

Decision No. 24566

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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

**ORIGINAL**

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.,

Defendants.

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O'Melveny, Tuller and Myers, by William W. Clary and B. E. Ahlport, for complainants

Guy Knupp for defendants

William F. Brooks for The Atchison Topeka & Santa Fe Railway Company, intervenor

Ed Stern, for Railway Express Agency, Inc., intervenor

W. S. Johnson and Guy V. Shoup, for Southern Pacific Company, intervenor on behalf of complainants.

STEVENOT, Commissioner

OPINION, FINDINGS AND JUDGMENT

Decision 23327 (35 C.R.C. 757), dated January 26, 1931 (effective date being fixed as twenty days from said date), found as a fact that C. S. Taber, C. R. Taber, and W. J. Taber, under the name and style of Taber Bros., were 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 obtained from the Commission a certificate of public convenience and necessity as required by Statutes 1917, chapter 213, as amended, and ordered that defendants cease and desist such common carrier operation unless and until a certificate of public convenience and necessity therefor should have been obtained. Thereafter, and on February 14, 1931, a petition for rehearing was filed. Rehearing was denied on February 26, 1931 (Decision 23452).

On July 18, 1931, the "Application for Order to Show Cause and Affidavit of Service" of H. E. Northway was filed. By an order to show cause issued August 11, 1931, defendants were ordered to appear before Commissioner Stevenot on Thursday, September 24, 1931 at the City Hall in Porterville, and show cause, if any they had, why they should not be punished for contempt for their refusal, failure and/or omission to comply with the terms of the order. Defendants appeared in person and by counsel and the matter was heard and submitted upon briefs. Subsequent to the hearing defendants submitted their answer to the "Application for Order to Show Cause and Affidavit of Service" (hereinafter referred to as Affidavit), raising for the first time the question of the insufficiency of the Affidavit to confer upon the Commission jurisdiction to issue any order of contempt.

Decision No. 24395, issued January 16, 1932, reads in part as follows:

"The Commission being of the opinion that the 'Application for Order to Show Cause and Affidavit of Service' upon which the above order to show cause was based is insufficient upon its face to confer jurisdiction to issue said order to show cause in that evidentiary facts are not therein alleged, and expressing no opinion and not passing upon the merits of the contempt alleged,

"IT IS HEREBY ORDERED that said order to show cause issued on August 11, 1931, is hereby dismissed solely for the reason of lack of jurisdiction."

On December 14, 1931, an "Amended Affidavit" was submitted for filing, and on December 15, 1931, the Commission issued its Order to Show Cause upon such new affidavit and directed defendants to appear before Commissioner Stevenot on Tuesday, January 19, 1932, in the City Hall at Porterville, to show cause why they should not be punished for contempt.

On January 7, 1932, defendants filed "Objections to Hearing on Order to Show Cause", and alleged that by reason of the hearing on September 24, 1931 they were once placed in jeopardy and that the Commission was without jurisdiction to proceed with the hearing then set for January 19, 1932. On the latter date and at the time and place specified in the order to show cause of December 15, 1931, defendants appeared in person and by counsel.

Defendants contend that the order dismissing the first order to show cause "constitutes and in effect is an acquittal of the defendants on the charges contained in the affidavit", and that the Commission "is wholly without jurisdiction to proceed with said second hearing on said order to show cause". Counsel requested and was granted 15 days within which to file a brief on this question, but no brief has been submitted. Consideration has been given to the plea of "once in jeopardy" and I am of the opinion that such plea is without merit.

At the hearing on January 19, 1932 it was stipulated that the witnesses testifying at the hearing of September 24, 1931 would, if sworn, testify to the same effect and in like manner as at the hearing of September 24, 1931, and that the exhibits introduced at that hearing would be considered to have been introduced in the present proceeding.

Without reviewing in detail the allegations of the affidavit, defendants are alleged therein to have continued common carrier operations between Los Angeles, Porterville, Fresno and intermediate points in the San Joaquin Valley. Allegations of specific movements on April 6, April 27, April 30, and May 5, 1931 are set forth.

Witness Robotham, service inspector of the Commission, testified regarding investigations made on April 6, April 15, April 16 and 17, 1931. The witness testified in detail as to license plate numbers, drivers, registration certificates, deliveries made, bills of lading, etc. Lieutenant E. R. Reynolds, motor vehicle inspector, Los Angeles Police Department, assigned to the Board of Public Utilities of Los Angeles, accompanied witness Robotham on the dates mentioned above, and testified to the investigation made on those dates. H. E. Northway testified that he was present on April 15, 16 and 17, 1931; and on May 4 and 5, 1931 made another check of the operations of defendants, testifying to a particular truck movement from Los Angeles to Bakersfield on said dates.

