

Decision No. 25597.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,

Complainant,

vs.

WALTER C. ECK, FIRST DOE, SECOND DOE,
THIRD DOE, FOURTH DOE, FIFTH DOE, FIRST
DOE CORPORATION, SECOND DOE CORPORATION,
THIRD DOE CORPORATION, FOURTH DOE COR-
PORATION, FIFTE DOE CORPORATION,

Defendants.

Case No. 3351.

Scott Elder, for complainant.

Edward Stern, for Railway Express Agency, Inc.,
interested party.

Otis Babcock, for defendant.

BY THE COMMISSION:

O P I N I O N

In this proceeding Regulated Carriers, Inc., alleges that defendants are operating trucks as common carriers between Sacramento on the one hand and Nevada City and Grass Valley and points intermediate thereto on the other without having obtained a certificate of public convenience and necessity from this Commission. Defendant in his answer denied each and all of the allegations of the complaint.

A public hearing was conducted by Commissioner Stevenot at Grass Valley December 16, 1932, and the matter was submitted.

The evidence presented related entirely to the operations of defendant Walter C. Eck.

Walter C. Eck is a vendor of fresh produce which he procures in Sacramento and delivers to mercantile houses at Grass Valley and Nevada City. In all he served eight consignees. He testified that he had so-called verbal contracts with three of the consignees and that he transported other than produce from Sacramento to them and to the others for compensation. Although Eck declared he had refused shipments for several persons the record is sufficient to establish the fact that aside from his produce vending business defendant has been rendering for approximately 14 months a transportation service as a common carrier for compensation between Sacramento and Nevada City and Grass Valley. He will be ordered to cease and desist therefrom.

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 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 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 Walter C. Eck is engaged in the transportation of property (other than fresh produce) 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 Sacramento and Grass Valley and Nevada City, 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 Walter C. Eck 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.

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 Walter C. Eck; that he cause

certified copies thereof to be mailed to the District Attorneys of Sacramento, Plumas and Nevada Counties; 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 defendants.

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

The effective date of this order shall be twenty (20) days after the date of service upon defendant Walter C. Eck.

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

C. L. Seaver
Leon A. White
M. A. C.
M. B. Harris
Walter C. Eck
Commissioners.