

Decision No. 35244 .

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SOUTHERN PACIFIC COMPANY, a corporation,
RAILWAY EXPRESS AGENCY, INC., a cor-
poration, and
PACIFIC MOTOR TRANSPORT COMPANY, a cor-
poration,
Complainants.

vs.

Case No. 3024

C.V. HILL,
ONE DOE,
TWO DOE,
THREE DOE,
FOUR DOE,
FIVE DOE,
SIX DOE COMPANY, a corporation, and
DOE OREGON-CALIFORNIA FAST FREIGHT,
Defendants.

ORIGINAL

In the Matter of the Application of
J.A. GRITSCH, doing business under the firm
name and style of OREGON-CALIFORNIA FAST
FREIGHT, for certificate of public con-
venience and necessity authorizing the
operation of an auto truck freight service
between San Francisco and Red Bluff,
Cottonwood, Anderson, Redding, Dunsmuir,
Mt. Shasta, Weed and Yreka.

Application
No. 17290

H.W. Hobbs, R.G. Hillebrand, W.S. Johnson, for
Complainants in Case 3024, and Protestant
in Application 17290.

Edward Stern, for Railway Express Agency, Inc.,
for Complainants in Case 3024, and Protestant
in Application 17290.

Decoto & St. Sure, by Ezra W. Decoto, for
J.A. Gritsch, Defendant and Applicant.

W.G. Stone, for Sacramento Wholesalers and
Manufacturers Association, as interest may
appear.

D.M. Swobe, for Mc Cloud River Railroad Company,
Protestant.

Harry See, for Brotherhood of Railroad Trainmen
and Brotherhood of Locomotive Engineers and
Firemen, Protestants.

J.W. Suffecool and H.W. Hobbs, for Yreka Railroad
Company, Protestant and Intervener.

HARRIS, COMMISSIONER:

O P I N I O N.

Complainants herein allege that defendants are conducting an operation for the transportation of freight between San Francisco, California, and points between Red Bluff and the California-Oregon state line, without having procured from this Commission a certificate of public convenience and necessity therefor, as required by Chapter 213, Statutes of 1917, as amended. Defendants enter a general denial and allege affirmatively that the business they are conducting in the transportation of freight is a private contract business and not subject to the jurisdiction of the Commission.

In Application 17290, J.A. Gritsch, doing business under the name Oregon-California Fast Freight, seeks a certificate of public convenience and necessity covering the business established and operated between the points heretofore named. C.V. Hill, originally a defendant named by complainants, made answer that he had ceased business in January, 1931, and beyond such answer he did not appear in the proceeding. It appears that this statement is true and that he had conducted no business between the points alleged and is conducting none; hence the complaint, as far as defendant Hill is concerned, should be dismissed. The complaint was amended to identify J.A. Gritsch and A.H. Gritsch as John Doe defendants individually, and also Doe Corporation as a fictitious name used by J.A. Gritsch as California-Oregon Fast Freight. The evidence does not show that A.H. Gritsch is other than an employee of his brother or has any proprietary interest in the business; therefore the complaint as to him should be dismissed.

By stipulation of all parties, the matters were consolidated for hearing and decision. Public hearings were held at

San Francisco, Yreka and Redding, the matters being finally submitted on briefs, which having been filed, the matter is now ready for decision.

During the hearings complainants and protestants presented 61 witnesses and defendants, 33 witnesses, and, in addition, the testimony of many other witnesses was tendered by stipulation of the parties; also, 54 exhibits were filed. It is obvious that such a mass of testimony can not be discussed in detail nor is such discussion necessary in view of the cumulative character of the testimony on both sides.

The major questions involved in these proceedings are whether J.A. Gritsch, under the name of Oregon-California Fast Freight, did establish a common carrier service for the transportation of freight between the points recited without having procured from this Commission authority so to do, and if so, is such establishment and operation to be condoned and certificated as a matter of public necessity.

J.A. Gritsch originally was an operator between Portland and Medford, Oregon. After disposing of this operation, he acquired the Oregon-California Freight Service which, at the time, conducted a strictly inter-state transportation business between Medford, Oregon, and San Francisco, California, and, so far as the record shows, was not engaged in intra-state business. After acquisition of this business, Gritsch associated himself at a terminal in San Francisco with C.V. Hill of Redding, who had been conducting a so-called contract operation between San Francisco and Redding and other points - an operation which was abandoned when attacked in these proceedings. When Hill abandoned the service, shippers brought freight to the terminal for points through which Gritsch passed with his trucks and Gritsch began the transportation of such shipments. This gradually enlarged until the shipping public became familiar with the Gritsch operation and

patronized it for all points between Red Bluff and Dunsmuir from San Francisco. Gritsch testified that at the inception of this business early in 1931, he investigated the necessity of obtaining a certificate and presented the matter to a lawyer who, according to his testimony, did nothing. After several months' waiting, Gritsch discharged the lawyer. He testified he then visited the offices of the Railroad Commission and was informed that he could conduct the business under contract with consignors or consignees but his testimony is not definite as to what contract relationship could be established.