Miss Pearl Bell, manager of Fruit Grower's Supply Company, Porterville, since February 15, 1931, has made occasional shipments over Taber Bros. truck line, consisting mostly of packing house supplies from Los Angeles to various points in

Tulare County. The witness testified at the hearing in 1930 in the proceeding resulting in the cease and desist order and stated that the trucking services rendered are practically the same. The witness understands that a written contract has been entered into with Taber Bros.

Mrs. Ruth Smith, plant bookkeeper, Neuhoff Packing Company, Porterville, testified that between February 15 and July 1, 1931, shipments were made via Taber trucks "practically every day; and sometimes it would be a week; I don't think it was ever a longer period than a week that we had no hauling." These shipments moved from Porterville to San Francisco, Oakland and to Arlington.

J. C. Doyle, tractor and implement dealer at Porterville, testified as to one shipment made in May, 1931, via Taber trucks, from Los Angeles to Porterville, on which freight was paid by giving Mr. Taber credit of \$1.50.

Fred S. Price, in the hardware and furniture business in Porterville, made a shipment on September 15, 1931, consisting of a load of heaters and fittings, from Los Angeles to Porterville. As Mr. C. S. Taber owed the witness money for goods purchased, his account was credited with the amount of the bill for transportation. At no time has the witness had a contract with the Tabers for hauling.

Anthony Booras, operating a grocery store in Porterville, between February 15 and July 6, 1931, has received shipments once or twice a week from Armour and Company at Bakersfield, the freight being prepaid.

Exhibit No. 1 consists of eight certified photostatic copies of applications for motor vehicle licenses from the records of the Division of Registration of the Department of Motor Vehicles of the State of California. On the back of each of

these applications is an affidavit. These affidavits are in two forms, as follows;

(Form 1)

" \_\_\_\_\_, being duly sworn, deposes and says;

That he is the \_\_\_\_\_ of \_\_\_\_\_ a transportation company.

That the vehicle described in this application is used exclusively by said company in the operative work of its business of transportation of persons or property as a common carrier for compensation over public highways of this state between fixed termini, or over a regular route, and subject to taxation under the provisions of Section 15 of Article XIII of the Constitution of the State of California."

(Form 2)

" \_\_\_\_\_ being first duly sworn, deposes and says:

That he is the \_\_\_\_\_ of \_\_\_\_\_ a transportation company.

That such company is operating an auto stage passenger service or freight service for the transportation of persons or property, under certificate and jurisdiction of the Railroad Commission of the State of California.

That said company presents herewith application for public service license in accordance with the ruling of the Attorney General under date of December 30, 1926."

"Form 1" affidavits are dated and signed as follows; January 16, 1930, "C. R. & Jennings Taber, Taber Bros."; January 16, 1930, "C. R. & Jennings Taber, Taber Bros."; March 26, 1930, "Taber Bros. by C. R. Taber"; May 6, 1931, "C. S. Taber". "Form 2" affidavits are as follows; June 6, 1931, "C. S. Taber"; June 9, 1931, "C. S. Taber"; January 16, 1930, "C. R. & Jennings Taber, Taber Bros."; July 14, 1930, "Charles S. Taber".

Witnesses for Defendants

C. S. Taber, one of the three defendants herein, testified that after the issuance of the "cease and desist" order, he sought advice of counsel and was told that he could not continue to operate at all unless he did it under a contract. Exhibit No.

2 is a form of contract prepared by counsel. Exhibit No. 3 is a "hauling contract" dated February 2, 1931 between Frank O. Sheldon (Sheldon Supply Co.) and Taber Brothers Transp. Co. "by C. S. Taber".<sup>(1)</sup>

W. J. Taber and C. R. Taber are sons of C. S. Taber. C. S. Taber testified that he decides what contracts are to be made and controls the operation of the business. During the period February 15 to July 6, 1931, trucks moved to Los Angeles "Whenever we had any freight they moved three times a week; sometimes moved four times a week; sometimes move but once a week". (Tr. p. 278) Trips for Armour and Company were made "mostly twice a week"; for Porterville Poultry Association "Maybe every other night, two loads a week; sometimes three." (Tr. p. 281); for Fruit Grower's Supply Co. "they might call in the Orange season two trips a week; might call once a week" (Tr. p. 282); for Western Meat Company "About 2 or 3 times a week" (Tr. p. 286); "maybe just a few loads for Swift & Company" (Tr. p. 287);<sup>(2)</sup>

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(1) Other contracts introduced in evidence on September 24, 1931 follow.

