

Decision No. 28327

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MOTOR FREIGHT TERMINAL COMPANY, a corporation,
and SAN JOAQUIN VALLEY TRANSPORTATION COMPANY,
a corporation,

Complainants,

vs.

Case No. 2881

C. S. TABER; C. R. TABER; W. J. TABER;
C. S. TABER, C. R. TABER and W. J. TABER,
as co-partners doing business under the
firm name and style of TABER BROS.;
ONE DOE, TWO DOE, THREE DOE, FOUR DOE and
FIVE DOE.

Defendants.

O'Melveny, Tuller & Myers, by Pierce Works and
B. E. Alport, for Complainants.

Farnsworth, Burke & Maddox, by James M. Burke,
for C. S. Taber; C. R. Taber; W. J. Taber;
C. S. Taber, C.R. Taber and W. J. Taber, as
co-partners doing business under the firm
name and style of Taber Bros., Defendants.

W. S. Johnson, for Southern Pacific Company, Intervenor.

Edw. Stern, for Railway Express Agency, Inc., Intervenor.

W. F. Brooks, for The Atchison, Topeka & Santa Fe Railway
Company, Intervenor.

BY THE COMMISSION -

OPINION

Motor Freight Terminal Company, a corporation, and San Joaquin Valley Transportation Company, a corporation, by their amended complaint herein, have filed complaint against C. S. Taber; C.R. Taber; W. J. Taber; C. S. Taber, C.R. Taber and W. J. Taber, as co-partners doing business under the firm name and style of Taber Bros.; One Doe, Two Doe, Three Doe, Four Doe and Five Doe, alleging that said defendants and each of them do not have a certificate of public convenience and necessity from the Railroad Commission entitling said defendants or any of them to operate as a common

carrier, or carriers, and/or as a transportation company as said term is defined by Chapter 213, California Statutes of 1917, and effective amendments; that notwithstanding the absence of such authorization from the Railroad Commission said defendants and each of them are, and for a long time past have been, maintaining and regularly owning, controlling, operating and/or managing motor trucks in the business of transportation of property as a common carrier or as common carriers of property for compensation over the public highways of and in the State of California between fixed termini and over regular routes, to wit: the transportation of freight and express regularly over said public highways between Los Angeles, Porterville, Fresno and intermediate points in the San Joaquin Valley, each and all of which said operations of said defendants and each of them are unauthorized and illegal and injurious to the transportation business conducted by complainants and each of them, and contrary to the provisions of the statutory law.

Complainants and each of them pray for an order of this Commission requiring said defendants, and each of them, to cease and desist from and to discontinue such illegal and unauthorized operation.

Defendant C. S. Taber duly filed his answer to the original complaint, said answer being a general denial of the material allegations of the complaint and alleging that C. S. Taber, C.R. Taber and W. J. Taber are and for a long time have been, co-partners doing business under the firm name and style of Taber Bros., and as such co-partners have been owning, managing, controlling and operating auto trucks on the public highways of the State of California for the transportation of property as private contract carriers and not otherwise, and not between fixed termini, not over regular routes and not regularly, but only as and when, and over such routes and between such termini as they are required to transport such property by such individuals, firms or corporations

as contract with them to transport such property .

A public hearing on this complaint was conducted by Examiner Handford at Porterville; at which time evidence was received, later briefs were filed and the matter is now duly submitted for decision.

Frank O. Sheldon, a dealer in builders' supplies and a building contractor, residing at Porterville, testified that he had received shipments via the Taber Bros. truck. Witness had performed work for C. S. Taber and the hauling was done to offset the amount due. Hauling was performed from Los Angeles to Porterville at a rate of 50 cents per cwt. and hauling was also performed from Richmond to Porterville at the same rate. Witness recalls three or four loads which were transported during the past year. Witness has been refused the hauling of small consignments but has never been refused when the shipment represented a truck load lot.

Fred S. Price, of the Price Hardware and Furniture Company of Porterville, testified that he began his hauling arrangements with C. S. Taber in 1929, Taber having hauled for the witness to work out a furniture bill. Hauling had been done from Los Angeles to Porterville and from San Francisco to Porterville. Less than truck load lots have been transported and witness has always done business with C.S. Taber, both as to the purchase of furniture and regarding transportation.

J. C. Doyle of the Doyle Tractor and Equipment Company of Porterville, testified that C. S. Taber first hauled for his company some years ago, hauling tractors, farm implements and similar commodities. Witness does most of his business during the months of March and April of each year, shipping in both truckload and less than truckload quantities. Bills for hauling are now made out in the name of Taber Bros. and the shipments received from Los Angeles are forwarded by the Killifer Mfg. Co.

