

Decision No. 24256

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

RICE TRANSPORTATION COMPANY, a Corporation, DONOVAN TRANSPORTATION COMPANY, a Corporation, and COAST TRUCK LINE, a Corporation, )  
 Complainants, )  
 vs. )  
 INDEPENDENT TRUCK OWNERS SERVICE COMPANY and JOHN BETTS TRANSPORTATION COMPANY, )  
 Defendants. )

ORIGINAL

Case No. 2994.

H. J. Bischoff for Complainants,  
 F. M. Leake for Railway Express Agency, Inc.,  
 (as its interests may appear)  
 John M. Devorin for Independent Truck Owners Service Company, Defendant,  
 Louis N. Whealton for John H. Betts Transportation Company, Defendant.

BY THE COMMISSION:

O P I N I O N

Rice Transportation Company, a corporation, Donovan Transportation Company, a corporation, and Coast Truck Line, a corporation, complainants in the above entitled proceeding, allege in substance and effect that the above named defendants, Independent Truck Owners Service Company and John H. Betts Transportation Company, are operating auto trucks in the transportation of property as a common carrier for compensation over the public highways between

Los Angeles and Los Angeles Harbor, on the one hand, and the cities of San Diego, Santa Ana, Fullerton, Anaheim and Orange on the other hand, and between Los Angeles and Los Angeles Harbor, and between Long Beach and San Diego and between Long Beach and Los Angeles, without having obtained from the Railroad Commission a certificate of public convenience and necessity authorizing such operations.

The above named defendant, Mrs. G. M. Grable, doing business under the fictitious name of Independent Truck Owners Service Company, by her separate amended written answer herein, denied all of the material allegations contained in such complaint and alleges further as a separate defense that ever since July, 1930, she has been, and now is, engaged under the fictitious name of Independent Truck Owners Service Company, in the business of rendering to independent truck owners, who are and who desire to become members of such service company, such service or services as she may be called upon to render by the said truck owners in the solicitation and procurement of, as their broker or agent, the transportation of freight as is generally hauled by automobile trucks, for such compensation as may be mutually agreed upon between them, and that the transportation of said freight is based upon such compensation for each particular load of freight so carried as may be mutually agreed upon between said shipper and the individual truck owners, dependent upon the nature of the commodities, accessibility, distance and such other features and facts as may be considered fair in each particular transaction, and that all such freight is transported by the said Independent Truck Owners Service Company as independent contractors with the shippers and not otherwise.

The above named defendant, John H. Betts, doing business under the fictitious name of John H. Betts Transportation Company, by his written answer herein, denies all of the material allegations contained in said complaint and alleges that he is operating as a private carrier under contract.

In pursuance of the request of each of the said defendants herein, separate public hearings on said complaint were conducted by Examiner Satterwhite at Los Angeles, the matters were submitted and are now ready for decision.

The separate public hearings were allowed on the ground that there is no business association or contractual connection or relationship whatever between the above named defendants and that any material or competent evidence introduced in this proceeding against either of the said defendants would not be admissible as evidence against the other.

Several witnesses were called and documentary evidence was introduced during the hearing in the complaint against the defendant, Mrs. G. M. Grable.

We are of the opinion that the motion of the defendant, Mrs. G. M. Grable, for a dismissal of the complaint without prejudice against her should be granted and the complaint dismissed.

There is little or no evidence in this proceeding to show that the defendant, Mrs. Grable, at any time or in any manner operated, controlled or managed, either as an owner or as a broker or agent, any automobile truck or trucks in the solicitation or procuring of business from various shippers of freight between points in California.

The evidence shows that the business of defendant as a broker was entirely managed by her husband, M. Grable, and that the Independent Truck Owners Service Company had been formed

and operated for the primary purpose of bringing the individual or small truck owner or operator in contact with various shippers of freight between points in the State of California.

The record shows that the defendant Grable about a month before the submission of this proceeding discontinued and ceased the business as a broker or agent in soliciting and procuring the transportation of freight from various shippers for individual truck owners between various points and places in California. Assurances by this defendant were also given to the Commission at the time of submission of this matter that the discontinuance and abandonment of said brokerage business was permanent and final.

In granting the motion of this defendant for dismissal of the complaint herein it is not to be understood that this Commission would ever countenance or look with favor upon the conduct of any brokerage business similar in kind or character to that of the defendant herein where it clearly appeared that said broker or agent in any manner controlled the operation or management of trucks owned by other persons in a common carrier transportation service.

