

Decision No. 5452

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MOTOR FREIGHT TERMINAL COMPANY,  
a corporation,

Complainant,

vs.

MC CLAIN TRUCK COMPANY, a  
copartnership, C. B. MC CLAIN,  
an individual, doing business under  
the fictitious name and style of  
MC CLAIN TRUCK COMPANY, C. B. MC CLAIN,  
FIRST DOE, SECOND DOE and THIRD DOE.

Defendants.

Case No. 3178

ORIGINAL

John M. Atkinson and Wallace K. Downey,  
by Wallace K. Downey, for Complainant.

Richard T. Eddy, for Defendants C. B. Mc Clain  
and Mc Clain Truck Company.

Richard T. Eddy, for Cudahy Packing Company,  
Armour & Company, and Swift & Company,  
interested parties.

R. E. Wedekind, for Southern Pacific Company and  
Pacific Motor Transport Company, intervenors  
on behalf of the Complainant.

Edward Stern, for Railway Express Agency, Inc.,  
intervenor on behalf of the Complainant.

Robert Brennan and William F. Brooks, by  
William F. Brooks, for The Atchison, Topeka  
and Santa Fe Railway Company, Intervenor on  
behalf of the Complainant.

BY THE COMMISSION -

O P I N I O N

By complaint filed on January 14, 1932, complainant charges C. B. Mc Clain, operating under the name Mc Clain Truck Company, with unlawful common carrier operations by auto truck between Los Angeles and Fresno and between Los Angeles and San Luis Obispo and intermediate points.

Public hearings were had before Examiner Handford on August 18th and 19th, September 13th and 27th, 1932, and the case was submitted on September 27, 1932.

The facts as developed at the hearings may be summarized briefly as follows:

The testimony of 17 witnesses shows a continuous use of defendant's service between Los Angeles and Fresno and intermediate points. Approximately 90 percent of the transportation charges was paid and borne by the consignees either directly to defendant or indirectly through the consignors. No contracts existed for this service except with three Los Angeles meat packing houses, providing for a northbound movement. In connection with these alleged contracts defendant built up a large back haul movement serving two score or more receivers of freight in Los Angeles. Some of the shipments tendered defendant at Fresno and intermediate points were destined to Arizona, being hauled to Los Angeles by defendant and transported beyond by other carriers. Exhibit No. 2 shows that from March 13, 1931 to April 28, 1932, defendant transported from Fresno and intermediate points to Los Angeles 149 shipments, ranging in weight from 290 to 40,500 pounds each (an average of 325 pounds). Defendant was using nine trucks and five trailers at the time of the hearing. He accepted all shipments tendered him. For more than a year prior to the hearing his operations were over a regular route and between fixed termini. His business shows a gradual enlargement. Only after this complaint was filed did he cease any of the operations. He admitted the operations as above stated but alleged they were conducted as a private carrier. The written contracts with the three meat packers were the beginning of the operation and are essentially a part of the service performed by defendant.

The record is obscure with respect to defendant's operations between Los Angeles and San Luis Obispo and intermediate points and is not sufficient to warrant a finding that between these points he was operating as a common carrier in violation of the Auto Truck Transportation Act.

A cease and desist order will issue.

An order of the 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. Stammer, 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 C. B. Mc Clain is 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 Los Angeles and Fresno and intermediate points 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 C. B. McClain 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 C. B. McClain; that he cause certified copies thereof to be mailed to the District Attorneys of Los Angeles, Kern, Tulare, Kings and Fresno 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.

IT IS HEREBY FURTHER ORDERED that in all other respects the complaint 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.

Dated at San Francisco, California, this 20<sup>th</sup> day  
February, 1933.

C. C. Weaver  
L. J. ...  
W. A. ...  
W. B. ...  
...  
COMMISSIONERS.