

Decision No. 22975

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ROBERT V. HARDIE, Complainant,

vs.

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

Defendants.

Case No. 2732

Owen C. Emery, for Complainant.  
Richard T. Eddy, for Defendants.

CARR, Commissioner -

OPINION and ORDER  
ON  
ORDER TO SHOW CAUSE

This proceeding is on orders by the Railroad Commission directing A. B. Mockenhaupt and L. I. Mockenhaupt, respectively, to appear before it and show cause why they should not be punished for contempt for their refusal, failure or omission to obey the order of the Railroad Commission, in Decision No. 22118, dated February 11, 1930, and issued in Case No. 2732, which order reads in part as follows:

"IT IS HEREBY FURTHER ORDERED that defendants A. B. 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 Olancho, 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."

The orders to show cause were issued on affidavits filed with the Railroad Commission by Robert V. Hardie, complainant in Case No. 2732, who in said affidavits declared that notwithstanding said cease and desist order contained in Decision No. 22118, A. B. and L. I. Mockenhaupt were conducting the same operations as were carried on by them prior to the issuance of said order, and that they had been continuously since the making of said order transporting for compensation groceries, meat and other property from various consignors in Los Angeles to various consignees in Owens Valley, in contempt of the order of the Railroad Commission.

A public hearing was held at Los Angeles, testimony heard and an order of submission made.

It appears from the evidence that respondents are, under private arrangement, transporting property for the Safeway Stores from Vernon, a point not covered by the Commission's cease and desist order, to Bishop. They had also, counsel for respondents frankly stated, transported to Bishop property delivered at the Vernon store by the Gudahy Packing Company of Los Angeles. The Gudahy packages were delivered at the Bishop Safeway Store and the manager at that store saw to it that the packages were delivered to one Marcus, a butcher. On advice of counsel for the Mockenhaupts the practice was discontinued. It further appeared that subsequently to the date of the order the respondent transported four truck loads of property to the Owens Valley, this being done it was claimed under private contract.

I am not satisfied an adjudication of contempt is justified by the record. To support such an adjudication the evidence of violation of the Commission's order should be clear and convincing. It is not clear that the Commission's order has been violated by the operations disclosed by the evidence.

I therefore recommend that the order to show cause be dismissed.

ORDER

A public hearing having been held on the orders to show cause issued in the above entitled proceeding, evidence heard and the matter taken under submission,

IT IS HEREBY ORDERED that the order of this Commission directing A. B. and L. I. Mockenhaupt, doing business as the B & L Truck & Transfer Company, to appear before it and show cause why they should not be punished for contempt of the Commission's order issued in Decision No. 22118, be and the same is hereby dismissed.

The effective date of this order shall be twenty days from the date hereof.

The above opinion and order are hereby declared to be the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17<sup>th</sup> day of October, 1950.

C. C. Seavey  
Ernest W. Smith  
Leon A. Wheeler  
Thos. S. Lewis  
W. J. Lee  
COMMISSIONERS.