

Decision No. 25556

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

THE RIVER LINES (The California Transportation Company, Sacramento Navigation Company, and Fay Transportation Company), THE WESTERN PACIFIC RAILROAD COMPANY, a corporation, and SACRAMENTO NORTHERN RAILWAY, a corporation,
Complainants,

vs.

FRANK P. GEORGE, TONY P. GEORGE,
FRANK P. GEORGE and TONY P. GEORGE
doing business under the partnership name
and style of George Brothers, FRANK P.
GEORGE and TONY P. GEORGE doing business
under the partnership name and style of
Associated Contract Freight Hauling,
FRANK P. GEORGE doing business under the
firm name and style of Associated Contract
Freight Hauling, TONY P. GEORGE doing business
under the firm name and style of
Associated Contract Freight Hauling, John
Doe, Richard Roe and John Doe Corporation.
Defendants.

McCutchen, Olney, Mannon & Greene, by F. W. Meilke,
for Complainant, The River Lines.

L. N. Bradshaw, for Complainants, the Western Pacific
Railroad and Sacramento Northern Railway.

Reginald L. Vaughan and Scott Elder, for Regulated
Carriers, Inc., intervenor on behalf of
Complainants.

Gwyn H. Baker, for Defendants.

CARR and WARE, Commissioners:

O P I N I O N

On October 21, 1932 complainants filed their complaint charging Frank P. George and Tony P. George, doing business sometimes under the name of George Bros. and sometimes "Associated Contract Freight Haulers," with unlawful common carrier truck operations between San Francisco and Sacramento and intermediate points. Issue was joined on November 12th, the defense being that the two Georges were operating as private or contract carriers and were not operating between fixed termini or over a regular route.

ORIGINAL

Case No. 3388.

ORIGINAL

A public hearing was had on January 10th and the case submitted for decision.

The evidence of regular operations between San Francisco and Sacramento is clear and convincing. Loads were regularly picked up on Mondays and Thursdays at San Francisco for delivery at Sacramento on the following days. The various shipping documents in the record indicate many return loads from Sacramento to San Francisco.¹ The evidence that these operators were common carriers is scarcely less convincing. For a time in the early part of 1932 the two Georges gave to their customers for each consignment an invoice entitled "Agreement for Transportation by Private Contract Carrier."² Somewhat later in the year they apparently abandoned these and gave to their customers a "Freight Bill" in the form set out in the

1. Thus, on October 24th driver Dutra handled a load from San Francisco to Sacramento for Public Food Stores (Ex. 1) and on October 25th he handled a load of beans from Stockton to San Francisco (Ex.5). On October 10th driver McFadden handled a load of groceries from San Francisco to Sacramento (Ex. 1) and on October 11th handled a load of beans from Sacramento to San Francisco. (Ex. 5). On November 14th Roy Myers handled a load from San Francisco to Sacramento for Wellman, Peck & Co. (Ex.2) and on November 15th he handled a load from Sacramento to San Francisco for the Capital Rice Mills (Ex. 6). On November 17th driver Tony DePont handled groceries for the Wellman Company to Sacramento (Ex.2) and on November 18th he hauled a load of beans from Sacramento, Stockton and Lodi to San Francisco (Ex. 5).

2. These invoices were on printed forms. The following is typical of many of these in the record.

Office Copy. Truck No. 5
No. 01864.

INVOICE
AGREEMENT FOR TRANSPORTATION
BY PRIVATE CONTRACT CARRIER

Sinsheimer & Co. Shipper
San Francisco, California,
hereby agrees to pay GEORGE BROS., a co-partnership, as a private contract carrier of freight by motor truck, 32510# in full compensation for transporting by motor truck from Haslett Whse, Sacramento, California, to Harbor Whse., San Francisco, Calif., the following goods and merchandise: 359 sks. beans.

The time or times when such transportation is to be made shall be as follows: Pick up March 8, 1932. Deliver March 9, 1932 (at 8 A.M.)
Shipper: Sinsheimer & Co.

Accepted: GEORGE BROS., a co-partnership
by F. George. Office Phone
Day-Niles 127
Night-Niles 127.

Niles, California
R.F.D. Rt. 1, Box 126.

foot-note.³ Some variations appear in the conditions printed on the back of the bill, but these are of an unimportant nature. At times

3.

