

Division No. 35275

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

MOTOR FREIGHT TERMINAL COMPANY,)
a corporation,)
Complainant. (

vs.)

WILLIAM C. RAINEY, WILLIAM C. RAINEY ()
Doing business under the fictitious ()
name and style of Union Trucking ()
Company, Union Trucking Company a ()
copartnership, First Doe, Second Doe, ()
Third Doe and Fourth Doe, ()
Defendants.)

CASE NO. 3272

ORIGINAL

----- (

Wallace K. Downey, for complainant.

H. W. Hobbs for Southern Pacific Company.

Edward Stern and H. W. Hobbs for Railway Express
Company, Inc.

HARRIS, COMMISSIONER:

O P I N I O N

Complainant is a truck operator under the authority of this Commission transporting property as a common carrier between Los Angeles, California, on the one hand and San Luis Obispo and intermediate points, Fresno and intermediate points, San Diego and intermediate points on the other hand.

Complainant alleges that each of defendants is operating trucks as a common carrier for compensation between Los Angeles, California, and the metropolitan area thereunto adjacent on the one hand, and San Francisco, California and the metropolitan area thereunto adjacent, including Oakland, Alameda, Richmond and Berkeley and points intermediate on the other hand; and between Los Angeles and the metropolitan area thereunto adjacent on the one hand and San Diego, California and intermediate points on the other hand; and between Los Angeles, California and the metropolitan area thereunto adjacent on the one hand and Calexico, California and intermediate points on the other hand; and between Los Angeles, California and the metropolitan area thereunto adjacent on the one hand and

Sacramento, California and intermediate points on the other hand, and that in each case, such operation is without authority from this Commission and is to the injury of complainant.

None of the defendants answered or otherwise appeared.

Complainant called a number of witnesses among them being the defendant, William C. Rainey who was subpoenaed to testify.

The evidence shows without contradiction that the defendant, William C. Rainey in his own name and also under the fictitious name of Union Trucking Company has been operating as a transportation company as defined by the Auto Stage and Transportation Act between the points above named since February 1st, 1932. Since that date defendant has maintained an office in Los Angeles at which he received and accepted orders from the general public for transportation of property by truck over the public highways. He has at all times both in person and by agent solicited business. He had no schedule but sent a truck whenever he was offered a "full load" which he defined as anything from ten (10) pounds up. He entered into contracts, usually verbal, for each load and collected payment therefor. He testified that he would accept a shipment at any time from any place to any place and corroborated the testimony of many shipper witnesses for whom he transported property between the points above named, such shipments ranging in time from almost daily to one or two a month. He owned no trucks but "leased" trucks from owners who "furnished" the drivers.

The action should be dismissed as to defendants Union Trucking Company, a copartnership and the various Does.

I find as a fact that the defendant, William C. Rainey and William C. Rainey doing business under the fictitious name of Union Trucking Company has been conducting a business of transportation of property for compensation over the public highways as a common carrier between the points above named and other points without authority from this Commission and that he should be required to cease and desist all such 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 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 \$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. Also every person who violates or fails to comply with or who procures, aids or abets in the violation of any provision of said Act likewise is guilty and subject to the same punishment.

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 defendants, upon the said opinion and order becoming final.

O R D E R

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 defendant 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, California and the metropolitan area thereunto adjacent on the one hand, and San Francisco, California and the metropolitan area thereunto adjacent, including Oakland, Alameda, Richmond and Berkeley and points intermediate on the other hand; and between Los Angeles and the metropolitan area thereunto adjacent on the one hand and San Diego, California and intermediate points on the other hand; and between Los Angeles, California and the metropolitan area thereunto adjacent on the one hand and Calexico, California and intermediate points on the other hand; and between Los Angeles, California and the metropolitan area thereunto adjacent on the one hand and Sacramento, California and intermediate points 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 defendant, William C. Rainey, William C. Rainey, doing business under the fictitious name and style of Union Trucking Company, shall immediately cease and desist such common carrier operations as described in the preceding paragraph, and

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon defendant William C. Rainey, William C. Rainey, doing business under the fictitious name and style of Union Trucking Company; that he cause certified copies thereof to be mailed to the District Attorneys of Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Kings, Salinas, Monterey, Santa Cruz,

Santa Clara, San Mateo, San Francisco, Alameda, Contra Costa, Orange, San Diego, Riverside San Bernardino, Imperial, Kern, Tulare, Fresno, Merced, Stanislaus, San Joaquin and Sacramento 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 defendant.

The effective date of this order shall be twenty (20) days after the date of service upon defendant, William C. Rainey, William C. Rainey, doing business under the fictitious name and style of Union Trucking Company.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission.

Dated at San Francisco, California, this 24th day of October, 1932.

C. S. Seaman
Leon Oubrey
W. A. C.
W. B. Harris
Fred G. Stewart
Commissioners.