

Decision No. 25596

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA INTERURBAN MOTOR
TRANSPORTATION ASSOCIATION,

Complainant,

vs.

Case No. 3188

VERNON P. HUNT,

Defendant.

H. J. Bischoff, for Complainant.

Rex W. Boston and Jay C. Sexton, for Defendant.

C. W. Cornell, for Southern Pacific Company and
for Pacific Electric Railway Company and for
Pacific Motor Transport Company, Interveners
on behalf of Complainant.

BY THE COMMISSION -

O P I N I O N

In this proceeding California Interurban Motor Transportation Association alleges that Vernon P. Hunt is operating auto trucks as a common carrier of property for compensation over the public highways between Redlands, Riverside and San Bernardino on the one hand, and Los Angeles and Los Angeles Harbor on the other hand, and between Redlands and Coachella Valley and intermediate points without having obtained from the Railroad Commission of the State of California a certificate of public convenience and necessity authorizing such operation.

Defendant, Vernon P. Hunt, by his written answer filed herein, sets up as a defense that he is operating as a private carrier under special agreements with those shippers for whom he carries goods.

A public hearing was conducted by Examiner Kennedy at Redlands, the matter was duly submitted and is now ready for decision.

The evidence with respect to defendant's operations between Redlands and Coachella Valley and intermediate points and between San Bernardino and Los Angeles and Los Angeles Harbor does not support the allegations of the complaint. However, the record clearly shows that defendant has held himself out to transport property between Redlands and Riverside on the one hand and Los Angeles and Los Angeles Harbor on the other hand. The testimony of several witnesses shows that defendant has responded freely to calls for such service. He admits that 75 percent of his entire transportation business was between Redlands and Los Angeles Harbor and a "husky 75 percent or maybe more" of this was citrus fruit alone. He had an office in Redlands, advertised in the telephone directory, actively solicited traffic, which defendant termed a check-up of customers, and accepted all traffic offered to the limit of his ability. Applicant has five trucks and five trailers and has found no difficulty in moving as much as one hundred tons of freight per week for one shipper. The services performed were for compensation between fixed termini and by regular, though at times different, routes. The record shows that some of the citrus shippers did not employ defendant directly but were members of mutual orange distributors which employed Hunt and paid him. However, in all cases transportation charges were charged back to the grower by the association. In many instances defendant hauled freight for concerns to whom he owed money

and received credit therefor on his account. It was not urged that this was not a form of compensation.

Defendant denied that he has held himself out to serve the public indiscriminately and cited instances where he had rejected shipments but each rejection was largely because of physical inability to handle the traffic. Such rejections, if construed as removing defendant from the category of a common carrier, would substantially nullify any attempt at regulation.

Upon this record we find that the defendant has been operating as a common carrier of property for compensation between Redlands and Riverside on the one hand, and between Los Angeles and Los Angeles Harbor on the other. In all other respects the complaint should be dismissed.

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 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 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.

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 Vernon P. Hunt 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 Redlands and Riverside and Los Angeles and Los Angeles Harbor without first having obtained a certificate of public convenience and necessity for such operations, as required by the Auto Truck Transportation Act, (Chapter 213, Statutes of 1917, as amended). Therefore,

IT IS HEREBY ORDERED that defendant Vernon P. Hunt 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 Vernon P. Hunt; that he cause certified copies thereof to be mailed to the District Attorneys of San Bernardino, Riverside, Orange and Los Angeles 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 in all other respects the complaint herein 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 Vernon P. Hunt.

Dated at San Francisco, California, this 30th day of January, 1933.

C. L. Deane
Leon White
M. A. Lee
W. B. Lewis
W. H. Moore
COMMISSIONERS.