FREIGHT BILL

ASSOCIATED CONTRACT FREIGHT HAULERS No. 1695
Address: 1610 Harrison Street.

Date Oct. 17, 1952
Driver Roy Myers.

Shipper: Public Food Stores, San Francisco.
From: Public Food Stores, San Francisco.
To: Public Food Stores, Sacramento.

<u>Quantity</u>	<u>Articles and Marks</u>	<u>Weight</u>	<u>Rate</u>	<u>Amount</u>	<u>Time lost</u>
	Load of Groceries	13,650#	15¢	20.48	

(Printed on back)

1. All freight bills will be sent immediately with a signature of consignee upon return of truck.
2. All accounts must be paid weekly upon receipt of statement.
3. The carrier will make a reasonable charge for the detention of any truck for loading and unloading and may add such charge to all other charges hereinafter and hold such property subject to a lien thereon.
4. The carrier may make a reasonable charge for a second delivery of all property which has been previously offered for delivery and returned through no fault of the carrier.
5. The carrier will not be liable for any damage or loss of goods after being transferred to any company for delivery.
6. The carrier will not be liable for any claim of any description unless said claim is filed within ten (10) days from date of shipment. This freight bill must accompany any claim for overcharge, loss or damage.
7. No carrier is bound to transport said property in time for any particular market, or otherwise than with reasonable dispatch, unless by special agreement.
8. Every party, whether principal or agent shipping explosives or dangerous goods without previous full written disclosure to the character of their nature shall be liable for all damage caused thereby and such goods may be warehoused at owners risk and expense, or destroyed without compensation.
9. This carrier shall not be held liable for any amount on goods not properly packed, nor on Fragile Fabrics, unless plainly marked as such; nor on articles consisting of or containing glass, unless so marked and packed so as to insure safe transportation by express with ordinary care and the shipper agrees that the Company shall not be liable in any event for more than Fifty (\$50.00) Dollars for any shipment unless a greater value is stated herein and so billed.
10. Associated Contract Freight Haulers have the right to refuse any load at any time.
11. Upon arrival of truck at shippers destination, truck failing to pick up load through fault of shipper, shipper must pay at the rate of 25¢ per mile from place of pick up to destination of consignee.

these operators took shipments under standard bills of lading.

While the defendants insisted that they reserved the right to refuse shipments, it is not established that they made rejections over the route in issue, nor is their testimony as to their state of mind and intention in this respect at all persuasive. Indeed, the evidence points clearly to the conclusion that these operators were in fact a common carrier merely masquerading as a private carrier. (People v. Duntley, 85 Cal., Dec. 38; People v. Lang Transportation Co., 85 Cal., Dec. 47; Haynes v. McFarland, 207 Cal. 529). If truck operations of the volume and character here displayed do not fall within the meaning and terms of the statute (Chapter 213, Statutes 1917), then, indeed, that act represents a fragile and ineffective exercise by the State of its regulatory authority over an instrumentality that long has occupied a substantial place in the field of freight transportation. A cease and desist order should issue.

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 following form of order is recommended:

O R D E R

A public hearing having been held in the above entitled case and the case having been submitted for decision, the Railroad Commission of the State of California, after giving full consideration to the record before it and the argument of counsel, concludes and finds as follows, to-wit:

The defendants, Frank P. George and Tony P. George, operating as co-partners under the name and style of Associated Contract Freight Haulers, are operating as a transportation company as defined in Sec. 1, Sub-Division (c) of the Auto Stage and Truck Transportation Act (Chapter 213, Statutes of 1917), and 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 Sacramento and points intermediate, without first having obtained a certificate of public convenience and necessity for such operations.

Based on the findings herein and in the opinion,

IT IS HEREBY ORDERED that Frank P. George and Tony P. George, co-partners, shall immediately cease and desist, directly or indirectly, or by any subterfuge or device, from operating as a transportation company between the termini and over the route specified in the foregoing findings, unless and until they shall have obtained a certificate of public convenience and necessity authorizing such service.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Commission shall cause personal service of a certified copy of this order to be made upon the respondents Frank P. George and Tony P. George, and that copies of this order be mailed to the District Attorneys of the City and County of San Francisco and the Counties of Sacramento and San Joaquin.

The effective date of this order is hereby fixed as twenty (20) days from and after the date hereof.

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 16th day of January, 1933.

C. C. Seawey

M. J. Carr

W. B. Harris

Walter W. Moore

Commissioners.