

Decision No. 25252

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MOTOR FREIGHT TERMINAL COMPANY,
a corporation,

Complainant,

vs.

P. D. JOHNSON and FIRST DOE,

Defendants.

ORIGINAL

Case No. 3215

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

Lindsay & Gearhart, by B. W. Gearhart for
P. D. Johnson, Defendant.

Edward Stern, for Railway Express Agency, Inc.,
intervenor on behalf of Complainant.

Robert Brennan and William F. Brooks, by
William F. Brooks, for The Atchison, Topeka
& Santa Fe Railway Co., Intervenor on behalf
of Complainant.

E. W. Hobbs for Pacific Motor Transport Company
and Southern Pacific Company, Intervenor on
behalf of Complainant.

BY THE COMMISSION -

O P I N I O N

Motor Freight Terminal Company, a corporation, has complained of P. D. Johnson and First Doe alleging that said defendants are maintaining and operating auto trucks in the business of transporting property as a common carrier for compensation over the public highways of this state and particularly between Los Angeles and the metropolitan area thereunto adjacent and Bakersfield and intermediate points. Complainant prays for an order requiring that defendants cease and desist such alleged unlawful operation until a certificate of public convenience and necessity therefor will have been procured as required by Chapter 213, Statutes of 1917, as amended.

Defendant P. D. Johnson duly filed his answer herein, admitting that he had no certificate of public convenience and necessity but also denying the specific allegations of the complaint.

Public hearings on this complaint were conducted by Examiner Handford at Bakersfield and the matter now duly submitted on the filing of briefs, and is now ready for decision.

James M. Brunsell, Bakersfield distributor for the Arrowhead Puritas Water Company, testified that he had used the trucks of P. D. Johnson for the transportation of bottled water and containers from Los Angeles to Bakersfield and intermediate points and for the return of empty bottles and containers. This service has been used for over two years. From June 1, 1931, to June 9, 1932, approximately 100 shipments were made. These shipments moved on a shipping order or uniform straight bill of lading of California Consolidated Water Company, issued by the shipper, although the witness stated that the bill of lading was merely considered as a memorandum of the number of bottles of water and containers that were forwarded. There was no written contract. The evidence shows that there was a verbal understanding that the shipper would give Johnson all his hauling both to Bakersfield and for returning empties, at an agreed rate. No time limit was agreed upon and the service was to continue as long as it was satisfactory to the shipper.

C. E. Strickler, of the Valley Office School Equipment Company of Bakersfield, testified that he used Johnson's service between Los Angeles and vicinity and Bakersfield and also to intermediate points along the route. Seven shipments were made during the month of February, 1932. No written contract exists between this shipper and Johnson, although a verbal

agreement as to hauling was entered into. This agreement is for no specific term and continues as long as the parties are satisfied with the service. No specific tonnage is covered by the agreement which covers not only hauling between Bakersfield and Los Angeles and intermediate points but also hauling between Bakersfield and other points in the San Joaquin Valley and from San Francisco to Bakersfield. Some shipments have been hauled from San Francisco to Bakersfield.

E. H. Loveland engaged in the wholesale grocery and produce business at Bakersfield, testified that his company received shipments from Los Angeles via the trucks operated by Johnson. No written contract exists and witness was not familiar with any verbal negotiations which resulted in Johnson doing hauling for his company other than that when shipments were to be moved.

C. S. Curran, Secretary of a sand, gravel and brick concern at Bakersfield, testified that his company had used the services of Johnson three times during the month of January, 1932, in the hauling of barbed wire and hardware from Los Angeles and four times during the month of February, 1932, in the hauling of hardware, paint, pipe and fittings, all shipments originating in Los Angeles. The evidence shows that no written contract existed between his company and defendant but that shipments were given to Johnson as a matter of reciprocity.

E. W. King, engaged in the retail lumber and building material business at Bakersfield, testified that he had used the trucking service of Johnson in the transportation of lumber, paint, roofing, nails, plaster and pipe covering, from Los Angeles to Bakersfield. The original hauling was given to Johnson to offset an account owed by Johnson to witness company. No written contract for the hauling was in existence. A verbal arrangement was made that whenever it was convenient, material

would be delivered to Johnson's trucks to be transported to any point designated.

L. Frank Johndrow, employed as bookkeeper for the E. H. Loveland Produce Company, testified that 25 shipments were received from Los Angeles and vicinity during the year 1930, by the Johnson truck service, all of which were paid for by his company.

Harry Jackson of Bakersfield, a dealer in tires representing the United State Rubber Company, testified that he received shipments by the truck line operated by Johnson; shipments weighing from 300 to 1000 pounds were received on an average of twice a week, the charges being paid by the shipping company.

Emmet Hayes, a tire dealer of Bakersfield, testified that he used the Johnson trucking service for shipments between Los Angeles and Bakersfield. The service has been used from two to three times per week, shipments varying in weight from 300 to 3000 pounds. All charges are paid for by the shipper, Mc Laren Rubber Company of Los Angeles.