W. E. Roby, manager of the Porterville Poultry Association, an organization of some 200 members, testified that his association

had done business with Taber Bros. for some years in the transportation of eggs from Porterville to Los Angeles and transportation of returning empty egg cases. It is the custom each year to request draymen for bids covering the transportation of eggs and returned cases and to award a contract for the hauling of such commodities for the ensuing year. The contracts for the year ending March 10, 1930, and for the subsequent year were obtained by Taber Bros. and covers transportation between Los Angeles and Porterville and also between Porterville and San Francisco. Defendant C. S. Taber at one time was indebted to the Association and transported some commodities to offset his indebtedness. Defendant C. S. Taber or Taber Bros. have never refused to haul goods, in any quantity offered, which were specified in the contracts referred to. All loads hauled, excepting eggs and returning empty cases, were a matter of negotiation in each instance. Witness has never seen any schedule of rates nor time schedule showing rates and service rendered by C. S. Taber or Taber Bros. Quite a little hauling was done between Porterville and Fresno during the years 1928 and 1929, consisting of eggs, returning empty egg cases and poultry, products of non-members being handled as well as business for the association and its regular members.

Lawrence Jones, Manager of the Tulare Co-operative Poultry Association, testified as to knowledge of one or two small shipments, not covered by contract. Taber Bros. submitted a bid for the hauling of eggs and returning empty cases for the current year, but such contract was not acceptable to the association and was not executed by it. The two loads, which were part loads, were the only ones hauled by C.S. Taber or Taber Bros.

Miss Pearl Bell, agent for Fruit Growers Supply Company at Porterville, testified that such company used the service of C.S. Taber or Taber Bros. in the hauling of paper orange wraps, such hauls being made whenever witness would advise that such were to be made, from three to five shipments per month being handled, and

witness is of the opinion that in each case they were trackload lots. Bids are requested each year prior to the commencement of the orange season. It appears that defendant C. S. Taber or Taber Bros. deliver shipments not only to Porterville but also to the orange packing houses where the commodities are to be used. It also appears that C.S. Taber or Taber Bros. transport other shipments from Los Angeles for the Fruit Growers Supply Company, arrangements for such transportation being made by and payments therefor being made by the Los Angeles office of said company. A form of contract on the letterhead of Taber Bros. Truck Company was introduced in evidence (Exhibit 4) between Fruit Growers Supply Co. and Taber Bros. Truck Co., bearing date of January 17, 1930, as being the contract existing for the transportation of shipments between Los Angeles and Porterville. The body of this contract, however, shows that C. S. Taber is the party of the second part, although the so-called contract is executed by Taber Bros. Truck Co.

Anthony Booras, a butcher and a resident of Porterville, testified that he received a shipment each week from Bakersfield, consisting of meats and packinghouse products from Armour & Co. As all freight received by this witness is prepaid, witness had no knowledge as to the existence of any contract. Similar testimony was given by Leo Sunderland, residing at Porterville, and employed by the Peoples Market Co. at that point. Witness receives shipments consigned by Armour & Co. of Bakersfield, but as the shipments are prepaid by Armour & Co. he has no knowledge of any contract. No shipments are forwarded by the Peoples Market Co. by the trucks of defendants.

H. R. Reynolds, a police lieutenant of Los Angeles, employed as a motor vehicle inspector for the City of Los Angeles, testified regarding the checking of trucks operated by Taber Bros. or C.S. Taber in the City of Los Angeles. Checks were made of equipment owned by Taber Bros. by this witness on November 1, 1928, March 24, June 10, 14, 28; November 25, 1929, and June 12, 1930. On several

of these checks mixed loads were disclosed where more than one consignor appeared as a shipper and more than one consignee appeared as the consignee. Shipments were made from Pomona and Los Angeles to Porterville, Sanger, Dinuba and Bakersfield.

Amos S. Meininger, employed as inspector for the Railroad Commission, testified that he made an investigation on June 12, 1930, at which time a truck belonging to E. W. Susterich of Porterville was operated by a driver for Taber Bros., the Taber Bros. truck having broken down and being laid up in the repair shop and the truck being hired to make the particular trip. This truck contained shipments from two different consignors in Los Angeles destined to Bakersfield and Porterville.

H. E. Northway, employed as an investigator for Pacific Freight Lines, testified that on February 8, 1930, he rode one of the Taber Bros. trucks, enroute from San Pedro to Los Angeles. This truck contained shipments from three consignors at Los Angeles destined to Porterville and Bakersfield.

C. S. Taber, one of the defendants herein, testified that he resided in Porterville and was engaged in the trucking business. Witness owns two trucks personally and three others are owned by his boys. Witness goes to Los Angeles whenever directed by his patrons and has done so for some time, hauling entirely for shippers or consignees with whom he has contracts. Eggs are hauled from Porterville to Los Angeles and return hauls are made for parties with whom contracts exist.