On February 26, 1931, Case 3024 herein was filed. It was not until April 7, 1931, that Gritsch's Application No. 17290 for a certificate was filed. From its beginning until submission of the case the business has been conducted and enlarged in volume without the authority of a certificate. It can not be successfully contended from the record that it was on a contract basis in view of the promiscuous character of the shipments received and transported and the absence of any but vague verbal contracts between the parties. In fact, the record as made by defendant and applicant herein does not appear to be intended to justify the operation, but rather to condone it.

The intra-state business was conducted by Gritsch in connection with his inter-state movements, and approximated about ten tons daily. It operated on regular schedules and terminals were maintained at San Francisco, Oakland, Redding and Yreka. Property was received from non-authorized carriers operating between Sacramento and Redding, at Redding, for delivery at points farther north. The schedules offered shippers were a 19-hour delivery as far north as Redding, and 17 hours between this point and San Francisco with distribution south of Redding on lesser schedule. In the business he used thirteen trucks. Some of the property destined for points south of Yreka was often backhauled from Yreka

and sometimes delivered direct en route. In the beginning written contracts were made (five only) and these contracts were in evidence. All his other business was done by solicitation. The contracts are such as this Commission has repeatedly determined to be no more than rate quotations, because of lack of mutuality or exclusiveness (Motor Freight Terminal Company vs. Tabor, 35 C.R.C. 757; P. & S.R. vs. Baylinson, 35 C.R.C. 793; Rice T. Co. vs. Independent etc., 36 C.R.C. 840; P. & S.R. vs. Robertson, 36 C.R.C. 61). It is true that some of the patrons of Hill had contracts and that Gritsch accepted them as benefiting him.

The record is perfectly clear that from a small beginning Gritsch developed the business, acquired large patronage and operated in every respect, including local pick-up and delivery at various points, as if he were an authorized carrier, even accepting shipments upon a common carrier bill of lading and transporting them without question. He solicited business at San Francisco and had agencies at Dunsmuir and other places. In the development of his business he met reductions in rates made by Pacific Motor Transport Company. He operated usually by way of Southern Pacific Ferry to Vallejo, and thence north up the west side of the Sacramento Valley, although frequently large shipments from East Bay territory, which were picked up for him at various communities by Peoples Express Company, were transported via Carquinez Bridge and then up the westside highway. There is very little testimony, particularly of a late date, showing that he refused shipments when tendered to him at the rates he offered.

Under the record presented I find that Defendant Gritsch has established and is maintaining a common carrier service for the transportation of freight between San Francisco and points between Red Bluff and the California state line, and that he should be ordered to desist such service immediately.

Applicant, nevertheless, contends that this Commission

should now certificate the business which he has thus illegally built up. He asks condonation claiming that he was not familiar with procedure in California and that he has believed at all times that he was a bonafide legal contract carrier and that he has come to this Commission "filed his application and manifested a sincere intention to submit to regulation by the Commission."

Ignorance of the law, of course, excuses no one, but this applicant was not ignorant of the law. Even after this complaint was brought and during the pendency of these proceedings, he has continued and increased his operations, added to his equipment and persisted in soliciting business.

Applicant has disregarded the plain language of the law that he must first secure a certificate before establishing a business and now asks this Commission not only to overlook his violation of law but to accept proof of his illegal operation as proof of convenience and necessity.

Applicant further contends that public necessity requires the continuation of his service. All the points sought to be served by applicant have been served for years and are now served by the Southern Pacific, the Railway Express Agency, Inc., Pacific Motor Transport, the Yreka Railroad, and, to a very limited extent, by the Pacific Greyhound Lines. There was a sharp conflict in the evidence as to the service of the applicant contributing to public convenience but the evidence clearly showed that the service of the above named carriers was reasonably adequate. In making these observations, I do not intend to convey the thought that a showing of public convenience and necessity would justify the issuance of a certificate to a proven violator of the law.

Upon the record, I find that public necessity and convenience do not warrant the granting of the application, and that

applicant has not justified his illegal operations.

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 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 should 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 proposed:

O R D E R

Public hearings having been held in the above entitled proceedings, the matters having been duly submitted and now being

ready for decision.

IT IS HEREBY FOUND AS A FACT that defendant herein, J.A. Gritsch 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 San Francisco and Red Bluff, Redding, Yreka, and points intermediate, 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 herein, J.A. Gritsch shall immediately cease and desist such common carrier operations as described in the preceding paragraph and notice is hereby given that such common carrier operations shall not be conducted by J.A. Gritsch, either directly or indirectly, or by his 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 defendant J.A. Gritsch 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 Alameda, Contra Costa, Napa, Colusa, Glenn, Tehama, Shasta and Siskiyou, and to the Department of Public Works, Division of Highways, at Sacramento; 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.

J.A. Gritsch, doing business under the firm name and style of Oregon-California Fast Freight, having made application to the

Railroad Commission for a certificate of public convenience and necessity authorizing the operation of an auto truck service between San Francisco and Red Bluff, Cottonwood, Anderson, Redding, Dunsmuir, Mt. Shasta, Weed and Yreka, a public hearing having been held and the matter being duly submitted,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity do not require the authorization nor establishment of the service proposed by applicant; and

IT IS HEREBY ORDERED that the application be and the same hereby is denied.

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 adopted as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10th day of October 1932.

C. L. Seavey
Leon Whidell
M. A. Cunn
W. B. Harris
Fred G. Stewart
COMMISSIONERS.