Complainants called John H. Betts, above named defendant, and several other witnesses in support of their complaint against this defendant. The undisputed testimony shows that the defendant Betts for about three years last past has engaged in the truck transportation of freight, of all kinds and character, excepting household furniture, principally between Los Angeles and San Diego and intermediate points; Long Angeles Harbor and Long Beach, on the one hand, and San Diego and intermediate points on the other hand, and between Los Angeles on the one hand and Long Beach and Los Angeles Harbor on the other hand.

This defendant has built up a very substantial and lucrative truck transportation business and for the past year has operated from seven to ten trucks and several trailers in order to meet the daily demands of his many patrons in the communities above named.

Several trips daily over the established highways are made each week between Los Angeles and Los Angeles Harbor and Long Beach; and one to three trips weekly are made between San Diego and Los Angeles and Los Angeles Harbor. The defendant has always employed a traffic manager who has full charge of and solicits all business.

The defendant testified in part as follows:

- Q. "What methods do you employ in getting business?  
A. We get out and hunt for it, if it doesn't come to us.  
Q. Any organization to assist you in your business?  
A. I have a traffic manager and secretary in the office.  
Q. What are the duties of the traffic manager, what does he do?  
A. His duties are to get the work if it is there.  
Q. How does he do that?  
A. By telephone and personal contact with people and people call him over the phone and give him orders.  
Q. His instructions are from you? A. His instructions are from me to get the business.  
Q. In the solicitation of business that your traffic manager engages in does he solicit anybody and everybody?  
A. I would think he would.  
Q. How many trips did you make to Los Angeles in the last six months? A. I would say quite a number, quite a lot because they are almost continual.  
Q. You carry property both ways between Los Angeles and Long Beach? A. Yes, we carry both ways.  
Q. For the past six months how many trips have you averaged between Los Angeles and Long Beach solicited and obtained by your traffic manager?  
A. Well, I think two or three a day would be my guess."

Although the defendant solicits business from and transports freight for all and any class of patrons the following named business concerns are those who use the transportation services of defendant more or less regularly in the shipment of large volumes of freight:

Western States Grocery	Pioneer Paper Company
Kaluber-Wangenheim	Whiting Mead Company
California Packing Co.	American Can Company
San Diego Soda Works	K. Hovden
Southwest Grocery	L.A. Ice & Cold Storage
MacMarr Stores	Van Camp Sea Food Co.
Wilson F. Clark	Dixie Lumber Company
Ideal Grocery	Western Metal & Supply Co.
Maier Brewing Company	Fletcher-Weil Company.

Complainant's Exhibit 3 is a tabulation of the volume of freight hauled by defendant Betts for several months during 1931; and the business done in the month of January affords, as set out below, an illustration of the volume of freight hauled from month to month between the communities named.

<u>For January, 1931-1932</u>	<u>No. of Lbs.</u>	<u>Total Amt. Received</u>
Jan. 2. Harbor to San Diego	17165	\$ 31.54
" " Los Angeles	43919	39.84
5. " " "	31305	21.13
6. " " San Diego	22065	34.59
Miscellaneous	16460	32.92
7. Harbor to Los Angeles	26165	17.66
Los Angeles to Santa Ana	25100	25.10
" " " "	25900	25.90
10. Los Angeles to San Diego	42618	65.54
Harbor to San Diego	3350	6.70
13. Los Angeles to San Diego	6710	10.34
Harbor to Santa Ana	40000	35.00
Los Angeles to Santa Ana	15600	15.60
14. Harbor to San Diego	44870	80.28
15. Los Angeles to San Diego	2283	10.27
Miscellaneous	21100	10.58
16. Harbor to Los Angeles	16632	11.23
Miscellaneous	19000	210.00
17. Los Angeles to Santa Ana	59240	59.24
Miscellaneous		105.00
Los Angeles to San Diego	45925	71.88
19. Harbor to Los Angeles	66556	44.92
20. " " " "	3800	2.66
Los Angeles to San Diego	23198	46.08
Miscellaneous	1120	3.36

