

Decision No. 23436

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MOTOR SERVICE EXPRESS,  
Complainant,

vs.

L. D. BARNES,  
Defendant.

Case No. 2947

**ORIGINAL**

H. J. Bischoff, for Complainant,

A. Heber Winder and Hugh Gordon, for Defendant.

BY THE COMMISSION -

OPINION

Motor Service Express, a corporation, complains of L. D. Barnes and alleges that said Barnes is engaged in owning, controlling, operating and managing auto trucks used in the transportation of freight as a common carrier for compensation over the public highways, between Los Angeles and Los Angeles harbor, on the one hand, and Riverside, Highgrove and Arlington, on the other hand, in competition with the complainant, without having obtained from the Railroad Commission a certificate of public convenience and necessity as required by the statutory law, and that the operations so conducted by said defendant are in violation of Chapter 213, Statutes of 1917, and effective amendments thereto. Complainant further alleges that said defendant has conducted, and is now conducting a regular service between the termini hereinabove mentioned, and has deprived, and is now depriving the complainant of a substantial amount of its business of transporting property between the points aforesaid; that it is extremely difficult to ascertain the amount of damages caused by defendant to complainant by reason of said unlawful acts; that compensation for

damages does not afford adequate relief, and that if said defendant is allowed to continue his unlawful acts as aforesaid, great and irreparable injury will be done to complainant. Complainant prays for an order of this Commission directing defendant to cease and desist from the violation of the statutory law as complained of, and directing said defendant to forthwith discontinue transporting freight as a common carrier between the points heretofore named except in accordance with certificates of public convenience and necessity as heretofore granted by the Railroad Commission.

Defendant duly filed his answer herein, said answer being a general denial of the material allegations of the complaint.

A public hearing on the issues joined by this complaint was conducted by Examiner Handford at Riverside, the matter was duly submitted following the filing of briefs and is now ready for decision.

L. D. Barnes, defendant herein, testified that he was operating as a common carrier, on call, in the transportation of paper wraps only, in quantities of not less than five tons, from Los Angeles to Corona and the territory surrounding Riverside, such transportation being conducted under certificate originally granted to W. O. Masters and transferred to witness by authorization of this Commission. Witness also transports oranges, loose and packed, to Los Angeles and to Los Angeles harbor points, also oranges from groves in the Riverside district to the packing houses in and around Riverside. This transportation is under written contracts existing between the Riverside Arlington Heights Fruit Exchange of Riverside and the witness. Copies of the existing contracts were introduced as exhibits in this proceeding. Witness has hauled some returning empties in connection with the hauling of loose fruit from the Riverside district to Los Angeles. The Riverside-Arlington Heights Fruit Exchange is organized as a non-profit association under the laws of the State of California, and acts for its members and growers, or organizations of growers of citrus fruits as repre-

sented by its members in the marketing of their citrus fruits upon such terms and conditions as may be determined upon by agreement between them and the exchange, and to perform such other services for its members in the protection of their common interests as they may authorize or instruct. Witness picks up fruit from all packing houses which are members of the exchange, including the L. V. W. Brown Estate, Mc Dermont & Wall, Monte Vista Citrus Association, Riverside Heights Orange Growers Association, Sierra Vista Packing Association, Arlington Heights Fruit Association, Victoria Avenue Citrus Association, Galwan Citrus Association, and the National Orange Company. All payments for the transportation of citrus fruit are made to the witness by the Association. Witness does not engage in the general hauling of freight for the public, does not advertise to do general hauling, has never solicited hauling either personally or through employees, neither does he maintain any office or depot at either Los Angeles or at Los Angeles Harbor in connection with the conduct of his business. Witness has hauled some fertilizer to the growers in the Riverside district, but the hauling has been at irregular intervals from Los Angeles harbor, about eight or ten loads having been hauled during a period of four or five years, such hauling having been done for growers who requested the accommodation. There is nothing of record showing that the hauling of fertilizer was a regular business or that such hauling is being done at the present time.

We have carefully considered all the evidence, exhibits and briefs in this proceeding. It appears therefrom that defendant under two separate contracts with the Riverside-Arlington Heights Fruit Exchange has transported and is now transporting citrus fruit from the Riverside district to the distributing agency of the exchange in the City of Los Angeles and for eastern shipment by the exchange through Los Angeles harbor points. Although two or more packers market their production through the Riverside-Arlington Heights Fruit Exchange, all arrangements for transportation are made by the exchange and the owners of the fruit are charged by the association for such hauling, the contracts existing between the

defendant and the exchange govern the rate and other arrangements for the transportation of the loose and packed fruit to Los Angeles and to Los Angeles harbor points. Defendant hauls nothing unless he is so ordered by the exchange with whom he has contracts. There is no evidence which indicates that defendant has held himself out as a common carrier of fruit or any other commodity for the general public, all hauling now being done under contract with the exchange. It is the contention of counsel for complainant that as the exchange charges back to its members such transportation charges as are made by the defendant under contract, that the exchange merely acts as agent for the grower or owner of the fruit in the arrangement for transportation and that, therefore, defendant is acting as a common carrier. The record, however, shows that no fruit is transported other than that from the Riverside district packing houses to Los Angeles or Los Angeles harbor points, and then only as directed or ordered by the exchange under the existing contracts. Under such circumstances and in view of the record herein, we conclude that defendant L. D. Barnes is not a common carrier but is conducting his operations in conformity with contracts existing with the Riverside-Arlington Heights Fruit Exchange. The complaint should be dismissed.

O R D E R

A public hearing having been held on the issues set forth in the above mentioned complaint, the matter having been duly submitted following the filing of briefs, the Commission being now fully advised and basing its order upon the conclusion as set forth in the opinion which precedes this order,

IT IS HEREBY ORDERED that this complaint be and the same hereby is dismissed.

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

Dated at San Francisco, California, this 24<sup>th</sup> day of  
February, 1931.

C. J. [unclear]  
Leon [unclear]  
W. J. [unclear]  
M. B. [unclear]  
Fred G. [unclear]  
COMMISSIONERS.