

Decision No. 24748.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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MOTOR FREIGHT TERMINAL COMPANY,
a corporation,
Complainant,

vs.

PAUL MORRIS TRUCKING COMPANY,
a co-partnership, PAUL MORRIS, an
individual, doing business under
the fictitious name and style of
PAUL MORRIS TRUCKING COMPANY,
PAUL MORRIS, J. WALTON, FIRST DOE
and SECOND DOE,
Defendants.

Case No. 3179.

ORIGINAL

John M. Atkinson and Wallace K. Downey, by Wallace K.
Downey, for Complainant.

Griffith and Thornburgh by Yale Griffith, for Defendant.

Edward Stern for Railway Express Agency, Inc.,
Intervenor on behalf of Complainant.

H. W. Hobbs for Southern Pacific Company and Pacific
Motor Transport Company, Intervenor on behalf
of Complainant.

BY THE COMMISSION:

O P I N I O N

Complainant herein alleges that defendants Paul Morris
and J. Walton are conducting a common carrier automotive service
for the transportation of property for compensation between
Los Angeles and Santa Barbara over the public highways and between
termini without the authority of a certificate of public convenience
and necessity therefor as required by Chapter 213, Stats. 1917
as amended. Defendants in answering admit the operations but deny
that they are those of a common carrier and allege that they are
strictly those of a private carrier not subject to regulation by
the Commission.

On the issues thus joined a public hearing was conducted by Examiner Kennedy at Santa Barbara March 8, 1932 at which time the matter was duly submitted and now is ready for decision.

Paul Morris has been operating for two and one-half years between Santa Barbara and Los Angeles over the state highways between termini; during this period he has made several trips each week transporting shipments in truck-loads in both directions; the shipments transported were secured by personal solicitation and advertising in Santa Barbara newspapers. During this period he has hauled particularly for the following Santa Barbara business houses: Coleman & Niel, McNall Building Material Company, Ambrose Lumber Company, H. G. Meyer, Contractors' Supply Company, Union Mill & Lumber Co., William Kitler Hardware Company. For one of these patrons he has transported shipments from eleven different concerns in Los Angeles. For another he has transported from an equal number of places and for many of the same consignors. Other witnesses testified to similar uses of defendant's service.

Testimony by Morris established the fact that he operates a trucking business made up of various consignments in either direction and does not require shipments to be to or from one consignor and one consignee exclusively. He further testified that he had refused shipments because they were not of sufficient quantity or because he already had a sufficient load for his truck. No written contracts exist, it being Morris' testimony that a verbal contract is made in each case and that no schedule of rates or time schedules are used by him. The compensation for each movement is received by him after he picks up shipments at the places of consignors in either Santa Barbara or Los Angeles. Some movements are made from Santa Barbara to Ventura and also between Santa Barbara and Lompoc but such movements are infrequent. Defendant admitted that he had not received a certificate of public convenience and necessity for any service, nor had he ever

applied therefor nor does he pay any taxes upon the business he conducts.

Defendant J. Walton testified that he is employed by defendant Morris as truck driver and has no interest in the business.

The record herein clearly indicates that the defendant Morris conducts a common carrier operation; accepting shipments offered him provided the quantity is sufficient and his equipment is not already filled to capacity. Defendant transports at one time, consignments from various consignors to various consignees, and the frequency of such movements is established by the fact that he makes several trips via the state highway between Los Angeles and Santa Barbara each week; that he is compensated by the shipper or receiver therefor. Such an operation conducted over a regular route between fixed termini for a period of more than two years with the frequency shown cannot be regarded as a radial operation and is, according to the record, in violation of Chapter 213, Acts of 1917 as amended.

We therefore find as a fact that defendant Paul Morris is conducting a trucking service between fixed termini and over a regular route to-wit: between Santa Barbara and Los Angeles and over the state highway as a common carrier for compensation and that such operation is in violation of Chapter 213, Acts of 1917 as amended. An order requiring him to cease and desist such operation should be entered.

As to defendant J. Walton, he is merely an employee of Morris and executing his instructions. He possesses no interest in the transportation business conducted by Defendant Morris and the complaint as to him therefore should be dismissed.

ORDER

Motor Freight Terminal Company, a corporation, having

made complaint that Paul Morris and J. Walton had been conducting an automotive trucking service for the transportation of property as common carriers over the public highways of this state without having first obtained a certificate of public convenience and necessity from the Railroad Commission, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

IT IS HEREBY ORDERED that Paul Morris operating as his proper person cease and desist from all operation by automotive trucks for the transportation of property as a common carrier over the state highways between Santa Barbara and Los Angeles until and unless he has first obtained a certificate of public convenience and necessity therefor from the Railroad Commission; and that the secretary of the Commission cause personal service of a certified copy of this opinion and order to be made upon said Paul Morris; that a certified copy of this opinion and order be mailed to the district attorneys of Los Angeles and Santa Barbara counties; to the Board of Public Utilities and Transportation of the City of Los Angeles; and to the Department of Public Works, Division of Motor Vehicles; and

IT IS HEREBY FURTHER ORDERED that the complaint insofar as it relates to J. Walton, defendant herein, be and the same hereby is dismissed; and

That this order shall become effective twenty (20) days after the date of service above mentioned.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 2nd day of May, 1932.

C. L. Seavery

W. A. Carr

H. B. Rogers

Fred G. Alexander
Commissioners.