

Decision No. 25139.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

MOTOR FREIGHT TERMINAL COMPANY,
a corporation,
Complainant.

vs.

MOYE FORWARDING COMPANY, a corporation,
O.P. MOYE, FIRST DOE,
SECOND DOE and THIRD DOE,
Defendants.

CALIFORNIA MOTOR EXPRESS LTD.,
a corporation,
Complainant.

vs.

MOYE FORWARDING COMPANY, a corporation,
O.P. MOYE, FIRST DOE,
SECOND DOE and THIRD DOE,
Defendants.

ORIGINAL

Case No. 3149.

Case No. 3217.

John M. Atkinson and Wallace K. Downey,
by Wallace K. Downey, for Complainant in Case
No. 3149 and as Intervenor in Case No. 3217.

M. F. Sylva for Moyer Forwarding Company, a corporation,
Defendant in Case No. 3149 and Case No. 3217.

Robert Brennan and Wm. F. Brooks, by Wm. F. Brooks
for The Atchison, Topeka and Santa Fe Railway
Company, Intervenor in Case No. 3149 and Case
No. 3217.

C. S. Booth, for Los Angeles Steamship Company,
Intervenor in Case No. 3217.

Edw. Stern for Railway Express Agency, Inc., Intervenor
in Case No. 3149 and Case No. 3217.

R. C. Bliss and A. G. Goodrich for Southern Pacific Com-
pany and Pacific Motor Transport Company, Intervenor
in Case No. 3149 and Case No. 3217.

Douglas Brookman for Complainant in Case No. 3217.

BY THE COMMISSION:

O P I N I O N

In Case No. 3149, Motor Freight Terminal Company complains of Moye Forwarding Company, a corporation, O. P. Moye, First Doe, Second Doe and Third Doe and alleges that said defendants are operating auto trucks as a common carrier over public highways within this state and particularly between Los Angeles and Fresno and intermediate points without having obtained a certificate of public convenience and necessity as required by the statutory law (Chapter 213, Statutes of 1917, as amended).

In Case No. 3217, California Motor Express, Ltd., complains of Moye Forwarding Company, a corporation, O. P. Moye, First Doe, Second Doe and Third Doe and alleges that said defendants are operating auto trucks as common carriers for the transportation of property over the highways of this state and particularly between San Francisco and Los Angeles.

Defendant, Moye Forwarding Company, a corporation, duly filed its Answer to each of the above complaints, such Answers being in general a denial of the material allegations of the complaints.

A public hearing was conducted by Examiner Handford at Fresno on Case No. 3149 and the matter was adjourned for hearing at Los Angeles. At the Los Angeles hearing Case No. 3217 was duly consolidated with Case No. 3149 for the receipt of evidence and for decision. The matters were duly submitted upon the filing of briefs and are now ready for decision.

At the Los Angeles hearing the name of A. R. Fouratt was substituted for that of First Doe as appearing as defendant in each of these complaints.

The record shows Moye Forwarding Company to be a corporation organized November 5, 1931, and that it commenced business on November 16, 1931. Prior to that date the Moye Forwarding Company was operated by O. P. Moye, who is located at Oakland and is now employed by the Moye Forwarding Company. The record shows that the Moye Forwarding Company owns no trucks but has all business transported by independent operators. These operators are paid by the Moye Forwarding Company and transport shipments, including pick-up and delivery between such points as may be agreed upon. A very considerable tonnage is transported between San Francisco and Los Angeles and the transcript shows that 87 shipments were transported from Los Angeles to Fresno, Visalia, Bakersfield, Hanford, Tulare and Lindsay from the beginning of operations on November 16, 1931, to January 4, 1932, the total tonnage of these shipments amounting to approximately 59,900 pounds. Moye Forwarding Company claims that all shipments moved are under contract, but no contracts were produced as evidence. It is the testimony of A. R. Fouratt, Secretary-Treasurer of the company, that these so-called contracts consist of a letter and that the receipt of such letter and shipment following constitute a contract between the company and the owner of the goods transported. The actual movement of the goods or merchandise is performed under an alleged contract with the Moye Forwarding Company by truck owners not certificated carriers responsible to this Commission. No contracts between the truck owners and the Moye Forwarding Company were presented in evidence, though the record shows 187 contracts to have been made in the month of February, 1932, with approximately 50 separate parties engaged in hauling.

A Los Angeles office is maintained at No. 814 East 29th Street in charge of L. Case, at which are also employed several office clerks and an outside man, Frank Devine, who contracts with

the large shippers. According to witness Fouratt, all contracts are secured from the San Francisco office by information secured from the Traffic Association and traffic managers of shippers, and the information is sent to Los Angeles for the use of the outside or contact man there employed. No solicitation of shipments from Los Angeles to Fresno and intermediate territory is made. No contracts exist for the transportation of shipments from Los Angeles to Fresno and intermediate points. It is the testimony of witness Fouratt that all of the shipments to such points were voluntarily offered to Moye Forwarding Company by shippers with whom the company contacts only by reason of their having other business from Los Angeles into territory north of Fresno.

