

Decision No. 25172

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the Commission's own motion into the operations, rates, regulations, time schedules, practices, contracts and/or certificates of GAROFALO & ELWELL, in the transportation of property as a common carrier between San Francisco and Los Angeles and intermediate points.

Case No. 3306

**ORIGINAL**

H. M. Anthony, for Respondents.  
R. L. Vaughan, for Regulated Carriers, Inc.,  
Intervener.  
H. W. Hobbs, for Southern Pacific Company and  
Pacific Motor Transport, Interveners.  
A. L. Hammell and E. Stern, for Railway Express  
Agency, Inc., Intervener.  
Douglas Brookman for Valley and Coast Transit  
Co., California Motor Transport, Ltd., and  
California Motor Express, Ltd., Interveners.  
Sanborn & Roehl, for Valley Express Company,  
Intervener.  
W. F. Brooks, for Atchison, Topeka & Santa Fe  
Railway Co., Intervener.  
J. M. Atkinson and W. K. Downey, for Motor  
Freight Terminal Company, Intervener.  
Hal Remington, for San Francisco Chamber of  
Commerce.

HARRIS, Commissioner -

O P I N I O N

By its Order issued August 1, 1932, the Commission cited respondents herein, S. Garofalo and B. S. Elwell, co-partners, to appear and show cause why the Commission should not issue an Order requiring them to cease and desist all operations for the transportation of property for compensation between San Francisco, Redwood City and Los Angeles and intermediate points unless and until respondents or either of them has 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 1917, as amended ).

A public hearing thereon was held at San Francisco on August 31, 1932, at which time the matter was submitted without briefs.

The respondents herein are partners in the drayage business in San Francisco and have conducted such business for the past twelve years. They are the owners of fourteen trucks and possess garage and terminal facilities used in their local drayage business. Early in March, 1932, the partnership acquired two refrigerator trucks and entered into a contract with E. W. Mc Lellan Company, wholesale dealers in cut flowers, potted plants and green foliage. Under this contract, which was executed March 6, 1932, the partnership was obliged to transport for the Mc Lellan Company "all merchandise provided by party of the second part to any designated designation at the rate of 200 cents per 100 pounds; and it is mutually understood and agreed by and between the parties hereto that such service shall continue until, at the option of either party hereto and upon five (5) days' written notice, said service may be discontinued."

Subsequently by identical contracts ten other shippers of perishable commodities such as fresh meats, cheese, etc. became shippers. At the hearing it was disclosed that in addition to those with whom contracts existed, service is being performed for at least fifteen other shippers (Exhibit No.3) with whom no contracts had been made except verbal agreements. Rates of charges were borne and paid by shippers.

While the contracts were silent as to points between which service was to be given, S. Garofalo, testifying for respondents, stated that there was no misunderstanding as to where the shipments were to be hauled and between what points; that the business was established to operate between San Francisco and Los Angeles; that the partners had a terminal at Los Angeles and had made some deliveries at intermediate points as well as picking up and transporting shipments of flowers from Redwood City to Los Angeles. No other transportation was sought to be established according to Mr. Garofalo and it was the intention of the partners to develop a contract business in order to be able to produce before the Commission suitable experience with and use of the service to justify the Commission in granting a certificate of public convenience and necessity therefor. Both Mr. Garofalo and Mr. Elwell were frank as to all their dealings and relationships including all charges made for the transportation of commodities and no further record is needed to satisfy the Commission of the nature of their business than the testimony of these two witnesses.

The record shows that the respondents established and operated first with two refrigerator trucks, and later with three, a service for the transportation of perishables between San Francisco and Los Angeles, that business was solicited by the partners, contracts therefor were made and shipments accepted somewhat promiscuously so long as the shippers agree to pay the rate fixed. The business was continued with daily schedules to and at the time of the hearing. It further appears from the record that all the acts and things done by the partnership for the transportation by truck between termini are such as are contemplated by the Truck and Transportation Act to be things

for which a prerequisite is a certificate of public convenience and necessity from this Commission. It appears that the partners reversed this requirement of law by establishing the service first without obtaining the certificate in the mistaken idea that establishment and success of the service would insure them a permit from the Commission.

This, of course, presents a situation in which the Commission has but one duty to perform and that is to enter an Order requiring defendants to cease and desist such operations and all operations of a like character between San Francisco and Los Angeles and intermediate points.

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. 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.

The following form of order is recommended:

O R D E R

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

IT IS HEREBY FOUND AS A FACT that respondents herein, S. Carofalo and B. S. Elwell, co-partners, 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 San Francisco and Redwood City, on the one hand, and Salinas, Paso Robles and Los Angeles, 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 respondents herein, S. Carofalo and B. S. Elwell, co-partners, 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 therefor, and notice is hereby given that such common carrier operations shall not be conducted by S. Carofalo and B. S. Elwell, individually or as co-partners, 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 personal service of a certified copy of this order to be made upon respondents, S. Carofalo and B. S. Elwell, and that 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 San Mateo, Santa Clara, Santa Cruz, Monterey, San Benito, San Luis Obispo, Santa Barbara, Ventura and Los Angeles, 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.

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 hereinbefore directed.

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

Dated at San Francisco, California, this 12<sup>th</sup> day of September, 1932.

C. J. [Signature]  
[Signature]  
M. H. [Signature]  
M. B. [Signature]  
[Signature]  
COMMISSIONERS.