We have carefully considered the record in this proceeding. It is the contention of defendants C. S. Taber and Taber Bros. that their hauling of commodities is not a matter in which this Commission has jurisdiction, it being entirely under contract and that no commodities have been hauled unless by agreement existing with either the shipper or consignee. The contention of defendants appears to be correct as regards the hauling of eggs from the Porterville Poultry Association at Porterville to Los Angeles,

but the alleged contracts for the hauling of merchandise and commodities from Los Angeles to Porterville, Bakersfield, Dinuba and points not within the issues of this complaint do not appear to be contracts that would exempt defendants from the provisions of the statutory law (Chapter 213, Laws of 1917, and effective amendments) as relieving defendants from the necessity of securing a certificate of public convenience and necessity from this Commission before commencing operation. The alleged contracts are little more than formal rate quotations, there being no obligation on the part of the shippers executing such alleged contract to furnish any shipments whatsoever during the term of the alleged contract.

Exhibit No.4, as introduced in this matter, is an alleged contract signed by Taber Bros. Truck Co. as party of the second part, and Fruit Growers Supply Co. as party of the first part. The alleged contract "agrees to haul all merchandise which the party of the first part may find it necessary to ship via the trucks of the party of the second part from Los Angeles to Porterville" for the sum of forty cents per hundred weight of merchandise so hauled. No obligation exists under any contract referred to in these proceedings requiring contracting shippers or receivers of freight to forward any shipments over the line of the transportation company.

Defendants have not refused to haul any commodity if the volume of the shipment and the rate of compensation be satisfactory but the volume of tonnage hauled for selected shippers or receivers appears to be the main consideration on the part of defendants. The hauling of mixed loads for a variety of shippers or receivers of freight as a back haul from Los Angeles to Porterville, Bakersfield and other points, the initial haul having been eggs under contract from Porterville to Los Angeles, appears to place defendants in the status of a common carrier, limited only as to the commodities forwarded or received by selected shippers or receivers, the selection of whom rests entirely with defendants

herein. For these reasons it appears that the hauling of merchandise, other than eggs for the Porterville Poultry Association from Porterville to Los Angeles and the return of empty egg cases, is that of a common carrier over regular routes between the termini of Los Angeles and Porterville and intermediate points. While the business is apparently transacted under the name of Taber Bros., the equipment used is owned by C.S. Taber and others of the Taber family. No leasing of this equipment to the co-partnership appears from the evidence in this proceeding nor any evidence of the existence of a co-partnership or corporation under the name of Taber Bros. Truck Company.

After full consideration of the record herein, we are of the opinion and hereby find as a fact that C. S. Taber, C.R. Taber and W. J. Taber, as individuals, and C. S. Taber, C.R. Taber and W. J. Taber, as a co-partnership or company, operating under the name and style of Taber Bros. or Taber Bros. Truck Company, are regularly operating an auto truck service, for compensation, over the highways of this state over regular routes between Los Angeles and Porterville and intermediate points without first having secured from this Commission a certificate of public convenience and necessity as required by the statutory law, (Chapter 213, Statutes of 1917 and effective amendments).

ORDER

A public hearing having been held on the above entitled proceeding, the matter having been duly submitted upon the filing of briefs by counsel, the Commission being now fully advised and basing its order on the finding of fact as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED that C.S. Taber, C.R. Taber and W.J. Taber, as individuals, and C.S. Taber, C.R. Taber and W.J. Taber, as a co-partnership or company, operating under the name and style of Taber Bros. or Taber Bros. Truck Company, immediately

cease and desist from the operation of an automobile truck service as a common carrier of property, for compensation, over the public highways of this state, and particularly between the fixed termini of Los Angeles and Porterville and points intermediate thereto, and not resume said operation unless and until said C.S. Taber, C.R. Taber, and W. J. Taber, as individuals, or C.S. Taber, C.R. Taber and W. J. Taber, as a co-partnership or company, operating under the name and style of Taber Bros., or Taber Bros. Truck Company, shall have obtained a certificate of public convenience and necessity from the Railroad Commission 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 is hereby directed to forward a certified copy of this order, by registered mail, to the District Attorneys of the Counties of Los Angeles, Kern, Kings and Tulare.

IT IS HEREBY FURTHER ORDERED that this complaint, insofar as it refers to defendants, One Doe, Two Doe, Three Doe, Four Doe and Five Doe be, and the same is hereby dismissed.

The effective date of this order is hereby fixed as twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 26th day of

January, 1931.

C. Henry
Leon Whitell

W. J. Taber
M. B. Harris

Frederic G. Stewart
COMMISSIONERS.