Lee Case, in charge of the Los Angeles office of defendant Moye Forwarding Company, testified that he was engaged in keeping the records there and forwarding them to the general office in San Francisco; that there were three other employees in the Los Angeles office, two of whom were bill clerks and Frank Devine an assistant helping other employees, answering the telephone and running errands. If information is received from the San Francisco office as to prospective shipments witness tries to arrange to handle the shipment with some truck which may be on hand, he having a list of trucks that may be called upon. This witness testified that approximately 20,000 pounds of freight was now being handled daily from Los Angeles to San Francisco and about an equal amount was being received from San Francisco with deliveries to 25 or 30 consignees in Los Angeles. No solicitation is made by employees of the Los Angeles office other than the contacting of prospective customers on tips received from the San Francisco office, although a telephone is maintained in the Los Angeles office.

It appears that the Moye Forwarding Company, a corporation, with headquarters at San Francisco and a branch office at Los Angeles, is engaged in the business of securing freight shipments between San Francisco and Los Angeles and between Los Angeles and Fresno and intermediate points. This business secured from selected shippers is transported by trucks which are owned and operated by other than operators who are certificated by this Commission. Bills of lading and shipping receipts are regularly used by the Moye Forwarding Company in the transaction of its business. The company claims that it does not hold itself out by solicitation or otherwise to handle all freight offered or as a common carrier, but no freight, except possibly in some instances furniture, is ordinarily refused.

The record shows that no trucks or other equipment are owned by defendant, Moye Forwarding Company. It does show, however, that the Moye Forwarding Company receives and transports shipments by using the facilities of truck owners or operators under so-called verbal contracts, and that the operations of such trucks are controlled by Moye Forwarding Company to the extent that destinations are specified and truck drivers receipt for and handle shipments in the name of Moye Forwarding Company and carry out instructions as furnished by such company.

Neither the Moye Forwarding Company nor any truck owner or operator with whom this record shows the Moye Forwarding Company to have had a verbal agreement or "contract" has ever applied for or obtained a certificate of public convenience or necessity from this Commission as required by the statutory law.

The Auto Stage and Truck Transportation Act (Chapter 213, Statutes of 1917, as amended), defines the term

"Transportation Company" as follows:

" The term "transportation company" when used in this act means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any auto truck, used in the business of transportation of property, or as a common carrier of property, for compensation, over any public highway in this state between fixed termini or over a regular route and not operating exclusively within the limits of an incorporated city or town, or of a city and county; provided that nothing in this act shall apply to the transportation of baggage and express when transported incidental to the transportation of passengers by a passenger stage corporation as defined in Section 2 $\frac{1}{2}$ of the Public Utilities Act. "

From the record herein we conclude that defendant Moye Forwarding Company is acting as a transportation company by controlling the shipment of property over the public highways of this state between Los Angeles and San Francisco and between Los Angeles and Fresno and intermediate points and that it should cease and desist such operations until a certificate of public convenience and necessity has been obtained as required by the statutory law.

The record also shows that O. P. Moye, defendant, was regularly served in each of the complaints. No Answer was filed by said defendant. The record shows that O. P. Moye was one of the truck owners or operators with whom Moye Forwarding Company arranged for the transportation of property and the order herein will direct said O. P. Moye to cease and desist from such operation until he shall have obtained the certificate of public convenience and necessity as required by the statutory law.

An order of this Commission finding an operation to be unlawful and directing it to be discontinued is in its effect not unlike an injunction. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vest 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. Motor Freight Terminal Co. vs. Bray, 37 C.R.C. 224; Ball & Hayes, 37 C.R.C. 487; Vermuth vs. Stamper, 36 C.R.C. 458; Pioneer Express Co. vs. Keller, 33 C.R.C. 571.

It should also be noted that under Section 8 of the Auto Stage and Truck Act (Statutes 1917, Chapter 213, as amended), 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 punishable in the same manner.

O R D E R

Public hearings having been held on the above entitled complaints, the matters having been duly submitted on briefs and the Commission being now fully advised,

IT IS HEREBY FOUND AS A FACT that defendants Moye Forwarding Company and O. P. Moye are engaged in the transportation of property by auto truck for compensation and as common carriers between fixed termini and over a regular route on the public highways of this state, viz., between San Francisco and Los Angeles and between Los Angeles, Fresno and intermediate 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 defendants Moye Forwarding Company and O. P. Moye shall immediately cease 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 notice is hereby given that such common carrier operations shall not be conducted by Moye Forwarding Company and O. P. Moye either directly or indirectly or by their agents, employees, representatives or assignees.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission cause personal service of a certified copy of this order to be made upon defendants, Moye Forwarding Company, a corporation, and O. P. Moye and copies of this order be mailed to the District Attorney of the City and County of San Francisco, to the District Attorneys of the Counties of Los Angeles, Kern, Kings, Fresno, Madera, Merced, Stanislaus, Contra Costa, Ventura, Santa Barbara, San Luis Obispo, Monterey, San Benito, Santa Clara and Alameda, to the Board of Public Utilities and Transportation of the City of Los Angeles and to the Department of Public Works, Division of Highways at Sacramento.

IT IS HEREBY FURTHER ORDERED that these complaints in so far as they refer to defendants A. R. Fouratt, Second Doe and Third Doe be and the same are hereby dismissed.

The effective date of this order is hereby fixed as twenty (20) days from and after the date of personal service of this order as hereinabove directed.

Dated at San Francisco, California, this 29th day of August, 1932.

C. S. Stearns
Leon A. Whalley
W. B. Harris
Fred G. Stewart
Commissioners.