

Decision No. 25339

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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SOUTHERN PACIFIC COMPANY, a corporation,
THE WESTERN PACIFIC RAILROAD COMPANY, a
corporation, SACRAMENTO NORTHERN RAILWAY
COMPANY, a corporation, THE ATCHISON,
TOPEKA AND SANTA FE RAILWAY COMPANY, a
corporation, CENTRAL CALIFORNIA TRACTION
COMPANY, a corporation, RAILWAY EXPRESS
AGENCY, INC., a corporation, SOUTHERN
PACIFIC GOLDEN GATE FERRIES, LTD., a
corporation, SACRAMENTO NAVIGATION COMPANY,
a corporation, and R. W. ROGERS, doing
business as Sacramento Motor Transport,

Complainants,

vs.

C. P. STANBROUGH and JOHN DOE STANBROUGH,
C. L. FILBERT, FIRST DOE, SECOND DOE, THIRD
DOE, and DOE COMPANY, a corporation, doing
business under the firm name and styles
of San Francisco-Stockton Express Company,
also Stockton-San Francisco Express Company,
and Truck Transportation Company,

Defendants.

ORIGINAL

Case No. 3042

L. N. Bradshaw and G. E. Walk for Western Pacific
Railroad and Sacramento Northern Railway

Allan P. Matthew for The River Lines

Louittit, Marceau & Louittit, by Thomas S. Louittit
for Defendants

H. C. Lucas and T. Finkbohner for Pacific Grey-
hound Lines

Berne Levy and G. E. Duffy for The Atchison,
Topeka and Santa Fe Railway Company

Edward Stern for Railway Express, Inc.

H. W. Hobbs and W. S. Johnson, for Southern
Pacific Company, Pacific Motor Transport Com-
pany and Central California Traction Company

WHITSELL, Commissioner :

OPINION ON REHEARING

The complaint herein alleges in substance that defendants are engaged in the business of operating motor trucks for compensation as common carriers of property over the public highways of the state between fixed termini and over regular routes between certain points; that they are soliciting from the public generally the transportation of property for hire, and holding themselves out as common carriers for the transportation of property or freight in auto trucks for compensation over the public highways of the state upon fixed and definite routes; that they are conducting such business under certain firm names and styles, in competition with complainants, soliciting the transportation of property for hire at rates lower than complainants' legally published and filed tariff rates; and that said operations are conducted without any certificate of public convenience and necessity and are unlawful.

Decision 24408 (37 C.R.C. 81) ordered that C. P. Stanbrough, as part owner of Stockton-San Francisco Express and as owner of Sacramento-San Francisco Express and Merchants Freight Forwarding and Distributing Company, cease operation as a common carrier of property over the line of Truck Transportation Company owned and operated by the Estate of C. D. Clarke, between San Francisco and Stockton, San Francisco and Sacramento, and intermediate points. It was ordered further that R. M. Stanbrough, as part owner of Stockton-San Francisco Express, cease operation over the line of Truck Transportation Company between San Francisco and Stockton and intermediate

points; and that the Estate of C. D. Clarke cease operation of trucks as a common carrier between the above points. (1)

At the rehearing defendants C. P. Stanbrough, R. M. Stanbrough, C. L. Filbert, and Mrs. Grace D. Clarke, as executrix of the last will and testament of C. D. Clarke, deceased, appeared and denied each of the allegations in the complaint.

C. P. Stanbrough, on April 9, 1930, under the name "Merchants Freight Forwarding and Distributing Company" filed Local Freight Tariff No. 1, naming commodity rates, rules and regulations for the transportation and delivery of freight between San Francisco or Oakland, Sacramento and Stockton. On April 9, 1930, C. P. Stanbrough also filed with the Commission, under the name "Stockton-San Francisco Express Co.", Local Express Tariff No. 1, naming "class and commodity rates for pickup and delivery of merchandise or personal effects between San Francisco or Oakland and Stockton either way and rules and regulations governing same." On the same date C. P. Stanbrough filed a similar express tariff under the name "Sacramento-San Francisco Express Co.", applying between San Francisco or Oakland and Sacramento.

In the original hearing (September 21, 1931) C. P. Stanbrough testified that the three names referred to above were fictitious names; that his son, R. M. Stanbrough, was "interested" in the "Stockton-San Francisco Express", but that no one else was associated with the business; and that his son-in-law, C. L. Filbert, was an employe under salary at Sacramento. (Tr. p. 54)

For some five years express operations had been conducted over boat and rail lines between San Francisco and Sacramento and Stockton, the witness paying the tariff rates over such lines.

(1) Decision 24408 was personally served upon C. P. Stanbrough on January 27, 1932; upon Grace D. Clarke on January 27, 1932; and upon R. M. Stanbrough on February 15, 1932.

