

Decision No. 24701

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

COAST TRUCK LINE, a corporation,)
Complainant, (

vs.)

ORIGINAL

Case No. 3070.

CALIFORNIA MERCHANTS ASSOCIATION, ()
LTD., and IMPERIAL VALLEY MERCHANTS
WAREHOUSE ASSOCIATION, LTD.)
----- Defendants.)

H. J. Bischoff, for Complainant.

Leland S. Bower, for Defendants,

Charles M. Schaeffer for California Merchants
Association, Ltd., Defendant,

Guy V. Shoup, J.L. Fielding and Kenneth Keeper,
by Kenneth Keeper for Southern Pacific Company
and Pacific Motor Transport Company, Intervenors.

BY THE COMMISSION:

O P I N I O N

Coast Truck Line, a corporation, by its complaint, as amended, complains of California Merchants Association, Ltd., and Imperial Valley Warehouse Association, Ltd., and alleges that said defendants, and each of them, are now and for some time past have been transporting property by truck over the highways of this state, particularly between Los Angeles and points in the Imperial Valley and between Los Angeles and San Diego. Complainant prays for an order from this Commission that defendants be required to cease and desist from the transportation of property as alleged until such time as they obtain from this Commission a certificate of public convenience and necessity in accordance with the requirements of Chapter 213, Statutes of 1917, and effective amendments.

Defendants herein duly filed their separate answer to the complaint making a general denial of the allegations of the complaint and alleging that defendants were not operating as common carriers but only for such shippers who were members of the respective associations.

Public hearings at El Centro and Los Angeles were conducted by Examiner Handford, brief was filed by complainant, the matter was duly submitted and is now ready for decision.

J. G. Bertschinger residing at Los Angeles, testified that he was employed as general manager for defendant, Imperial Valley Warehouse Association, Ltd., that he handled the purchasing, segregation and shipment of merchandise from Los Angeles to points in the Imperial Valley. Merchandise is delivered to the Los Angeles warehouse of his company and thence forwarded by truck to its destination in Imperial Valley, no regularly scheduled service being maintained, but shipments are made between twice and six times per week. Witness engages trucks for the transporting of merchandise for the association, practically all the hauling being from Los Angeles to Imperial Valley points, no shipments moving in the reverse direction unless it consists of the return of merchandise for some cause, the truck being released by the association after its arrival and delivery of goods in the Imperial Valley. The witness stated that at no time had the association handled goods for other than its own members, transportation having been refused to others, although it was frequently requested.

The record shows that the witness, Bertschinger, was formerly engaged in the trucking business but that his operation ceased by reason of an injunction issued by the Superior Court of Los Angeles County in the year 1929. Shortly thereafter this association was formed, the witness being one of the parties

signing the incorporation papers. Witness and his wife are now employed by the association, each being a paid employec.

The purpose of the organization was to transport the merchandise of the members from Los Angeles to Imperial Valley points, expeditious service being rendered and rates enjoyed that were less than those of railroads or authorized truck carriers. No trucks were owned by the association, trucks being leased for each particular load from Los Angeles to Imperial Valley.

Fifteen witnesses residing at Imperial Valley points testified in this proceeding. These witnesses each held one share of stock in the association and testified regarding their satisfactory use of the service and the low rates enjoyed.

Shares of stock in the association were sold to prospective users of its facilities for \$5.00 per share. A record of the outstanding shares shows the following as the residence of the various shareholders:

Not specified -----	5
Los Angeles -----	9
Holtville -----	6
El Centro -----	18
Calexico -----	24
Brawley -----	21
Westmoreland -----	5
Imperial -----	1
Heber -----	2

All the above mentioned individuals hold one share each of the stock of the association. In addition, a resident of Chino holds 100 shares, J. G. Bertschinger holds 150 shares, Ieland S. Bower holds 100 shares and Mr. Tebo, Secretary, holds 50 shares. The above record is taken from the stock book of the association.

It is apparent that any merchant of Los Angeles or the Imperial Valley by paying the nominal amount of \$5.00 may become a shipper over the facilities operated by this association, and

thereby secure such service and rates as the association may offer to its members. The majority of the stock is held by the general manager, his wife, attorney and secretary of the association. No dividends have ever been declared on the outstanding stock of the association.

