

Decision No. 34104

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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

Complainants,

vs.

EVERETT HOUCK,

Defendant.

ORIGINAL

) Case No. 3025

Mark A. Hall, for Everett Houck
Sanborn, Roehl and Brookman, by Arthur
Roehl, for complainants
W. S. Johnson, for Southern Pacific Company

STEVENOT, Commissioner:

OPINION, FINDINGS AND JUDGMENT

On April 27, 1931, Everett Houck was ordered to cease and desist unauthorized common carrier trucking operations between Los Angeles and Pasadena, South Pasadena, and Glendale (Decision No. 23634, 36 C.R.C. 207). On July 22, 1931, complainants filed an "Application for Order to Show Cause and Affidavit of Service", in which it was alleged that said Houck had failed to comply with the above order and had been operating a common carrier trucking service continuously since the date of the decision.

In addition to the general allegation certain specific instances of alleged unlawful operations were set forth. In compliance with the prayer of the affidavit Houck was ordered by the Commission to appear and show cause why he should not be punished for contempt.

At the hearing on the order to show cause respondent appeared by counsel and in person. The following representatives of Los Angeles wholesale firms or jobbers engaged in the sale of auto supplies, equipment, and accessories testified regarding their use of respondent's transportation service for shipments from Los Angeles to Glendale, Pasadena, and South Pasadena.

Robert M. Wilcox, of Fey and Krause
H. Diers, of E. A. Featherstone, Inc.
William H. Barnum, of Chanslor & Lyon's Store, Inc.
Robert Hoselton, of Electric Equipment Co.
Edward Maley, of Banta Corp.

The transportation service performed for Fey and Krause may be taken as typical of that rendered other Los Angeles shippers. There has been no change in the manner of service since May 1, 1931, and Houck has not refused any shipments offered. Witness Wilcox presented six books of shipping receipts and it was estimated by counsel for complainants and for respondent that approximately 300 individual shipments had been made by this firm during the period May 28, 1931 to September 10, 1931. On May 16, 1931, at the instance of respondent or his representatives, a writing purporting to be a contract was entered into between "Pony Parts Service" (the name under which Houck's operations were conducted) and Fey and Krause. By its terms "Pony Parts Service" was to act as "purchasing agent * * * and shall do anything else" required by Fey and Krause for the sum of \$35 per month. This purported contract is effective until dissolved by

consent and the shipper is not bound thereby to tender any specific tonnage and feels free to discontinue at any time. The sum of \$35 was arrived at by averaging the total transportation costs per month based on a rate of nine cents per package and one cent per pound formerly charged by respondent.

None of the other Los Angeles shippers testifying have any written agreement or purported contract with Houck. E. A. Featherstone, Inc. pays nine cents per package plus one cent per pound. The others ship collect.

The following witnesses located outside of the City of Los Angeles also testified;

Norman C. Herzog, Glendale Motor Parts Co., Glendale.
Keith L. Council, Psenner & Pauf, Glendale.
Edward R. Wood, Beedee Distributing Service, Pasadena.
R. P. Sailor, Packer Motor Co., Pasadena.
H. M. Parker, Glendale.
Ernest S. Kirk, Handy Parts Store, Glendale.

These witnesses are representative of receivers of shipments from Los Angeles via the Houck line. Their testimony is corroborative of that of the Los Angeles witnesses. All of them have entered into purported contracts. ⁽¹⁾ The monthly payments thereunder vary and were obtained by averaging one month's business under the package and pound rate heretofore explained. The service performed by Houck as "purchasing agent" consists of carrying purchase orders to wholesalers in certain instances and in matching sample parts in some cases where such parts may not be described accurately over the telephone. This service clearly appears and was conceded by certain of the witnesses to be incidental to the transportation service.

(1) These "contracts", with minor modifications in certain provisions, are substantially the same as that with Fey and Krause of Los Angeles, and were all entered into on or about May 16, 1931. On behalf of "Pony Parts Service", certain of these writings were signed by Henry C. Houck, a brother of respondent and employed by him as a truck driver.

Respondent Everett Houck testified that he had received and understood the cease and desist order. Because of the propounding of certain questions to witnesses at the first hearing as to whether they had any contracts with Houck, the latter believed that by having his shippers and receivers enter into such contracts he would so change his status as to be operating legally as a private carrier. The form of contract used was prepared by an attorney, not, however, by respondent's present counsel, whom I believe should be commended for the fair position taken by him at the hearing. Present counsel was retained by respondent about two weeks before the hearing on the order to show cause and after investigation advised respondent shortly prior thereto that the purported contracts did not place Houck's trucking operations within the category of a private carrier.

Everett Houck is now 23 years of age and came to California from Oregon four years ago. He was employed by the Packer Motor Co., one of the concerns for whom he has hauled, first as a driver of its pick-up truck and later in its parts department. In the latter position he ordered parts, did some buying and waited upon customers. About a year and a half ago he conceived the idea of a transportation service, left the employ of the Packer Co., and acquired the necessary equipment.

It is apparent that respondent has entertained a misconception of the status of a common carrier and of the regulatory statutes governing such public utility enterprises. Under the Auto Stage and Truck Transportation Act (Statutes 1917, chapter 213, as amended), those wishing to engage in the business of

operating a common carrier trucking service must first obtain a certificate of public convenience and necessity therefor from the Railroad Commission. After hearing respondent was ordered to cease and desist his common carrier operations until such a certificate had been obtained. It is undisputed that he continued his business in substantially the same manner as before the cease and desist order. In so doing he was not only continuing an unlawful operation, but must be adjudged guilty of contempt of the Railroad Commission and its order. It is found as a fact that subsequent to the issuance of Decision No. 23634 Everett Houck has been engaged in common carrier trucking operations in violation of said decision and of Statutes 1917, Chapter 213, as amended. However, his willingness to acknowledge violation of the Commission's order to desist in his unlawful operations as well as completely closing out his trucking service taken in conjunction with his immaturity, inexperience and age appears to justify the Commission in dealing leniently with defendant Houck.

J U D G M E N T

An order to show cause having been duly made and issued herein on August 11, 1931, wherein Everett Houck was directed to appear and show cause before the Railroad Commission why he should not be punished for contempt for his disobedience of the order of the said Commission, made in its Decision No. 23634, and the said Everett Houck having appeared by counsel and in person and having been given full opportunity to answer said order to show cause and to purge himself of his alleged contempt, based upon the foregoing findings,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that said

Everett Houck has been guilty of contempt of the Railroad Commission of the State of California in disobeying its order made on April 27, 1961, in its Decision No. 23634, by failing and refusing to desist from the transporting of property as a common carrier for compensation between Los Angeles and Glendale, Pasadena and South Pasadena.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED, that for said contempt of the Railroad Commission, as aforesaid, said Everett Houck shall be punished by a fine of \$ 100.00 to be paid to the Secretary of the Railroad Commission of the State of California within ten (10) days from the date of service of a certified copy of this judgment, and in default of the payment thereof that he be committed to the county jail of the County of Los Angeles, State of California, until such fine be paid or satisfied in the proportion of one day's imprisonment for each \$5.00 of said fine that shall so remain unpaid.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission, if such fine is not paid within the time above specified, prepare appropriate order of arrest and commitment in the name of the Railroad Commission of the State of California directed to the Sheriff of the County of Los Angeles, to which shall be attached and made a part thereof a certified copy of this opinion, findings and judgment.

The foregoing opinion, findings and judgment are hereby approved and ordered filed as the opinion, findings and judgment of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 5th day of October, 1961.

Clarence
Leon Anderson

W B Harris
Fred G. Stewart
Commissioners