

Decision No. 25636

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.

Case No. 3389.

W. F. ARMSTRONG, T. B. RAY, W. F. ARMSTRONG, doing business under the firm name and style of Armstrong Truck Company, W. F. ARMSTRONG doing business under the firm name and style of Armstrong Transportation Company, T. B. RAY doing business under the firm name and style of Armstrong Truck Company, T. B. RAY doing business under the firm name and style of Armstrong Transportation Company, W. F. ARMSTRONG AND T. B. RAY doing business under the partnership name and style of Armstrong Truck Company, W. F. ARMSTRONG and T. B. RAY doing business under the partnership name and style of Armstrong Transportation Company, FIRST DOE, FIRST DOE doing business under the firm name and style of Armstrong Truck Company, SECOND DOE, SECOND DOE doing business under the firm name and style of Armstrong Transportation Company, THIRD DOE, FOURTH DOE, THIRD DOE and FOURTH DOE doing business under the partnership name and style of Armstrong Truck Company, FIFTH DOE, SIXTH DOE, FIFTH DOE and SIXTH DOE doing business under the partnership name and style of Armstrong Transportation Company, and FIRST DOE CORPORATION,

Defendants.

McCutchen, Olney, Mannon and Greene, by F. W. Mielke,
for Complainant, The River Lines.
Reginald L. Vaughan, Scott Elder and F. M. Bigelow,
for Complainants, Regulated Carriers, Inc.
Harry N. Grover and Frank J. Comaich, for Defendants.

WARE, COMMISSIONER:

O P I N I O N

By complaint filed on October 24, 1932, complainant

ORIGINAL

charges the defendants with unlawful common carrier operations by auto truck between San Francisco and Chico, and intermediate points.

By way of satisfaction of the complaint, the defendants W. F. Armstrong and T. B. Ray alleged that their only operation of transportation of property was prior to November 1, 1932, and that said operation was confined to motor trucks not owned by them but run pursuant to contract with the owners and operators of such trucks.

By way of answer the defendants joined issue with the complaint, a public hearing was had and the case submitted on February 8, 1933.

The facts as developed at the hearing are summarized briefly as follows:

Prior to November 1, 1932, the defendants W. F. Armstrong and T. B. Ray, as co-partners operating under the firm name of Armstrong Transportation Company, maintained their office at 1608 Harrison Street, San Francisco. Their sole business was the transportation of property by motor trucks for compensation. They have never been granted any certificate of public convenience and necessity by this Commission.

The trucks employed in their business were engaged by said co-partners from owners and operators under express contracts. Said trucks were operated over public highways. All of the freight hauled was procured through the active solicitation of the defendant co-partners. They likewise fixed, maintained and collected all freight rates.

The wide and varied scope of freight and shippers accommodated by the defendants clearly establishes their operations as being within the category of common carriers. Among their steady and regular patrons were:

- (1) California Packing Corporation (San Francisco)
- (2) The Best Foods, Inc. (San Francisco)
- (3) Rosenberg Bros. and Company (San Francisco)
- (4) Kettenbach Grain Co. (San Francisco)
- (5) Nichols Hardware Co. (Chico)
- (6) Great Northern Iron Metal Co. (Chico)

These shippers utilized the transportation afforded them by said defendants in movements that aggregated in various instances 30,000 pounds. The commodities thus transported included the general run of merchandise and ranged through a wide assortment of junk, grain, groceries and machinery.

With equal clarity, the testimony shows that the practice of these defendants pursued a course of freight transportation between fixed termini and over a regular route. Shipments moved in the manner hereinabove described between San Francisco, Sacramento and intermediate points, and similarly between San Francisco and Chico, at a greater frequency than weekly. A large part of the defendant Armstrong's activities was exercised in procuring loads to and from the termini of San Francisco and Chico so as to avoid light or empty trucks. Indeed, the only showing of any failure or refusal upon the part of the said defendants to transport proffered freight was occasioned through the inadequacy of their equipment.

While the record reveals that the defendants have ceased the operations hereinabove described and have desisted from their practice, as complained of, since November 1, 1932, the same record patently discloses that the defendants Armstrong and Ray were operating as a common carrier for compensation, upon the public highways and between fixed termini and over a regular route for a period of six (6) months prior to November 1, 1932.

The termination of this unlawful business by the defendants is commendable. It should likewise be rendered permanent.

The accomplishment of this is a duty and a regulation devolved upon this Commission. Therefore, 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.

O R D E R

Public hearings having been had in the above entitled case,

It is hereby found that W. F. Armstrong and T. B. Ray, as individuals and as co-partners operating under the firm name and style of Armstrong Truck Company, are operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Transportation Act (Chapter 213, Statutes 1917 as

amended), with common carrier status between San Francisco and Sacramento, and intermediate points, and between San Francisco and Chico and intermediate points and Sacramento, and without a certificate of public convenience and necessity or prior right authorizing such operations.

Based upon the finding herein and the opinion,

IT IS HEREBY ORDERED that W. F. Armstrong and T. B. Ray, as individuals and as co-partners operating under the firm name and style of Armstrong Truck Company, shall cease and desist directly or indirectly or by any subterfuge or device from continuing such operations.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon W. F. Armstrong and T. B. Ray, as individuals and as co-partners operating under the firm name and style of Armstrong Truck Company, that he cause certified copies thereof to be mailed to the District Attorneys of Contra Costa, Solano, Sacramento, Sutter, Yuba, Butte, Colusa, Glenn, Alameda and San Francisco Counties; to the Board of Public Utilities and Transportation of the City of Los Angeles; and to the Department of Public Works, Division of Highways, at Sacramento.

The effective date of this order shall be twenty (20) days after the date of service upon defendants.

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 14th day of February, 1933.

Oliver
Leon Whitell
W. A. Linn
W. B. Linn
W. B. Linn
Commissioners.