the City of Los Angeles, testified that he investigated the operations of defendant Eickerman on August 2, 1929, having observed a truck of said defendant loading at the platform on East Sixth St., Los Angeles. The result of the investigation was incorporated in a report to Capt. James Gunn, Chief Motor Vehicle Inspector of the Board of Public Utilities and Transportation of the City of Los Angeles, a copy of said report being introduced in evidence (Exhibit No.9), and showing 34 shipments from Los Angeles consignors destined to Laws, Bishop, Lake Mary, Mammoth, Lone Pine, Independence, Big Pine, Cartego, Keough Hot Springs and Bartlett Station, the total weight of said shipments being 11280 pounds. On August 19, 1929, this witness stopped a truck of defendant Eickerman just north of the city limits of San Fernando and check over the bills of lading covering the contents of the truck. A report of this investigation was made under date August 20, 1929, to Capt. Jas. Gunn, Chief, Motor Vehicle Inspector for the Board of Public Utilities and Transportation of the City of Los Angeles, a copy of said report being filed as an exhibit (Exhibit No.11) and showing 14 shipments from Los Angeles consignors to consignees at Bishop, Big Pine, Independence and Lone Pine, the aggregate weight of shipments being 4830 pounds. On August 7, 1929, this witness investigated the operation of a truck of defendant Eickerman, observing the loading of the truck at the platform of the Eickerman Transportation Company in Los Angeles, stopping the truck at the time of its departure and checking the waybills

covering its loading. A report of this investigation was forwarded to Capt. Jas. Gunn of the Board of Public Utilities and Transportation of the City of Los Angeles under date August 8, 1929, a copy of said report being filed as an exhibit (Exhibit No.10) and showing two shipments from one consignor in Los Angeles to consignees at Lone Pine and Laws, the aggregate weight of said shipments being 13,289 pounds.

W. J. Mc Quinn, employed as bookkeeper for Shepard Crook, Inc., of Los Angeles, testified that on July 26, 1929, his company shipped two sprockets to C. E. Wilson at Crestfield Camp, shipment moving via the truck of defendant Eickerman. The shipment was forwarded "collect on delivery", the amount of the collection to be \$101.50, for which returns had not been received at the date of hearing.

Ed Lips, employed as shipping clerk by W. P. Fuller & Co., of Los Angeles, testified that he had used the facilities of defendant Eickerman for transportation to Owens Valley points. Memorandum shipping bills filed as an exhibit (Exhibit No.14), show two shipments received by Eickerman from W. P. Fuller & Co. on August 1, 1929, destined to consignees at Bishop.

Defendant A.F.Eickerman presented no evidence at the hearings, nor did he participate in the cross examination of witnesses called by complainant.

The record herein clearly establishes the fact that A. F. Eickerman, defendant herein, has been and now is operating an automobile truck service as a common carrier and for compensation, over the public highways and over regular routes between the City of Los Angeles on the one hand and points in the Owens Valley on the other hand, said Owens Valley points including Bishop, Laws, Independence, Lone Pine, Big Pine, Manzanar, Olancho, Cartego, Keough's Hot Springs and to points in Mono County beyond Bishop, transfer being made at Bishop to other

carriers serving such destinations. This operation has been conducted without the authority of a certificate of public convenience and necessity having been granted by this Commission as required by the statutory enactment (Chapter 213, Statutes of 1917, and effective amendments thereto).

We will now consider the evidence and exhibits presented in the complaint against A. R. Mockenhaupt and L. I. Mockenhaupt, doing business as B. & L. Truck & Transfer Company.

Robert V. Hardie, complainant herein, testified that he had frequently observed trucks of the B. & L. Transfer loading shipments for Owens Valley points at the depot maintained by the defendants Mockenhaupt, said depot being located at 517 East Avenue 21, at the corner of Darwin Avenue and Avenue 21 in the City of Los Angeles, also that he had observed trucks of these defendants enroute to and from points in the Owens Valley transporting shipments, and at points in the Owens Valley where deliveries were being made.

W. J. Osborne, employed as shipping clerk for Haas, Baruch & Co., wholesale grocers of Los Angeles, testified that his company had used the facilities of the B. & L. Truck Line to points in the Owens Valley, shipments having been infrequent during the past year.

C. H. Sunbeem, employed as a shipping clerk for California Hardware Company of Los Angeles, testified that his company forwarded shipments by truck to its customers located at points in the Owens Valley. An exhibit tabulating freight bills covering shipments forwarded by California Hardware Company via B. & L. Truck Line in the month of July, 1929, (Exhibit No.5), shows 9 shipments from Los Angeles to consignees at Big Pine, Lone Pine, Independence and Bishop, the total weight of such shipments being 1481 pounds. This witness has been advised by representatives of the B. & L. Truck that no further shipments would be accepted from Owens Valley points.