Cecil Hauger, bookkeeper for Summer Plumbing Supply Company of Bakersfield, testified that his company had used the truck service of defendant Johnson for transportation of shipments between Los Angeles and Bakersfield, a total of 16 shipments aggregating 20,850 pounds having been moved in the period from April 16, 1931, to May 19, 1932. Witness has no contract for hauling service with defendant Johnson. The record shows that Johnson has rendered service in hauling from San Francisco to Bakersfield for the concern by whom witness is employed.

F. J. Ratliff, local Bakersfield manager for W.P. Fuller & Co., dealers in paints and glass, testified that he used the service of Johnson, in the transportation of shipments from

Los Angeles and also from Fresno and San Francisco. Witness knows of no contract between Johnson and his company and has continued to patronize the Johnson service because it was operating at the time he came to Bakersfield as the Manager of that branch. When shipments are to move, Johnson is notified by telephone and the goods are delivered thereafter.

R. E. Gignoux, manager of Hopper Machine Works of Bakersfield, testified that his company had used the trucks of defendant Johnson for transportation of shipments from Los Angeles to Bakersfield, four shipments weighing 27,248 pounds having been moved during the period from July 13, 1931, to May 6, 1932, all from Los Angeles to Bakersfield. No written contract was made for the transportation. A verbal arrangement by telephone was made in the case of each shipment requiring transportation.

E. R. Carlton, operator of a bottling works at Bakersfield, testified that he had used the Johnson trucking service between Los Angeles and Bakersfield for a period of about four years, shipments being received on an average of four to six times per month. No contract for the hauling exists between Johnson and witness. Occasional shipments were also from Sacramento and San Francisco.

A. C. Neilson, member of the firm of Pioneer Mercantile Company of Bakersfield, testified that his firm had used the Johnson trucking service for about two years or more between Los Angeles and Bakersfield, service being used approximately once a week. Witness knows of no written contract that his firm has for the hauling performed. He calls Johnson by telephone whenever he has shipments to move.

Edward E. Hall, local manager of Pacific Freight Lines at Bakersfield, testified that he had observed the trucks of P. D. Johnson unloading and delivering freight to local merchants in the City of Bakersfield, and especially a shipment of approximately 25 tires from the United States Rubber Company of Los Angeles to the store of the Jackson Tire Company in Bakersfield. Witness also testified as to shipments now handled by the Johnson trucking service which were formerly handled by his company, same being consigned to two tire companies and to the Pioneer Mercantile Company at Bakersfield.

We have carefully considered the testimony, briefs and exhibits of record herein. It is the contention of defendant, P. D. Johnson, that he is not operating as a common carrier between Los Angeles and Bakersfield and intermediate points, but that the operation is that of a private carrier under contract. No written contracts appear or were presented in this proceeding. Defendant also claims that no holding out of service as a common carrier was made to the public by solicitation or by advertising in newspapers, on billboards, over the radio, by distribution of handbills or in any other method. It appears, however, that defendant distributed calendars and also advertised his business in Buyer's Guide of the telephone directory of Kern County, California, in which appears, on page 44, a quarter page advertisement of the P.D. Johnson Trucking Co. (Exhibit No.4). Defendant further contends that his trucks bore no sign or other designation of the business in which they were engaged. No signs or other advertisement of the defendant's business appears on the headquarters at 1909 Nile Street, Bakersfield, same being the residence of P. D. Johnson and the headquarters of his trucking business.

A full review of the record in this proceeding leads to the conclusion and we hereby find as a fact that P.D.Johnson, defendant herein, operating under the name and style of P. D. Johnson Trucking Company, is operating over the public highways of this state and particularly between Los Angeles and Bakersfield and intermediate points as a common carrier and as a transportation company in the carriage of property as such terms are set forth in the Auto Stage and Truck Act, (Chapter 213, Statutes of 1917, as amended).

No written contracts exist between defendant and shippers or receivers of goods and the operation carried on by alleged verbal arrangement or agreement is the same as that of other regularly authorized common carriers. While defendant has not generally advertised the service rendered, it appears that regular service is rendered for shippers and receivers of freight and that such service is that of a common carrier. Trips are made at least three times per week and the record shows the defendant has furnished service whenever shipments have been offered, the only service declined being when a rate could not be agreed upon between defendant and a prospective user of the trucking service. An order to cease and desist the service should be issued, effective until such time as defendant shall secure a certificate of public convenience and necessity.

An order of this Commission finding an operation unlawful and directing that it be discontinued is in its effect not unlike an injunction issued by a court. A violation of such an 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.

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.

ORDER

Public hearings having been held in the above entitled proceeding, the matter having been duly submitted on briefs and now being ready for decision,

IT IS HEREBY FOUND AS A FACT that P. D. Johnson, operating under the name and style of P. D. Johnson Trucking Company, 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 Los Angeles and Bakersfield 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 P.D. Johnson, operating under the name and style of P.D. Johnson Trucking Company, 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 P.D. Johnson, 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 P.D. Johnson, and that copies of this order be mailed to the District Attorneys of the counties of Kern 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, 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 P.D. Johnson.

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

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

C. C. [unclear]
Leon [unclear]

W. A. [unclear]

W. B. [unclear]

Fred G. [unclear]
COMMISSIONERS.