

Decision No. 35140.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MOTOR FREIGHT TERMINAL COMPANY,
a corporation,
Complainant,

vs.

F. W. DEAN, doing business under the
fictitious name and style of WEST COAST
FORWARDING COMPANY, E. L. SHURTLIFF,
doing business under the fictitious name
and style of WEST COAST EAST FREIGHT,
WEST COAST FORWARDING COMPANY, a co-
partnership, ED DEMIER, FIRST DOE and
SECOND DOE,

Defendants.

ORIGINAL

Case No. 3200.

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

F. W. Turcotte, for defendants J. H. Hickok and
J. L. Sneed.

Edward Stern, for Railway Express Agency, Inc.,
intervener on behalf of the complainant.

Robert Breanan and Wm. F. Brooks, for The Atchison,
Topeka and Santa Fe Railway Company, intervener
on behalf of the complainant.

C. W. Cornell, for Southern Pacific Company and
Pacific Motor Transport Company, interveners
on behalf of the complainant.

Robert Lacy, for California Motor Express, Ltd.,
intervener on behalf of the complainant.

BY THE COMMISSION:

O P I N I O N

Complainant alleges that defendants have been and are
conducting the transportation of freight between Los Angeles

and adjacent points on the one hand and San Francisco and adjacent points on the other and points intermediate to the terminals for compensation as a common carrier without first having procured from this Commission 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).

Defendants deny the allegations of the complaint. Prior to hearing defendants First Doe and Second Doe were identified as J. L. Snead and J. H. Hickok, doing business under the fictitious name of Universal Forwarding Company. An amended complaint was duly served upon these defendants. Their answers denied the allegations of the complaint.

On the issues thus joined public hearing was conducted by Examiner Kennedy at Los Angeles June 28, 1932. At this time Railway Express Agency, Inc., The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Pacific Motor Transport Company and California Motor Express, Ltd., were permitted to intervene in behalf of complainant. The matter was duly submitted on briefs and is now ready for decision.

The evidence shows that Snead and Hickok, operating under the name of the Universal Forwarding Company, had taken over the business of the West Coast Forwarding Company. The essential facts relating to the operations of the Universal Forwarding Company, largely contained in the testimony of J. L. Snead and supported by the testimony of shipper witnesses and exhibits, are clear and not disputed. Defendants Snead and Hickok operated as co-partners. They had terminals at Los Angeles and San Francisco, and for a time at Fresno. Consolidated loads of freight were solicited at Los Angeles and San Francisco, about 50 shippers being served at each place. Freight was hauled between the termini

and from and to intermediate points. The volume amounted to about 12 tons each way daily. Schedules were not maintained, the consolidated loads moving to termini or to intermediate points whenever sufficient quantity was available. Rates were not fixed, being based on the bargain with the shipper. These shipments were received under a so-called contract or receipt (Exhibit No. 3) which contained the following provisions:

"Received at Los Angeles, Calif., Date 6/2/32, From Sealright Pacific, Ltd., Address _____, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which the Universal Forwarding Company agrees and undertakes to have transported via a reliable contract truck carrier to said destination. It is mutually agreed and understood that the Universal Forwarding Company owns controls, operates or manages no auto trucks used in the business of transportation of property, or as a common carrier, for compensation or otherwise, over any public highway between fixed termini or over regular routes or otherwise, and that the sole undertaking of the Universal Forwarding Company is to hire on behalf of the consignor herein a reliable contract truck carrier to transport the goods from origin to destination within a reasonable time and at a contract rate not in excess of that set forth below."

Shipper witnesses testified that they regarded this as a receipt only. No other documents were ordinarily used.

Having thus acquired shipments defendants had them picked up by local truck draymen and delivered at the terminals, except where truck loads were obtained, these being picked up at the place of consignor and moving directly to destination. Having thus assembled a load, Snead testified, various truck operators (not certificated carriers) were asked to bid on taking the load to destination. Less than truckload shipments were hauled to the terminal, from which local draymen made deliveries by truck; truckload shipments were delivered direct to the consignee.

A "trucking contract" (Exhibit No. 5) was executed between defendants and the truckman, which contained details of the

vehicle, owner and driver, a list of the shipments and the following provision:

"Received at _____, Date _____, 1932, from Universal Forwarding Company, the property described above, in good order and condition, except as noted, consigned to Universal Forwarding Company at _____, California, which I agree to transport by auto truck to the place of business of the Universal Forwarding Company at destination, at the rate of \$ _____ per ton of 2000 pounds. It is agreed and understood that I will deliver said goods at destination within a reasonable time (which is hereby agreed to be within _____ hours), and there deliver the same to said Universal Forwarding Company in like good order and condition as received by me, excepting only damage thereto caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or natural shrinkage."

Following this the truckman delivered to the consignor the "receipt" set forth above, signed by the truckman for Universal Forwarding Company. In one instance a shipment was moved under a uniform bill of lading (Exhibit No. 2).

At the conclusion of the hearing defendants' counsel moved to dismiss the complaint on the ground that the business of defendants was that of a forwarding company for which no certificate is required. The motion will be denied.

The record clearly shows that defendants solicited generally from the public shipments to be transported by truck between fixed termini for compensation. For no other reason was the business acquired and no shipper had anything else in mind. To insure the shipper defendants carried cargo insurance to destination. Witness Shead admitted that all liability rested between the Universal Forwarding Company and the shipper. It is clear that the Universal Forwarding Company was the custodian of the property from beginning to end. The truckman was a mere instrumentality in control of defendants for the execution of an agreement to transport the shipments.

Section 1(c) of the Auto Stage and Truck Transportation Act (Chapter 213, Statutes of 1917, as amended) defines a

"transportation company" as

"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, or as a common carrier of property for compensation, over any public highway between fixed termini or over a regular route."

That defendants "control" and "manage" the trucks of others is clearly borne out by the evidence. The suggestion that they are an express corporation is made negative by the fact that none of their shipments is over the line of any common carrier, as required by Section 2(k) of the Public Utilities Act. (Southern Pacific Company vs. Stambrough et al., Decision No. 25039, dated August 8, 1932.) The instant case is not materially different in fact from the above case. Defendants' method of operation is no more than a device to attempt avoidance of the provisions of the Auto Stage and Truck Transportation Act which if effective for such purpose would destroy the Act in its regulation of public transportation. An order will be entered requiring the defendants to cease and desist the transportation they have been conducting as a common carrier.

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 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. (C.C.P. Sec. 1218; Motor Freight Terminal Co. vs. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wermuth vs. Stamper, 36 C.R.C. 458; Pioneer Express Company vs. 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 a 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

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 defendants J. L. Snead and J. H. Hickok are 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, San Francisco 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 J. L. Snead and J. H. Hickok shall immediately cease and desist such common carrier operations, as described in the preceding paragraph, unless and un-

til 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 J. L. Sneed and J. H. Hickok either directly or indirectly or by their agents, employees, representatives or assignees.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon defendants J. L. Sneed and J. H. Hickok; that he cause certified copies thereof to be mailed to the District Attorneys of Los Angeles, Kern, Ventura, Santa Barbara, Fresno, Madera, Stanislaus, San Luis Obispo, Kings, Monterey, San Benito, San Joaquin, Santa Cruz, Santa Clara, Alameda, San Mateo and San Francisco 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 defendants.

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

The effective date of this order shall be twenty (20) days after the date of service upon defendants J. L. Sneed and J. H. Hickok.

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

Q. Seaver
Leon Whittell
W. J. Lee
M. B. Harris
Fred G. Stewart
Commissioners.