After attempts to obtain a lower rate from the rail carriers, in order to meet trucking competition, Mr. C. D. Clarke, with whom witness had been acquainted, became interested in the transportation. On December 23, 1930, an agreement was entered into by C. P. Stanbrough and C. D. Clarke (Exhibit No. 1), whereby the latter undertook to transport freight by truck between San Francisco and/or Oakland and Sacramento and intermediate points, or between San Francisco and/or Oakland and Turlock and/or intermediate points. . . . Clarke operated under the fictitious name of "Truck Transportation Company", and began

(2) This agreement stated that Stanbrough was engaged in the express and freight forwarding business under three fictitious names; that the service conducted under the names of Stockton-San Francisco Express and Sacramento-San Francisco Express involved pickup service at point of origin and delivery service at destination, tariffs for such service being on file with the Commission; that the service of Merchants Freight Forwarding and Distributing Company involved no pickup service at point of origin but included delivery at destination, tariffs for such service being on file; that the parties desired to provide "for the carriage and transportation of any and all freight to be moved by said C. P. Stanbrough in connection with his said business * * *"; and provided in substance as follows:

1. Stanbrough agreed to offer to Clarke for "carriage and transportation all freight and merchandise * * * which he may accept from consignors for carriage and transportation", with certain minor exceptions.

2. Clarke agreed to acquire and maintain such trucks and trailers as shall be necessary to transport such freight and not to solicit or accept freight for transportation from any other person without the consent of Stanbrough.

3. When Stanbrough offers freight to Clarke for transportation "for account of Sacramento-San Francisco Express or Stockton-San Francisco Express between any of the points covered by the tariffs of either of said express companies on file with the Railroad Commission" or any freight which Stanbrough may accept for transportation between said points under contract with said consignors, requiring both pickup and delivery service by Stanbrough, Clarke shall perform the terminal to terminal haul for one-third of the total sum payable to Stanbrough as determined by the tariffs on file.

4. When Stanbrough offers freight for transportation for account of Merchants Freight Forwarding and Distributing Company, Stanbrough shall pay Clarke according to rate sheets attached to

hauling regularly about February 1, 1931. Mr. Clarke died on or about May 20, 1931, and his estate is now in the hands of Mrs. Grace D. Clarke, executrix of the last will and testament of C. D. Clarke, deceased.

At the rehearing C. P. Stanbrough testified that he owned the Merchants Freight Forwarding and Distributing Company; that part of the merchandise is brought to the "plant" by local draymen and part by his own autos; that the Stockton merchandise

the agreement as Exhibit "A".

5. When aggregate charges under paragraphs 3 and 4 do not amount to \$15 for each trip, then \$15 shall constitute the minimum charge.

6. Rates determined in paragraphs 3 and 4 apply to terminal to terminal only, Clarke not being obligated to perform pickup or delivery service. Clarke, however, shall at the request of Stanbrough perform any pickup or delivery service in addition to the line haul, additional compensation therefor to be subject to mutual agreement.

7. Should Stanbrough have any freight available for transportation between any points other than those referred to in paragraphs 3 and 4; or any freight the rate for transportation of which is not determined by said paragraphs; or in the event that the volume of any one shipment of freight, the rate for transportation of which would otherwise be fixed by said paragraphs, warrants the shipment being received directly from consignor and delivered directly to consignee, the compensation to Clarke shall be determined by mutual agreement. If unable to agree, Stanbrough "may obtain bids from other carrier for such transportation", and Clarke may elect to transport such shipment at the same rate as the most favorable of the bids.

8. Compensation to Clarke is to be payable and settlement made daily upon completion of service.

9. Stanbrough is to obtain cargo insurance.

10. Provisions relating to liability of the parties for damage or loss.

11. Clarke's business is to be conducted under the name "Truck Transportation Company".

12. The agreement is to remain in effect for five years.

is loaded in a trailer of Truck Transportation Company, the Sacramento merchandise being loaded in a similar unit for Sacramento; and that the line haul is performed by Truck Transportation Company pursuant to the agreement of December 23, 1930. Upon completion of the line haul to Stockton the trailer is detached from the power unit and left "where the delivering company have their office." The power unit and semi-trailer proceeds to Sacramento, the semi-trailer being left there for distribution. The power unit is then transferred to a semi-trailer that has been loaded in Sacramento destined for San Francisco and proceeds to Stockton, picking up a loaded trailer at that point, and delivers the two units to C. P. Stanbrough at San Francisco. Settlement of the revenue earned by Truck Transportation Company is made with a representative of Mrs. Clarke daily.

As to Sacramento-San Francisco Express, C. P. Stanbrough testified at the rehearing that

"* * * The Sacramento outfit I have no interest in at all. That belongs to a man named Filbert.

Q. And Mr. Filbert is a relative of yours?

A. He is a son-in-law" (Tr. p. 85),

and that the Stockton-San Francisco Express belongs to his son, R. M. Stanbrough, to whom it was transferred because

"A. He requested it and he earned it out so that he was obligated - or I was obligated to give him title.

Q. Was he associated with you before that time?

A. Yes, on a commission basis, percentage basis.

Q. Does he receive a salary from you now?

A. No, sir. We pay him a percentage for his services.

Q. That is on a commission basis now?

A. Well, I don't know whether you would call it commission, or what. I pay him so much for his services rendered.

Q. How do you determine the amount which you are to pay him? Is it 10 per cent of the gross rates, or 50 per cent, or what is it?

