

Decision No. 25016.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MOTOR FREIGHT TERMINAL COMPANY,
a corporation,
Complainant

vs.

HERMAN BAHLIS, doing business under
the fictitious name and style of
UNITED MOTOR TRANSPORT; UNITED
MOTOR TRANSPORT, a co-partnership;
FIRST DOE and SECOND DOE,

Defendants.

Case No. 3208.

ORIGINAL

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

Rex W. Boston, for Defendant.

David G. Shearer, for California Interurban
Motor Transportation Association, Intervenor
on behalf of Complainant.

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

E. Bissinger, for Southern Pacific Company and
Pacific Motor Transport Company, Intervenor
on behalf of Complainant.

Wm. F. Brooks, for The Atchison, Topeka and
Santa Fe Railway Company, Intervenor on behalf
of Complainant.

BY THE COMMISSION:

O P I N I O N

Motor Freight Terminal Company, a corporation, complainant herein, complains and alleges that defendant, Herman Bahls, doing business under the fictitious name and style of United Motor Transport, is conducting a common carrier automotive service for the transportation of property for compensation over the public highways between Los Angeles and the metropolitan area adjacent thereto and San Francisco and adjacent territory, including Oakland, Alameda, Berkeley and points intermediate thereto,

without first having obtained a certificate of public convenience and necessity therefor, as required by the Auto Stage and Truck Transportation Act (Chapter 213, Statutes of 1917, as amended).

Defendant, in answering, admits that he does not have a certificate of public convenience and necessity but denies the allegation that his operation is that of a common carrier.

A public hearing was conducted by Examiner Kennedy at Los Angeles, the matter was duly submitted and is now ready for decision.

Herman Bahls, the above named defendant, is an individual operating under the fictitious name of United Motor Transport. According to his testimony he conducts a transportation business from an office located at 1730 Industrial Street, in the City of Los Angeles. At the address above referred to there is also located a loading place, small warehouse and yard. Defendant does not have title to any trucks but hires the service of six individual truck owners who perform the actual operation of transporting freight tendered defendant. Bahls testified further that he moves, on an average, five or six truck loads per week between Los Angeles and vicinity and San Francisco, Oakland and adjacent territory. Defendant has at times engaged the services of two solicitors who were paid commissions on the amount of business received by defendant as a result of their solicitation. In addition, he admitted advertising in the Los Angeles Commercial News as a motor truck operator conducting an over-night service between Los Angeles and vicinity and San Francisco and territory adjacent thereto.

Defendant contended that he was operating under contracts but his own testimony fails to substantiate this fact. He admitted that he had no written contract with any shipper. He further testified that he had refused two shipments of furniture on the theory that he did not want to hold himself out as a common carrier.

On cross-examination, however, he admitted that if the furniture had been crated - "I suppose it would have been all right - we would not object".

Seven witnesses testified on behalf of complainant, the testimony of these witnesses indicating that defendant has hauled merchandise between the points heretofore referred to. All witnesses testified that they had nothing more than an oral understanding with defendant and compensation for the service rendered was paid accordingly.

The record herein clearly indicates that defendant Bahls conducts a common carrier operation, transporting consignments from shippers in both Los Angeles and territory adjacent thereto to San Francisco and the bay area, as well as shipments from San Francisco to the southern part of the state in the vicinity of the City of Los Angeles; that the operation consists of five or six truck loads in each direction every week; and that the defendant receives compensation therefor. An order to cease and desist such operation 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 \$1000.00, 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 defendant, upon the said opinion and order becoming final.

ORDER

A public hearing having been held in the above entitled proceeding, the matter having been duly submitted and being now ready for decision,

IT IS HEREBY FOUND AS A FACT that defendant Herman Bahls, doing business under the fictitious name of United Motor Transport, is engaged in the transportation of property by auto truck for compensation, and as a common carrier, between fixed termini and over a regular route on the public highways of this state, viz: between San Francisco, Oakland and contiguous points and Los Angeles and contiguous points without first having obtained a certificate of public convenience and necessity for such operations, as required by the Auto Stage and Truck Transportation Act, (Chapter 213, Statutes of 1917, as amended). Therefore,

IT IS HEREBY ORDERED that defendant Herman Bahls, doing business under the fictitious name of United Motor Transport,

shall immediately cease and desist such common carrier operations, as described in the preceding paragraph, unless and until he shall obtain a certificate of public convenience and necessity therefor, and

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon defendant Herman Bahls, doing business under the fictitious name of United Motor Transport; that he cause certified copies thereof to be mailed to the District Attorneys of San Francisco, Alameda and Los Angeles Counties and, 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 defendant.

The effective date of this order shall be twenty (20) days after the date of service upon defendant Herman Bahls.

Dated at San Francisco, California, this 1st day of

August 1932.

C. Stearns
Leon Whidney
M. J. ...
M. B. ...
Fred G. ...
COMMISSIONERS.