I. B. Joseph, a general merchant at Big Pine, testified that he had received shipments from Los Angeles over the B. & L. Truck line. An exhibit consisting of 12 duplicate shipping receipts signed by drivers of the B. & L. Truck & Transfer during the months of June, July and August, 1929 (Exhibit No.2), shows shipments from Los Angeles to this witness at Big Pine, the total weight of such shipments being 14,754 pounds.

George L. Wood, residing at Bishop, and employed as manager for the Smith Auto Truck Line, testified that he knew of the operations of the B. & L. Truck Line and had received shipments from such carrier at Bishop destined to points served by the line of his employers, such shipments having been received as late as the month of July, 1929. Witness has observed the trucks of defendants making store door deliveries in Bishop, Safeway Stores being one of such delivery points.

A. S. Crocox, employed as a motor vehicle inspector for the City of Los Angeles, testified that on August 8, 1929, he investigated the operation of a truck handling shipments for the B. & L. Truck Line. The report of his investigation was forwarded under date of August 9, 1929, to Capt. James Gunn, Chief Motor Vehicle Inspector of the Board of Public Utilities and Transportation of the City of Los Angeles. A copy of this report was presented as an exhibit (Exhibit No.8) and shows 23 shipments from Los Angeles consignors to consignees at Olancha, Lone Pine, Independence, Fish Springs and Bishop, the total weight of shipments aggregating 3955 pounds.

S. E. Locke, residing at Lone Pine, and employed as district representative for the truck line of complainant, testified that he had frequently observed the trucks of the B. & L. Truck line operating in the Owens Valley, had followed trucks and had observed them making deliveries to stores and consignees in different communities, particularly having noticed deliveries to Safeway Stores since July 23, 1929.



G. C. Myers, employed by Union Hardware & Metal Co. of Los Angeles, testified that his company had made shipments to points in the Owens Valley by the B. & L. Truck line. Shipping receipts presented as an exhibit (Exhibit 12) show three shipments from Los Angeles during the months of July and August, 1929, to consignees at Lone Pine, Big Pine and Bishop, the total weight of said shipments aggregating 331 pounds.

Ed Lips, employed as shipping clerk for W. P. Fuller & Co., of Los Angeles, testified that his company used the service of B. & L. Truck line for shipments to its Owens Valley branch. An exhibit (Exhibit 13) consisting of 3 shipping receipts signed in the month of August, 1929, shows shipments handled to consignees at Lone Pine and Bishop via the B. & L. trucks.

L. I. Mockenhaupt, one of the defendants, testified that he was one of the partners operating under the fictitious name of B. & L. Truck & Transfer; that the partnership owned fourteen trucks which were registered in the name of B. & L. Truck & Transfer; that at times additional trucks were leased in connection with the operation of the partnership business, which was that of general trucking. The business of the partnership covers operation of trucks to Pomona, San Bernardino, Santa Barbara, San Diego and other points. The partnership does hauling for the Los Angeles Can Company to any point desired and also for the Southern California Telephone Company in a similar manner. The partnership has made deliveries to points in the Owens Valley and is now making deliveries twice or three times per week of shipments consigned to the Safeway Stores at Lone Pine, Big Pine, Mojave, Lancaster, Palmdale and Bishop.

A. B. Mockenhaupt, one of the defendants, testified that the B. & L. Truck line operated regularly between Los Angeles and points in the Owens Valley until the latter part of July, 1929, and ceased such regular operation following receipt of

communications from the attorney for the complainants, said communications advising as to the date of commencement of complainants authorized service under authority granted by a certificate of public convenience and necessity. (Decision No. 21195 on Application No. 14544). This witness testifies that no solicitation for hauling from Los Angeles to Owens Valley points has been made for the period of ninety days preceding the hearing, although states that he has had inquiries regarding hauling upon which he has quoted rates or prices. Witness states that the partnership is now handling only straight loads, or shipments in truckload lots from one consignor to one consignee, to points in the Owens Valley, and that such condition had existed for some time past, or since complainant established his regular service under the certificate authority of this Commission. In explanation of the character of hauling alleged to be conducted at the present time, witness presented a copy of a contract with Safeway Stores, Incorporated, of Los Angeles, accepted under date July 31, 1929, and covering transportation of merchandise from Safeway Stores, Incorporated, at Los Angeles to destinations at Palmdale, Lancaster, Tehachapi, Randsburg, Lone Pine, Big Pine and Bishop. There was also presented in evidence by this witness 8 letters under date June 20, 1929, offering rates between Los Angeles and Bishop and "way points" said letters, respectively, bearing the acceptance of Bishop Hardware & Supply Co., J.C. Fiege, H. V. Walton, Pete Staffer, Lone Pine Lumber & Supply Co., Leichman & Leete, proprietors, Inyo Bottling Works and Bishop Ice Co., John C. Morris, and one illegible signature.

