

Decision No. 25015

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

CALIFORNIA INTERURBAN MOTOR TRANSPORTATION ASSOCIATION; CLARK BROS.; SOUTHERN PACIFIC COMPANY, a corporation; and PACIFIC MOTOR TRANSPORT COMPANY, a corporation,

Complainants,

-vs-

R. I. McCONNELL; W. A. TINDALL; JOHN GAMES; TINDALL & GAMES: a co-partnership, composed of W. A. TINDALL and JOHN GAMES; FIRST DOE; SECOND DOE; THIRD DOE and FOURTH DOE,

Defendants.

ORIGINAL

Case No. 3174.

Reginald L. Vaughan for California Interurban Motor Transportation Association, Complainants,

Sans & Hudson, by R. H. Hudson, for Clark Bros., Complainants,

Rosedale & Thomas, by Edsell Thomas, for R. I. McConnell, Defendant.

George Graham for Tindall & Games, Defendants.

BY THE COMMISSION:

O P I N I O N

California Interurban Motor Transportation Association, Clark Bros., Southern Pacific Company, a corporation, and Pacific Motor Transport Company, a corporation, complainants in the above entitled proceeding, allege in substance and effect that R. I. McConnell, W. A. Tindall, John Games, Tindall & Games, a copartnership composed of W. A. Tindall and John Games, are operating auto trucks in the transportation of property as common carriers for compensation over the public highways between Watsonville and within a radius of 12 miles thereof, and San Francisco and intermediate points, and also between Watsonville, and within

a radius of 12 miles thereof, and Oakland and intermediate points, without having obtained from the Railroad Commission of the State of California a certificate of public convenience and necessity authorizing such operations.

The defendants, and each of them, by their separate answers herein, deny all of the allegations contained in said complaint and allege that they are operating as private carriers under contract.

Public hearings on said proceeding were conducted by Examiner Satterwhite at Santa Cruz, the matter was submitted, and it is now ready for decision.

The complainants called each and all of the defendants and several other witnesses in support of their complaint.

The evidence shows that each of said defendants, individually, and W. A. Tindall and John Games, as co-partners under the name of Tindall & Games, have for more than one year last past been engaged in the operation of motor trucks for compensation between Watsonville and San Francisco and Oakland and certain way-points. The record shows that the defendants, and each of them, by solicitation of various shippers, have succeeded in securing a very substantial shipping business and have made regularly for that period several trips monthly between the points above named, in order to transport the volume of tonnage obtained for transportation.

The territory surrounding Watsonville for many miles is devoted extensively to the growth of all kinds of vegetables and produce including apples, pears and berries. San Francisco is a large purchasing center for these vegetables and fruits. The defendants have been handling these commodities ever since they began their trucking operations for many of the well-known packing and shipping concerns located at Watsonville, whose

consignees consist of numerous Commission houses at San Francisco and Oakland. The following named shippers at Watsonville constitute in the main the produce and packing houses who have patronized the trucking services of the defendants and each of them:

Cottrell, Grafe & Adriance,	Nick Melick
T. J. Horgan & Company,	Secunda & Warner
Barney Radovitch,	Pajaro Valley Lettuce Co.
C. E. Sheehy Company,	S. Mauri
Mike Resetar	Travers Brothers

The shipments have varied from a thousand pounds to truck load lots and the commodities hauled mainly north-bound by the defendants have consisted of lettuce, artichokes, tomatoes, beans, peas, sprouts, turnips, cauliflower and carrots, also apples, pears and berries. The trucking operations of defendants have been carried on entirely under verbal agreements, with one exception, by virtue of which a seasonal service on call has been rendered at a charge or rate quoted and accepted by the shippers or determined by mutual arrangement. No time limit as to the period of service or volume of tonnage to be hauled was ever definitely agreed upon, except the defendants' patrons had in several instances indicated their willingness to use the service of defendants as long as it proved satisfactory. It appears that each of the defendants has from time to time refused to accept offers of shipments when the rate was too low or unsatisfactory or the load too small or when equipment was not available.

The evidence shows that the defendants, in order to accommodate the needs or convenience of their various patrons, would pick up shipments either at sheds or platforms of the shippers within the city of Watsonville or at the farms located within a radius of at least 12 miles of Watsonville. It appears that the defendants co-operate together in the conduct of their individual and partnership business to the extent

that in the event any one of them is unable for any reason to take care of a particular shipment, at a given time, either of the other defendants would haul the particular shipments upon request if equipment was available and retain the full proceeds of the haul.

We have carefully considered all the evidence in this proceeding and are of the opinion and hereby find as a fact that R.I. Mc Connell, W.A. Tindall, and John Games, and W.A. Tindall and John Games, co-partners under the name of Tindall & Games, are operating as a transportation Company and as a common carrier within the meaning of Chapter 213, Statutes of 1917, as amended, between Watsonville and within a radius of 12 miles thereof and San Francisco and intermediate points, and Watsonville and within a radius of 12 miles thereto and Oakland and intermediate points, without having obtained a certificate of public convenience and necessity therefor. An order to cease and desist such unlawful operations will be entered.

An order of this Commission finding an operation to be unlawful and directing that it be discontinued, is in its effect not unlike an injunction issued by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vests the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a party is adjudged guilty of contempt, a fine may be imposed in the amount of \$500.00, or he may be imprisoned for five (5) days, or both. C.C.P. Sec. 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 8 of the Auto Truck Act (Statutes 1917, Chapter 213), a person who violates an

order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding \$1,000.00, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. Likewise a shipper or other person who aids or abets in the violation of an order of the Commission is guilty of a misdemeanor and is punishable in the same manner.

The Secretary of the Commission will be directed to mail certified copies of this opinion and order to shippers who appeared as witnesses in the course of the proceeding and to other shippers who are known to be using the service and facilities of defendants, upon the said opinion and order becoming final.

ORDER

Public hearings having been held in the above entitled proceeding, the matter having been duly submitted and being now ready for decision,

IT IS HEREBY ORDERED that R. I. McConnell, W. A. Tindall, John Games, Tindall & Games, a co-partnership composed of W. A. Tindall and John Games, immediately cease and desist their common carrier operations between Watsonville and within a radius of 12 miles thereof, and San Francisco and intermediate points, and also between Watsonville, and within a radius of 12 miles thereof, and Oakland and intermediate points, until they and each of them have 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 R. I. McConnell, W. A. Tindall, John Games, and Tindall & Games, a co-partnership composed of W. A. Tindall and John Games; that he shall cause certified copies thereof to be

mailed to district attorneys of Monterey, Santa Cruz and Alameda counties and the City and County of San Francisco, and that upon this decision becoming final he shall cause certified copies thereof to be mailed to shippers who appeared as witnesses in the course of this proceeding and to other shippers who are known to be using the service and facilities of defendants.

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

Dated at San Francisco, California, this 1st day of August, 1932.

C. J. Levey
Leon A. ...
W. A. ...
M. B. Harris
Fred G. ...
Commissioners.