<u>1931- 1932</u>		<u>No. of Lbs.</u>	<u>Total Amt. Received</u>
Jan.			
20.	Harbor to San Diego	11984	17.98
21.	" " " "	23488	46.88
	Los Angeles to San Diego	925	2.78
22.	Los Angeles to Santa Ana	24500	24.50
24.	" " to San Diego	4644	11.29
26.	Los Angeles to Santa Ana	4800	4.80
	Harbor to San Diego	2750	4.12
	Los Angeles to San Diego	3800	5.70
	Harbor to Los Angeles	40773	27.52
	Miscellaneous	23000	40.67
27.	"	23240	210.00
28.	Los Angeles to San Diego	10300	25.20
	Harbor to San Diego	567	.85
	Miscellaneous	2475	3.71
29.	Los Angeles to Santa Ana	4300	4.30
	Harbor to Los Angeles	50000	25.00
	" " San Diego	4725	8.36
	Misceallaneous		21.75
31.	Los Angeles to San Diego	40253	61.75

The traffic manager of defendant has full charge of the trucking services and operations and under and by virtue of oral agreements transports practically all freight upon call at a charge or rate quoted by defendant and accepted by the defendant. Rates are quoted in each instance and are based upon the character and kind of freight hauled. The rates range from \$3.00 to \$5.00 as a rule for the same class of commodities between the above named communities served. Defendant maintains his business headquarters at Long Beach, but has no depot or freight terminal there or elsewhere from or to which goods are shipped, but operates a direct pick-up and delivery service from the consignor to the consignee.

The following excerpts from a few characteristic letters by defendant to his numerous patrons and prospective customers discloses clearly the practice or methods pursued in soliciting and conducting his transportation service:

"November 3, 1930.

Gentlemen:

Replying to your letter of October 30th in regard to shipments from Fullerton to San Diego, I beg to quote you a price of \$5.00 per ton for a minimum load of five tons. In other words, if your load is less than five tons you will be charged for a five ton load. Amounts over five tons will be billed at the rate of \$5.00 for each 2000 pounds.

Thanking you for the inquiry, and hoping to have your future orders, we are,  
Yours very truly, "

"January 8, 1931.

Gentlemen:

This is a confirmation by telephone today of a rate of 20¢ per cwt. for hauling 250 bags of green coffee from the harbor to San Diego.

We have the equipment and are prepared to give you and your customers the most efficient service, absolutely unexcelled in point of time and careful handling.

We thank you for the inquiry and trust that we will soon be favored with this order, which will be only the beginning of a pleasant and profitable relationship with you.

Very truly yours, "

"March 19, 1931.

Gentlemen:

This confirms the rate quoted you over the telephone today of \$4.00 per ton from Los Angeles to San Diego in quantities of more than one ton. In quantities of one ton or less the rate is 25¢ per cwt.

We appreciate your calling and giving us the opportunity of serving you. We shall be glad to load goods for you next Tuesday if you notify us in time to do so, and then and at all other times will render you the most prompt and efficient service that can be given.

Very truly yours, "

"April 24, 1931.

Gentlemen:

This is to confirm my verbal quotation of this morning;

Los Angeles to San Diego and intermediate points directly on the route, \$4 per ton in lots of 5 or more tons;

\$5 per ton in less than 5 ton lots,

Los Angeles to Capistrano, 5 ton lots or more, \$4 per ton.

We are prepared to give you prompt and efficient service to any point in any tonnage. Our equipment is the best, and our drivers are all careful, experienced men accustomed to rendering superior service.

We await the favor of your patronage.

Yours very truly, "

Mr. Jackson, Traffic Manager of defendant, testified at length relative to the methods and practices pursued by defendant in his trucking operations; and we quote briefly from his



testimony as follows:

- Q. "You are soliciting business? A. Yes Sir.
- Q. In these communities mentioned in the complaint?
- A. Yes, in those communities.
- Q. If anyone rings you up and wants you to haul anything to San Diego, Oceanside or Santa Ana from Long Beach, Los Angeles or Los Angeles Harbor, you give them a price and you haul it?
- A. After finding out what it is and the conditions of loading it, etc.
- Q. Do you select people, any class of patrons that you haul for?
- A. No Sir.
- Q. Haul for anybody?
- A. Yes sir, who pays the price we ask. We refuse lots of business because we cannot get the price we ask.
- Q. Have you a written contract with any of your patrons?
- A. Only with the Mission Clay Products, that is the only written contract we have.
- Q. How do you secure the amount of business two or three times a week on northbound shipments?
- A. We have a contract with the California Packing Company, and, for instance, they call me up very often to know if I am going to have a truck down next day and if I could bring something back.
- Q. What kind of a contract?
- A. A verbal contract.
- Q. What are the terms of that contract?
- A. \$3.00 a ton.
- Q. That is, they are not compelled to ship by you at all?
- A. No.
- Q. You are not compelled to haul if you don't want to?
- A. No Sir.
- Q. You have that kind of a contract with most of the patrons that employ your service in the shipment of goods?