The principal business of the association is the carriage for compensation over the highways of this state between Los Angeles and Imperial Valley points, the only requirement being that prospective shippers or receivers of freight shall be members of the association. Such transportation is, in our opinion, that of a common carrier and is limited only by the requirement that prospective shippers or receivers of freight shall be members of the association and each hold at least one (1) share of stock in the association. There is no limit to the number of shares of stock which may be thus sold.

We therefore conclude, after a careful review of the record herein that the principal business of defendant, Imperial Valley Warehouse Association, Ltd., is that of a common carrier, for compensation, over the highways of this state between Los Angeles and Imperial Valley points, and that such operation requires the issuance of a certificate of public convenience and necessity under the provisions of Chapter 213, Statutes of 1917, if same is to be hereafter lawfully conducted. The present operation, as shown by the record herein, is a violation of the provisions of the statutory law and such operation should be discontinued until a certificate will have been obtained as now provided for by Chapter 213, Laws of 1917, and effective amendments.

We will now consider the complaint against California Merchants Association, Ltd.

At the time of the hearing on this complaint, the defendant, California Merchants' Association, Ltd., was not operating trucks over the highway between Los Angeles and San Diego but was making shipments over the rail line of the Atchison, Topeka & Santa Fe Railway as a forwarding company, thereby serving not only its members but all portions of the public desiring said transportation. This method of operation followed the issuance of an injunction issued by the Superior Court of San Diego County in a complaint made by the Boulevard Express, an authorized carrier between Los Angeles and San Diego.

The record shows the method of organization of this association to be similar to that of Imperial Valley Warehouse Association, Ltd., which is heretofore outlined. Practically all stockholders hold one (1) share each but the Santa Fe Iron & Metal Company was issued 151 shares and Leland S. Bower, Attorney, now holds 17 shares.

There was no evidence presented in this proceeding that defendant was now operating trucks over the highways of this state between Los Angeles and San Diego. The business now being conducted is that of a forwarding company handling shipments for not only its stockholders but for the general public. The line of the Atchison, Topeka & Santa Fe Railway Company is used for the transportation from Los Angeles to San Diego.

In view of the record in this proceeding the evidence shows that the allegations of the complaint have not been justified and the complaint in so far as it refers to defendant, California Merchants Association, Ltd., will be dismissed.

O R D E R

Complaint having been made by Coast Truck Line, a corporation, against Imperial Valley Merchants Warehouse Association, Ltd.,

a corporation, and California Merchants Association, Ltd., a corporation, public hearings having been held, the matter having been duly submitted and the Commission being now fully advised,

THE RAILROAD COMMISSION HEREBY FINDS AS A FACT that the operation of trucks over the highways of this state by defendant, Imperial Valley Merchants Warehouse Association, Ltd., is operation as a common carrier between Los Angeles and Imperial Valley points and defendant should immediately cease and desist from such operation until a certificate of public convenience and necessity will have been secured from this Commission in accordance with the provisions of the statutory law, (Chapter 213, Statutes of 1917, and effective amendments.)

IT IS HEREBY ORDERED that Imperial Valley Merchants' Warehouse Association, Ltd., a corporation, immediately cease and desist from the operation of auto trucks as a common carrier, for compensation, over the highways of this state and particularly between Los Angeles and Imperial Valley points and not resume such operation of trucks unless and until a certificate of public convenience and necessity will have been granted by this Commission after application therefor will have been made and granted in accordance with the provisions of Chapter 213, Statutes of 1917, and effective amendments.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon Imperial Valley Merchants' Warehouse Association, Ltd., a corporation, and that he shall cause certified copies of this decision to be mailed to the District Attorneys of Los Angeles, San Bernardino, Riverside and Imperial Counties.

IT IS HEREBY FURTHER ORDERED that this complaint, in so far as it refers to California Merchants' Association, Ltd.,

a corporation, be and the same is hereby dismissed.

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

Dated at San Francisco, California, this 18th day of April, 1932.

C. Seaver
Leon White
M. A. Carr
W. B. Hayes
Fred G. Stebbins
Commissioners.