

Decision No. 23634

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ROBERT V. HARDIE, doing business  
under the name of Glendale Interurban  
Express; BIRDIE M. MACY, doing busi-  
ness under the name of Pasadena Express  
& Freight Service; UNITED PARCEL SERVICE  
OF LOS ANGELES, Inc., a corporation,

Complainants,

vs.

EVERETT HOUCK,

Defendant.

Case No. 3025

**ORIGINAL**

Sanborn, Roehl, Smith & Brookman, by Douglas Brookman,  
for all Complainants.

Edward Stern, for Railway Express Agency, Inc.,  
Intervenor, as their interests may appear.

M. B. Towman, for Defendant.

BY THE COMMISSION -

O P I N I O N

Robert V. Hardie, doing business under the name of  
Glendale Interurban Express; Birdie M. Macy, doing business  
under the name of Pasadena Express and Freight Service, and  
United Parcel Service of Los Angeles, Inc., a corporation,  
have filed complaint against Everett Houck, also known as  
A. E. Houck, and allege that said Everett Houck, notwithstanding  
that he has never obtained a certificate of public convenience  
and necessity from this Commission authorizing him to operate  
as a common carrier and/or as a transportation company, as  
said term is defined by Chapter 213, Statutes of 1917, as  
amended, for some time past has been maintaining and regularly  
owning, controlling, operating and/or managing auto trucks used  
in the business of transportation of property as a common  
carrier, for compensation, over the public highways in the  
State of California between fixed termini and/or over regular

routes, and particularly the transportation of property regularly over the public highways between Los Angeles and Glendale, and between Los Angeles and South Pasadena and Pasadena. Complainants allege that the operations conducted by said Everett Houck are illegal and injurious to the transportation business conducted by the complainants, all of whom are carriers operating under authority granted by this Commission, and they pray for an order of this Commission requiring defendant to cease and desist from such illegal and unauthorized operations.

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

Defendant did not formally answer the complaint herein, the record showing that in response to the Commission's notice to satisfy or answer the complaint his counsel had returned the copy of the complaint forwarded to him with the advice that the answer would be considered a matter of defense. His motion to dismiss the complaint on the ground that defendant had not been properly served is denied.

Eight witnesses were called by the complainants. Their testimony was all of the same nature: That they used the "Pony Express" (the fictitious operating name used by Houck); that he operated twice daily between Los Angeles and Glendale and Pasadena, and that the service was not performed under contract. One witness testified that he paid \$15.00 a month for such hauling as was performed. Others testified that they paid him by the package, the rate being nine cents plus a poundage charge, and another said he paid twenty-five cents for each pick-up. They also testified that Houck performed no other service for them, the charges collected by Houck, or his drivers, being for transportation service only. The bills presented by Houck covered transportation charges between Los Angeles and points of delivery. A number of receipts for

goods delivered by Houck, signed by consignee (Exhibits 1, 2 and 3), were introduced in evidence.

Defendant Houck, called as a witness in his own behalf, described his operations. He said the "Pony Express" operated practically as described by complainants' witnesses, the service being increased occasionally by extra trips or "specials." Recently, he said, he had found it necessary (two or three times a week), to increase the trips to Pasadena to three a day. He said he confined his service to the transportation of auto parts and accessories. He said he owned four trucks which he used for pick-up service in Los Angeles and delivery service in Pasadena, South Pasadena and Glendale. The haul between Los Angeles and Pasadena and Glendale, he testified, was performed by "Mike's Transfer," a concern in which, he declared, he had no interest and to whom he paid, monthly, bills rendered for the hauling service performed by it. Supporting this testimony, he offered in evidence a number of bills (Exhibit No.4), presented to him by "Mike," the bills (made out on blank forms), showing that they had been paid, the money being receipted for by "Mike's Transfer per H. A. M." He said that "Mike" was a woman. He said also that she was a Miss, but that he did not know how she spelled her last name. He reiterated his statement that he knew nothing of the business affairs of "Mike's Transfer," and he admitted that he could not give in detail the items entering into the bills or the basis of the charges, other than that sometimes they were based on a mileage rate, and other times on a time basis. He said he had never found cause to question the accuracy of "Mike's" bills. Quite frequently, during the course of a lengthy cross-examination, he stressed the point that the "Mike Transfer" was a transfer company in which he had no interest, either monetary or otherwise,

and then, in response to a question by counsel for complainants, admitted "Mike" was his wife, operating under her maiden name.

It is unnecessary to consider the rest of the testimony in the proceeding. In the light of the very evident intent of the defendant to deceive the Commission, his entire lack of candor, it is entitled to little, if any, credence. A "Mike," visualized as herculean in proportions, as befits a truckman, was in reality one of the weaker sex. Successively from the testimony of witness Houck a Miss became a Mrs. and, as a climax, the "transfer man" became the wife of the man who had repeatedly declared he had no knowledge whatsoever of "Mike's" business other than the service performed for him.

Subterfuge and deceit, to a degree never before reached in a matter before this Commission, marked this proceeding.

After full consideration of the record consisting of evidence and exhibits herein, we conclude and hereby find as a fact that Everett Houck has operated, and is now operating, under the name of "Pony Express", automobile trucks as a common carrier of property between Los Angeles and Pasadena, South Pasadena and Glendale, over regular routes between the above mentioned fixed termini, and without having secured a certificate of public convenience and necessity from the Railroad Commission, as required by the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto.

#### ORDER

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

IT IS HEREBY ORDERED that Everett Houck, defendant herein, operating under the name "Pony Express," or as an individual, immediately cease and desist from the operation of an automobile service as a common carrier of property, for compensation, over the highways of this state between Los Angeles and Pasadena, South Pasadena and Glendale, and not resume such operation, unless and until said defendant shall have secured a certificate of public convenience and necessity from this Commission after proper application therefor in accordance with the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto, and

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

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

Dated at San Francisco, California, this 27<sup>th</sup> day of

April, 1931.

W. S. Searcy  
Leon Whitell  
M. J. Carr  
W. B. Harris  
Fred G. Stewart  
COMMISSIONERS.