A. Certainly.

Q. What is, between these points that are mentioned in the complaint?

A. Yes Sir. \* \* \* "

Q. "These trucks that you now own are generally utilized in your present volume of business?"

A. Yes Sir.

Q. They are all kept pretty busy? There are days we don't do anything; there are days we could use more trucks.

Q. If you had more trucks? A. If we had more trucks,

Q. When the offering of business gets to the point where it reaches the full capacity of your trucks and trailers you don't receive any more business? A. No. Sir.

Q. Where do most of these trucks work, within what territory?

A. Los Angeles, San Diego and the Harbor."

This Commission has heretofore held that the trucking operations of the so-called "contract hauler" claiming to be a private carrier between given points in California are unlawful when it appears that his services, either under oral or written arrangements, do not cover or embrace any specific period of time for which he is bound or any definite amount of tonnage he is obligated to haul; or whenever it appears that there is no obligation on the part of the shipper to patronize the carrier or any duty upon the truck operator to continue his "on call" services. In Sierra Railway Co. vs. Joseph Berg, 35 C.R.C., Page 512, the Commission said:

"Since the decision in Frost v. Railroad Commission, supra, the Commission has been confronted with many instances of so-called contract hauling claimed to be that of private carriers. The mere fact that a truck operator enters into verbal or written contracts or agreements with his customers will not change a common carrier status to that of a private carrier (Thompson v. Gregory, 33 C.R.C. 455, 459). Nor is it a prerequisite that one must undertake to serve all persons without limitation in order to be classed as a common carrier. If a particular service is offered to all those members of the public who can use it, the public is in fact served and the business is effected with the public interest, although the actual number of persons served may be limited. (In re Jack Hiron, 32 C.R.C. 48). The Commission has heretofore held that

whereas in the instant proceeding the only limitation on the right to receive service (otherwise common carrier in nature) is that the business of an individual shipper shall "prove profitable," such operation is unlawful in the absence of a certificate (P. & S. Railroad Company v. Desycher, 32 C.R.C. 141, 145)."

The Commission also said in Motor Freight Terminal Co. v. Taber, et al., 35, C.R.C., page 757:

"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 \* \* \* \* defendants have not refused to haul any commodity if the volume of the shipments at the rate of compensation is 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 appears to place the 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 the defendants herein."

We have carefully considered all the evidence in this proceeding and are of the opinion and hereby find as a fact that John H. Betts, doing business under the fictitious name of John H. Betts Transportation Company, is operating as a transportation company and as a common carrier within the meaning of Chapter 213, Statutes of 1917, as amended, between Los Angeles and Los Angeles Harbor, on the one hand, and San Diego and intermediate points, including Santa Ana, Fullerton, Anaheim and Orange on the other hand, and between Los Angeles and Los Angeles Harbor, and between Long Beach and San Diego and between Long Beach and Los Angeles, without having obtained from the Railroad Commission a certificate of public convenience and necessity therefor.

O R D E R

Public hearings having been held in the above entitled proceedings, the matters having been submitted and being now ready for decision,

IT IS HEREBY ORDERED that the complaint in the above case, No. 2994, against the defendant Mrs. G. M. Grable, doing business under the fictitious name of Independent Truck Owners Service Company, be and the same is hereby dismissed without prejudice.

IT IS HEREBY ORDERED that John H. Betts, doing business under the fictitious name of John H. Betts Transportation Company, cease and desist from common carrier operations between Los Angeles and Los Angeles Harbor, on the one hand, and San Diego and intermediate points, including Santa Ana, Fullerton, Anaheim and Orange on the other hand, and between Los Angeles and Los Angeles Harbor, and between Long Beach and San Diego and between Long Beach and Los Angeles until he has obtained the requisite certificate of public convenience and necessity from this Commission.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission cause a certified copy of this decision to be personally served upon John H. Betts and he shall also cause certified copies of this decision to be mailed to the district attorneys of Los Angeles, Orange and San Diego counties, the Motor Vehicle Division and the Board of Public Utilities & Transportation of the City of Los Angeles.

This decision shall become effective twenty (20) days from and after the above mentioned date of service.

Dated at San Francisco, California, this 23<sup>rd</sup> day of November, 1931.

C. Seaver  
Leon Whipple  
M. J. Lee  
M. B. Lewis  
Fred G. Stewart  
Commissioners.