H. E. Northridge, office manager for E. L. Thompson Co., of Los Angeles, distributors of butter, cheese and eggs, testified as to the receipt by the truck line of the B. & L. Truck & Transfer of a consignment of butter weighing 1349 pounds, same originating at the Inyo Co-operative Creamery at Bishop and being transported to Los Angeles, shipment having moved under a

waybill dated October 1, 1929.

H. A. O'Reilly, for two years manager at Los Angeles for B. & L. Truck line, testified that he was told by his employers to cease acceptance of shipments from Los Angeles for Owens Valley points after July 29, 1929, and that in future no more "mixed loads" were to be accepted. Witness, upon cross examination admitted that during the week preceding the date of his testimony a consignment of meat was hauled from the Mt. Whitney Packing Company to the Firman Packing Company at Los Angeles, and that the transportation of such shipments, varying in weight from 4000 to 5000 pounds, was customary, the shipments being delivered in Los Angeles to such consignees as were designated by the Firman Packing Company. Witness also admits knowledge of the transportation of meat and butter, consigned to different consignees and originating with different shippers from points in the Owens Valley to Los Angeles.

A careful review of the evidence and exhibits relative to the complaint against defendants A. R. Mockenhaupt and L. I. Mockenhaupt justifies the conclusion that these defendants, operating under the fictitious name of B. & L. Truck & Transfer Company, are now, and have been, operating as common carriers, for compensation, in the operation of automobile trucks in the transportation of property between Los Angeles and Bishop and intermediate points in the Owens Valley, such operation having been conducted over the highway over regular routes and between the fixed termini of Los Angeles and Bishop, serving also the intermediate points of Olancho, Lone Pine, Big Pine, Independence and Fish Springs.

We find nothing in the contentions of complainants regarding the alleged cessation of operation as regards the transportation of individual shipments, after having received notice from counsel for complainant that the authorized operation of complainants certificated service would begin on July 22, 1929, and the

instructions given by defendants Mockenhaupt to their employees that no shipments, other than "straight loads" would be accepted and transported after such date, such operation as has been given by said defendants having been at all times in violation of the statutory law. The alleged contracts herein presented in evidence do not sustain the contentions of defendants, eight of such documents being nothing more than rate quotations and the remaining one accepted by the Safeway Stores, Incorporated, not being a contract to the extent that operation thereunder relieves defendants from the jurisdiction of this Commission as regards compliance with the provisions of the statutory law.

We therefore conclude and hereby find as a fact that the operation of automobile trucks by defendants A. R. Mockenhaupt and L. I. Mockenhaupt, co-partners operating under the fictitious name and style of B. & L. Truck & Transfer Company, has been, and now is, operation of automobile trucks for the transportation of property as a common carrier, for compensation, over the highways of this state, over regular routes, and between the fixed termini of Los Angeles and Bishop and the intermediate termini of Olancha, Lone Pine, Big Pine, Independence and Fish Springs; and that such operation has been and now is being conducted in violation of the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto.

#### O R D E R

Public hearings having been held on the foregoing complaint, the matter having been duly submitted, the Commission being now fully advised and basing its order on the conclusions and findings of fact as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED that defendant A. F. Eickerman be and he hereby is ordered to immediately cease and desist from the operation of an automobile truck line as a common carrier of

property, for compensation, over the public highways of this state and over a regular route between the City of Los Angeles on the one hand and points in the Owens Valley on the other hand, said Owens Valley points including Bishop, Laws, Independence, Lone Pine, Big Pine, Manzanar, Clancha, Cartego, Keough's Hot Springs and to points in Mono County beyond Bishop, transfer being at Bishop to other carriers serving such Mono County destinations, and not to resume such operation unless and until a certificate of public convenience and necessity will have been secured from the Railroad Commission after proper application has been made therefor in accordance with the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto.

IT IS HEREBY FURTHER ORDERED that defendants A. R. Mockenhaupt and L. I. Mockenhaupt, co-partners doing business under the fictitious name and style of B. & L. Truck & Transfer Company, be, and they are hereby ordered to immediately cease and desist from the operation of an automobile truck line as a common carrier of property, for compensation, over the public highways of this state and over a regular route between the City of Los Angeles on the one hand and points in the Owens Valley on the other hand, said Owens Valley points including Olancha, Lone Pine, Big Pine, Independence and Fish Springs, and not to resume such operation unless and until a certificate of public convenience and necessity will have been secured from the Railroad Commission after proper application has been made therefor in accordance with the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be and he hereby is directed to forward a certified copy of this order, by registered mail, to the Board of Public Utilities and Transportation of the City of Los Angeles and to the District Attorneys of the Counties of Los Angeles, Kern and Inyo.

