

Decision No. 25381

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, prac-)
 tices, contracts or any of them of)
 H. J. COCHRAN, WESTERN TRUCK SERVICE,)
 J. E. RODEFER, MISS M. A. HAWES,)
 DUDLEY KNISELEY, LELAND KNISELEY,)
 DOUGLAS D. HOWARD, John Doe Nos. 1,)
 2, 3 and 4 and Jane Doe Nos. 1, 2)
 and 3 for the transportation of)
 property as a common carrier between)
 San Francisco and Monterey Peninsula)
 points.)

ORIGINAL

Case No. 3357.

J. E. Rodefer, Respondent, in propria persona,
 Douglas D. Howard, Respondent, in propria persona,
 H. J. Cochran, Respondent, in propria persona,
 H. W. Hobbs for Southern Pacific Company,
 Interested Party,
 H. W. Hobbs and Edward Stern, by H. W. Hobbs,
 for Railway Express Agency, Inc.
 Interested Party.

BY THE COMMISSION:

O P I N I O N

The above proceeding is an investigation upon the Commission's own motion into the operations, rates, regulations, practices, contracts, or any of them, of H. J. Cochran, Western Truck Service, J. E. Rodefer, Miss M. A. Hawes, Dudley Kniseley, Leland Kniseley, Douglas D. Howard, John Doe Nos. 1, 2, 3 and 4 and Jane Doe Nos. 1, 2 and 3 for the transportation of property as a common carrier between San Francisco and Monterey Peninsula points.

A public hearing on this investigation was conducted by Examiner Handford at Monterey, the matter was duly submitted and is now ready for decision.

The record shows that in November or December, 1930, J. E. Rodefer, Dudley Kniseley and Leland Kniseley commenced the operation of an automobile truck service between San Francisco and Monterey Bay points. The equipment was rented from H. J. Cochran under a verbal understanding that when the equipment was paid for there would be a division of the profits of the operation between Rodefer and the Kniseley Brothers, although no proportion of the profits to be so divided was agreed upon. J. E. Rodefer acted as Traffic Manager and the Kniseley Brothers acted as drivers. Operation was conducted under the name of Western Truck Service. Miss M. A. Hawes, who is also employed as the secretary of H. J. Cochran in his service station at Monterey, acted as bookkeeper and attended to the office duties with headquarters at Cochran's Service Station at Castroville and Salinas Roads in Monterey. H. J. Cochran purchased four units of equipment, each unit consisting of a Ford Tractor, semi trailer and trailer, which were used in the operation, but other than in the purchasing and renting of the equipment, Cochran claims to have had no interest in the operation of the business conducted as Western Truck Service. J. E. Rodefer claims to have been employed solely as a salaried employee until sometime, approximately April, 1932, when he received his final check for employment.

The operation from the beginning of service in 1930, until its discontinuance in April, 1932, is alleged to have been "Contract Trucking Exclusively" and

such notation appears on the statements or bills rendered to customers during the operative period. Shipments were forwarded from Monterey by carriers, principally canned fish, destined to San Francisco and Bay points and shipments were transported from San Francisco to Monterey and Pacific Grove consisting of miscellaneous merchandise. Some of these shipments were covered by written contracts or agreements, but a number were to parties with whom the Western Truck Service had merely a verbal agreement. There is no evidence that shipments were ever refused if destined to or from San Francisco proper. As the business did not return a profit the operation was discontinued some time in April, 1932, at the time J. E. Rodefer left his employment. Rodefer claims to have been employed by J. H. Cochran originally and Cochran denies any responsibility for such employment or any connection with the Western Truck Service, other than that he leased equipment to such concern. No written lease of the equipment was ever made. Miss Hawes was a salaried employee and the Kniseley Brothers, who were employed as drivers, were regularly paid until the time of their discharge in January, 1932, although they were to receive some proportion of the profits of the operations, if any, when the equipment which was being used was paid for. Miss Hawes was not to receive any portion of the profits after the equipment owned by H. J. Cochran was paid for.

On July 1st, 1932, Douglas D. Howard entered into an agreement with H. J. Cochran for the rental of equipment for operation from Monterey, and is now operating there with the equipment under the name of Monterey Transport. The agreement was for the rental of equipment on a mileage basis, all drivers, oil, gas and

supplies to be furnished by the lessor. Douglas D. Howard is the operator of this leased equipment and conducts operations under the name and style of Monterey Transport between Monterey and San Francisco and between San Francisco and Monterey peninsula points, including Pacific Grove.

The record shows that it is intended by ~~defendants~~ Howard to operate under "contract or agreement" by the terms of a standard form of contract (Exhibit 2). These contracts are of record between the ~~defendants~~ and the following individuals or consumers:

Carmel Canning Company, Monterey.
Hovden Food Products Corporation, Monterey,
San Xavier Fish Packing Company, Monterey,
Monterey Canning Company, Monterey,
Coast-Dakota Flour Company, San Francisco,
Barry Brothers, Monterey,
Ziegler Creamery, Monterey,
Harris & Standiford, Monterey,
Del Mar Canning Company, Monterey.

Under the contracts or agreements herein considered all charges for the transportation of shipments are to be paid for by the party signing the contract or agreement, and such transportation is to be for the sole benefit of the party subscribing to the contract. The record shows several shipments made by the Coast-Dakota Flour Company from San Francisco to the Mission Baking Company at Monterey. Shipments were also made for the same company to Salinas and to Hollister and shipments to C.A. Borchers at Pacific Grove. No contracts or agreements exist between Douglas D. Howard or Monterey Transport and these consignees and the existing agreement specifically state that payment for transportation charges shall be made by the parties who have signed contracts or agreements.

The headquarters of Douglas D. Howard are at the service station of E.J. Cochran at Salinas and Castroville Roads, Monterey, but no rental is paid for the portion of the office space that is used. There appears to have been no advertising of the service except the personal solicitation of the shippers by defendant Howard.

We have carefully considered the record in this proceeding and conclude therefrom that Douglas D. Howard is operating under the fictitious name of Monterey Transport between San Francisco and Bay points and Monterey and Pacific Grove and intermediate points as a common carrier and that he should immediately cease and desist such operations until he shall have obtained a certificate of public convenience and necessity as required by the statutory law (Chapter 213, Laws of 1917, and effective amendments).

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, 38 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 Stage and Truck Transportation 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 appears 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

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 Douglas D. Howard, also operating under the fictitious name of Monterey Transport, 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 San Francisco bay points and Monterey and Pacific Grove 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 Douglas D. Howard, also operating under the fictitious name of Monterey Transport, shall immediately cease and desist such common carrier operations, as described in the preceding paragraph, unless

and until he shall obtain a certificate of public convenience and necessity therefor, 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 Douglas D. Howard; that he cause certified copies thereof to be mailed to the District Attorneys of San Francisco, San Mateo, Santa Clara, San Benito and Monterey^{Counties} to the Board of Public Utilities and Transportation of the City of Los Angeles; 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.

IT IS HEREBY FURTHER ORDERED that this investigation, insofar as it refers to defendants H. J. Cochran, Western Truck Service, J. E. Rodefer, Miss M. A. Hawes, Dudley Knisely, Leland Kniseley, John Doe No.1, No.2, No.3 and No.4 and Jane Doe No.1, No.2 and No.3, be and the same hereby is dismissed.

The effective date of this order shall be twenty (20) days after the date of service upon defendant Douglas D. Howard.

Dated at San Francisco, California, this 21st day of November, 1932.

C. C. Lundy
Frank C. White
W. J. Lundy
M. B. Lundy
John G. Lundy
COMMISSIONERS.