Exhibit No. 4 - Fruit Growers Supply Co. - April 1, 1931  
Exhibit No. 5 - Swift & Company - April 1, 1931  
(bearing notation "This contract terminated July 15, 1931")  
Exhibit No. 6 - Neuhoff Packing Corporation - April 11, 1931  
Exhibit No. 7 - Western States Grocery Company - February 1, 1931  
Exhibit No. 8 - Western Meat Company - March 10, 1931

Reference was also made during the hearing to the following contracts introduced in the original proceeding and which were before the Commission for consideration in Decision 23327;

Exhibit No. 1 - Doyle Tractor and Equipment Co.  
Exhibit No. 2 - Porterville Poultry Association  
Exhibit No. 5 - Armour and Company  
Exhibit No. 6 - Layne and Bowler Company

(2) The Swift & Company contract provides that either party can terminate the contract on one day's notice and it was terminated on July 15, 1931.

for Neuhoﬀ Packing Corporation trips were made whenever they called, "during the summer they didn't do much business; in the last month or two they have done quite a bit" (Tr. p. 289); for Sheldon Supply Company "about three loads" were hauled during the first six months of 1931 (Tr. p. 290).

C. S. Taber further testified

"Q. You were willing to haul for people who would make these contracts with you, were you not, Mr. Taber?

A. Yes, if they would give us a sound contract."  
(Tr. p. 290)

Five trucks were being operated until about a week prior to the hearing (September 24, 1931), when they were repossessed for failure to make payments. No hauling is being done at the present time. At the hearing on January 19, 1932, C. S. Taber testified that he owns no equipment and is not engaged in the transportation business. He was employed for a time by Mr. Frank Kennedy (who had repossessed equipment formerly operated by the Tabers) as a truck driver between San Francisco and Porterville. This employment ceased about two months prior to January 19, 1932. C. R. Taber is at the present time employed by Mr. Kennedy.

Mrs. Lola Taber testified regarding rejection of certain business during the first six months of 1931. C. R. Taber testified that after February 15, 1931, quite a few shippers were "dropped", and that defendants understood that under the cease and desist order they could continue operating under contract. W. J. Taber testified that he drove a truck "sometimes", that he knew of the cease and desist order, and that "we" continued to haul for some of the people who were being served prior thereto.



An examination of the contracts (some of which were considered in Decision 23327) and the testimony relating thereto, discloses that the operations conducted by the three defendants subsequent to the effective date of the above mentioned decision were those of a common carrier. For so doing they 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 23327 said C. S. Taber, W. J. Taber, and C. R. Taber, and each of them, have engaged in common carrier trucking operations between Los Angeles and Porterville and intermediate points, in violation of said decision and of Statutes 1917, chapter 213, as amended. However, the fact that defendants are no longer engaged in any transportation business, appears to justify the Commission in dealing leniently with defendants.

#### JUDGMENT

C. S. Taber, W. J. Taber, and C. R. Taber having been ordered to show cause why they should not be punished for contempt for their refusal, failure, and/or omission to comply with the terms of Decision No. 23327, and the said defendants having appeared by counsel and in person, and having been given full opportunity to answer said order to show cause and to purge themselves of their alleged contempt;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that said C. S. Taber, W. J. Taber, and C. R. Taber, and each of them, has been guilty of contempt of the Railroad Commission of the State of California in disobeying its order made on the twenty sixth day of January, 1931, in its Decision No. 23327, by failing and refusing to desist from common carrier truck operations

for compensation between Los Angeles, California, and Porterville, California, and intermediate points; and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that for their said contempt of the Railroad Commission and its order as aforesaid, the said C. S. Taber, W. J. Taber, and C. R. Taber shall each be punished by a fine of fifty dollars (\$50.00) to be paid to the Secretary of the Railroad Commission within ten (10) days after the effective date of this opinion, findings and judgment, and that in default of the payment thereof on the part of any of said defendants, that such defendant be committed to the county jail of Tulare County, until such fine be paid or satisfied in the proportion of one day's imprisonment for each five dollars (\$5.00) of said fine that shall so remain unpaid.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission if any of such fines are 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 Tulare, to which shall be attached and made a part thereof a certified copy of this opinion, findings and judgment.

IT IS HEREBY FURTHER ORDERED that, as to each of the respective defendants, this opinion, findings, and judgment shall become effective twenty (20) days after personal service of a certified copy thereof upon said defendant.

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 Calif-  
ornia.

Dated at San Francisco, California, this 14<sup>th</sup>  
day of March, 1932.

C. Weaver

M. A. ...

W. B. Harris

Frederic G. ...

Commissioners