A. He gets 33 1/3 per cent.

Q. That is, of the gross rates for the movement between San Francisco and Stockton?

A. Yes, sir.

Q. Is there some percentage which is allocated to your service here in San Francisco, your pick-up and delivery service?

A. The balance comes back to San Francisco, that is, 66 2/3. Out of that I pay the Truck Transportation Company for their line haul." (Tr. p. 94)

It was stated at the rehearing that the business at Sacramento was transferred to C. L. Filbert, and that at Stockton to R. M. Stanbrough about September 10, 1931 (Tr. p. 101.)

There are approximately 300 shippers using the service from San Francisco to Stockton and Sacramento and 20 shippers in the reverse direction. Certain shipments are refused as not being attractive if the hazard is great, if it is of extra length, such as thirty feet lengths of iron and steel, or if it is very bulky and light... (3) Although nothing is being shipped over rail or boat lines, the tariffs on file have not been withdrawn and the rates charged shippers are not those set forth in the tariff.

(3) "Q. As a physical matter you could handle some of this light traffic to which you have referred? A. The light -

Q. Yes, you speak of reed and willow.

A. No, it is too bulky. Our space is limited.

Q. You could not put it in the space?

A. No, not and make any money out of it.

Q. It is unprofitable to you, so therefore, you don't care to take it? A. That is very true." (Tr. p. 98)

It is the position of defendants and petitioners for rehearing that C. P. Stanbrough's operations are confined entirely to the City and County of San Francisco, that he performs a consolidation and forwarding service, and solicits the business of persons who have occasion to use transportation; that the line haul service is performed by Truck Transportation Company under a private contract whereby goods are hauled only for C. P. Stanbrough; that R. M. Stanbrough performs no service except a pickup and delivery service in Stockton; and that C. L. Filbert performs a similar service in Sacramento. It is contended, therefore, that none of the parties are engaged in a common carrier service over the public highways, and that Truck Transportation Company is a private carrier under Frost v. Railroad Commission, 271 U. S. 583.

By the method described above and in the prior decision herein, a daily transportation service by truck is being rendered to the public between the points involved. No certificate of public convenience and necessity has been obtained. A common carrier service may not be placed beyond the pale of the regulatory statutes by the method under which the various defendants herein are conducting such common carrier service. Should this mode of operation be sanctioned, it would no longer be necessary for any truck operator to obtain a certificate before engaging in business as a common carrier. Under defendants' theory, every truck carrier in California, by entering into agreements of the nature set forth above, could remove itself from regulation. After a careful review of the entire record in this proceeding it must be recommended that defendants be ordered to cease and desist from their unauthorized service until such time as a certificate shall be

obtained.

While C. P. Stanbrough has three express tariffs on file, the record shows that express operations are not being conducted over the line of any authorized common carrier. As section 2(k) of the Public Utilities Act contemplates express operations over a line lawfully operating as a common carrier, it cannot be said that any of the defendants herein are engaged in business as an "express corporation."

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 five hundred dollars (\$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.

ORDER ON REHEARING

Rehearing having been had and the matter submitted upon briefs, and upon consideration of the entire record herein,

IT IS HEREBY FOUND AS A FACT that C. P. Stanbrough, R. M. Stanbrough, C. L. Filbert, and Grace D. Clarke (Executrix of the Last Will and Testament of C. D. Clarke, deceased), are engaged in the operation of a common carrier of property, for compensation, over the public highways between San Francisco and Sacramento and Stockton and intermediate points; and vice versa, without having obtained a certificate of public convenience and necessity for such operation.

IT IS HEREBY ORDERED that C. P. Stanbrough, R. M. Stanbrough, C. L. Filbert, and Grace D. Clarke, Executrix of the Last Will and Testament of C. D. Clarke, deceased, operating under the following fictitious names

Merchants Freight Forwarding and Distributing Company
Stockton-San Francisco Express
Sacramento-San Francisco Express
Truck Transportation Company,

immediately cease and desist from the operation of a common carrier trucking service between San Francisco and Sacramento and Stockton and intermediate points unless and until a proper certificate of public convenience and necessity shall have been obtained therefor.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Commission cause personal service of a certified copy of this opinion and order on rehearing to be made upon C. P. Stanbrough, R. M. Stanbrough, C. L. Filbert, and Grace D. Clarke, as Executrix of the Last Will and Testament of C. D. Clarke, deceased; and

to cause a certified copy of this opinion and order to be mailed to the District Attorneys of the Counties of Alameda, San Joaquin, Sacramento, and Contra Costa and the City and County of San Francisco, and to the Department of Public Works, Division of Motor Vehicles.

IT IS HEREBY FURTHER ORDERED that Decision No. 24408, so far as inconsistent with the provisions of this decision on rehearing, is hereby revoked and annulled.

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

Dated at San Francisco, California, this 8th day of August, 1932.

C. J. Seaver
Leon Whitely
M. J. ...
W. B. ...
Fred G. Stewart
Commissioners