

Decision No. 3201.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MOTOR FREIGHT TERMINAL COMPANY,
Complainant,

vs.

NATIONAL SHIPPERS ASSOCIATION, LTD.,
a corporation, TEX SAID, doing business
under the fictitious name and style
of SAID BROTHERS TRANSFER COMPANY,
SAID BROTHERS TRANSFER COMPANY, a co-
partnership, FIRST DOE and SECOND DOE.
Defendants.

Case No. 3201.

ORIGINAL

John M. Atkinson and Wallace K. Downey, by
Wallace K. Downey for Complainant; and for
California Interurban Motor Transportation Association;
Valley Motor Lines, Inc.;
Valley Express Company, a co-partnership;
Lyon Van Lines, Inc.;
Bekins Van Lines, Inc.,
Intervenors on behalf of the complainant.

Robert Brennan and Wm. F. Brooks, for Atchison, Topeka
& Santa Fe Railway Company and Western Pacific
Railroad Company, Intervenors on behalf of the
Complainant.

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

Douglas Brockman, for California Motor Express, Ltd.,
and for California Motor Transport Company,
Intervenors on behalf of the Complainant.

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

H.C. Lucas, for Pacific Greyhound Lines, Intervenor on
behalf of the Complainant.

Leo D. Daze, for National Shippers Association, Ltd.,
Defendant.

BY THE COMMISSION:

O P I N I O N

In this proceeding complainant alleges (a) that defendants
are and have been operating automotive trucks for the transportation
of property as common carriers for compensation over the public

highways of the state between fixed termini and over regular routes, namely, between Los Angeles and adjacent points on the one hand, and San Francisco Bay points on the other without first having obtained a certificate of public convenience and necessity as required by the Auto Stage and Truck Transportation Act (Chapter 213, Statutes of 1917, as amended), and (b) that defendants are and have been operating as an express corporation, as that term is defined in the Public Utilities Act, between Los Angeles and adjacent points on the one hand, and San Francisco Bay points on the other, without having filed tariffs with this Commission.

Public hearings were held before Examiner Kennedy at Los Angeles on April 15 and 23, 1932, and the matter submitted.

The evidence in this proceeding primarily relates to the operations of the National Shippers Association, Incorporated hereinafter referred to as the National Shippers Corporation formed March 7, 1931, for the purpose, among other things, "to engage in, conduct and carry on on all its franchises the business of transferring, carrying and forwarding of freight and merchandise in both large and small quantities, parcels and shipments of every class and character in the State of California to and from customers and shippers solicited by the corporations through its officers or agents either gratuitously or for consideration **** provided, however, this corporation shall not act as common carrier ****". The record will not support a finding with reference to the other defendants.

The National Shippers commenced operations January, 1931. It maintained terminals at Los Angeles and San Francisco and generally solicited shipments from the public, using its own trucks

to pick up and deliver the shipments at the termini but using the railroads, steamship lines or certificated trucks to perform the line haul service. About the first of September, 1931, defendants abandoned the use of the carriers under this Commission's jurisdiction and entered into a purported contract with Said Brothers Forwarding Company whereby the latter agreed to perform the line haul service between the termini by truck. Said Brothers Forwarding Company has no certificate of public convenience and necessity to operate on the public highways as common carriers.

On January 25, 1932, the National Shippers filed with the Commission what was intended to be an express tariff. The tariff was not accepted for filing as it was not constructed in conformity with the Commission's rules relating to the construction and filing of tariffs nor was the Commission informed over what common carrier or carriers the alleged express matter was to be transported. The record in this proceeding, however, shows that at the time this tariff was offered for filing the National Shippers was not operating as an express corporation, as that term is defined in the Public Utilities Act. Its President testified

that the express matter, if such it could be called, was being transported between the termini not by a common carrier but by Said Brothers Forwarding Company, a carrier purporting to be a private contract carrier.

In the fore part of March, 1932, the National Shippers Association purchased the automotive equipment of the Said Brothers Forwarding Company and since that date have been directly operating trucks. It now serves approximately 244 shippers, and operates a regular schedule by its own trucks between Los Angeles and adjacent points on the one hand, and Bakersfield, Fresno, Madera, Merced, Stockton, Oakland, Berkeley, Emeryville, Alameda and San Francisco on the other hand. Trucks leave Los Angeles at about 6 P.M., arriving at San Francisco the following morning at about 10 A.M. Southbound the running time is about an hour slower. The service is extensively advertised and solicitors are employed to solicit business from shippers generally. There is no attempt by defendant to negotiate any contracts with those whom it serves.

The evidence clearly shows that at the present time defendant is transporting property as a common carrier over the public highways of this state between fixed termini and over regular route without having obtained from this Commission a certificate of public convenience and necessity. An order will be entered requiring the National Shippers Association, Incorporated to cease and desist rendering this unlawful service unless and until a certificate of public convenience and necessity is obtained from the Commission.

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. Stamber, 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.

O R D E R

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 National Shippers Association, Incorporated 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 Los Angeles and contiguous points on the one hand and Bakersfield, Fresno, Madera, Merced, Stockton, Oakland, Berkeley, Emeryville, Alameda and San Francisco on the other hand 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 National Shippers Association, Incorporated, shall immediately cease and desist such common carrier operations, as described in the preceding paragraph, unless and until a certificate of public convenience and necessity is obtained from the Commission 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 National Shippers Association, Incorporated; that he cause certified copies thereof to be mailed to the District Attorneys of San Francisco, Alameda, San Joaquin, Stanislaus, Fresno, Kern 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.

IT IS HEREBY FURTHER ORDERED that in all other respects the complaint is hereby dismissed.

The effective date of this order shall be twenty (20) days after the date of service upon defendant National Shippers Association, Incorporated.

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

C. J. Sawyer
Leon O. White
W. A. ...
W. B. ...
Fred G. ...
COMMISSIONERS