

Decision No. 25748.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,

Complainant,

vs.

Case No. 3446.

ALBERT ARATA, FIRST DOE, SECOND DOE,
THIRD DOE, FOURTH DOE, FIFTH DOE, FIRST
DOE CORPORATION, SECOND DOE CORPORATION,
THIRD DOE CORPORATION, FOURTH DOE
CORPORATION, FIFTH DOE CORPORATION,

Defendants.

Reginald L. Vaughan and Scott Elder, by
W.S. Johnson for Complainant.

Defendant appeared in his own behalf without
counsel.

WARE, Commissioner:

O P I N I O N

By complaint filed on December 19, 1932, complainant charges Albert Arata with unlawful common carrier operations by auto truck between Stockton on the one hand, and Ione, Martell, Jackson, Sutter Creek, Amador City, Pine Grove and intermediate points on the other hand.

Public hearings were had at Jackson on March 9, 1933, on which date the case was submitted.

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

Defendant Arata entered Jackson about ten years ago as a peddler of watermelons and perishable food stuffs. His trade constantly developed through the intervening years to the present time, which finds him possessed of a warehouse in Jackson, which is supplied by two trucks that make round trips daily between

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Stockton and Jackson via Ione with perishable food stuffs and other merchandise, all of which Arata buys, hauls and sells to his customers. In addition to this, Arata has developed quite a substantial transportation business.

Eight witnesses testified that while they occasionally bought produce from the Arata trucks, they more frequently patronized his freight service, which they said was quick, economical and convenient. Arata calls daily for their orders, promptly and efficiently attends to their shopping from the wholesalers in Stockton, and returns daily to Jackson with the merchandise at rates slightly less for the hauling than those of the common carriers serving this territory.

Six witnesses testified that they had never purchased any produce from Arata but that they frequently used his transportation services in procuring shipments of hardware, paint, meats, batteries, bakery supplies, radio outfits, etc. The record shows that Arata thus far has not enlarged his jobbing business so as to embrace all of the freight which he handles. All of the witnesses testified that he had never refused to haul freight for them, and that his accommodations were always available.

Arata confirmed the testimony of the witnesses who appeared at the hearing, and also admitted carrying considerable freight for 13 other firms engaged in business in Jackson, Ione, West Point, Pine Grove and Volcano. He frankly acknowledged that his transportation service had developed as a natural outgrowth of his business as a produce dealer.

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, as amended), 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

IT IS HEREBY FOUND that Albert Arata is operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Act (Chapter 213, Statutes 1917, as amended), with common carrier status between Stockton on the one hand, and Ione, Martell, Jackson, Sutter Creek, Amador City, Pine Grove and intermediate points on the other hand, 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 Albert Arata 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 Albert Arata, that he cause certified copies thereof to be mailed to the District Attorneys of San Joaquin, Calaveras and Amador 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 defendant.

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 20th day of March 1933.

A. C. [Signature]
[Signature]
M. D. [Signature]
M. B. [Signature]
[Signature]
Commissioners.