

Decision No. 25768.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SACRAMENTO NORTHERN RAILWAY,
a corporation,
THE WESTERN PACIFIC RAILROAD COMPANY,
a corporation,

Complainants,

vs.

WALTER J. JOHNSON, an individual,
WALTER J. JOHNSON, doing business
under the firm name and style of
P. F. JOHNSON & SON, ROSE A. JOHNSON,
an individual, FIRST DOE, SECOND DOE,
THIRD DOE, FOURTH DOE, FIRST DOE COR-
PORATION, SECOND DOE CORPORATION,
THIRD DOE CORPORATION and FOURTH DOE
CORPORATION,

Defendants.

ORIGINAL

Case No. 3365.

L. N. Bradshaw, for complainants.

Reginald L. Vaughan and Scott Elder for Regulated
Carriers, Incorporated, intervener in behalf of
complainant.

McCutchen, Olney, Mannon & Greene, by F. W. Mielke,
for The River Lines, intervener in behalf of
complainants.

Thomas M. Carlson and Thelen & Marrin, by Max
Thelen, for defendants.

BY THE COMMISSION:

O P I N I O N

The Sacramento Northern Railway and The Western Pacific
Railroad Company by complaint filed October 4, 1932, and as amend-
ed, allege that Walter J. Johnson and Rose A. Johnson, partners
doing business under the name of P. F. Johnson & Son, are conduct-
ing a freight trucking business as a common carrier for the

transportation of property for compensation over the public highways between San Francisco Bay points, namely, San Francisco, Oakland, San Leandro and Richmond on the one hand, and Sacramento, Marysville, Yuba City, Oroville and Chico on the other, serving as intermediate points various communities en route. It is alleged that said operations are in violation of Chapter 213 of the Statutes of 1917, for the reason that defendants have failed to secure the necessary certificate of public convenience and necessity required by the Statute.

A public hearing was held before Examiner Geary at Oroville on January 5, 1933, the matter submitted, and briefs filed.

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

The parties defendant deny that they are engaged in the transportation as common carriers and maintain that any property transported is handled exclusively as private carriers not subject to the jurisdiction of the Railroad Commission, and that the said operations do not violate Chapter 213 of the Statutes of 1917.

The business activities of this organization commenced in the year 1909 as a draying firm within the City of Richmond. It would appear from the record that in 1929 the Standard Oil Company made an agreement with the A. & N. Trucking Company of Oakland for the movement of petroleum products in packages from Richmond to points in the Sacramento Valley as far north as Hornbrook and that in August 1930 these defendants took over the Standard Oil business formerly handled by the A. & N. Trucking Company. Later, on July 31, 1931, another agreement was entered into with the Standard Oil Company by letter, making certain changes in the original arrangement. The tonnage of the Standard Oil Company,

averaging from 40 to 50 tons per week, originates at Richmond and is destined to points in the Sacramento Valley, principally Sacramento, Chico, Marysville and Oroville. In connection with southbound movements from the Sacramento Valley points, the defendants haul the returning empty packages for the Standard Oil Company. They also solicit tonnage from all of the general public for both southbound and northbound business. Until August 1932 defendants retained the services of a representative, with headquarters at Marysville, who solicited all available tonnage for the trucks engaged in the regular Standard Oil services, and it is also of record that when these vehicles could not handle the tonnage, additional trucks would be secured.

There was an abundance of testimony by shipper witnesses, subpoenaed by the complainants, to the effect that prior to October 1932 they had made regular shipments via defendants' trucks, both north and south bound. Defendants apparently relied to a large extent upon the southbound tonnage of the olive growers to prevent trucks returning empty, and had oral agreements with these shippers. Under date of November 4, 1932, the defendants issued a circular letter addressed to their employees, instructing that freight be received only from the Olive Products Company, Wyandotte Olive Growers Association and the Standard Oil Company. With the exception of one consignment no tonnage has been accepted from other than these three shippers since November 4, 1932. There were filed by the defendants as exhibits copies of letters embracing their agreements with the Standard Oil Company and also copies of the two contracts dated November 4, 1932, signed by the Wyandotte Olive Growers Association and the Olive Products Company.

Defendants produced but two witnesses, the first being

Walter J. Johnson, one of the partners, who testified that the business commenced with the draying activities by his father, and described the contracts entered into with the three organizations. The other witness was an employee, who explained the method of handling traffic via the competing railroads.

Defendants did not attempt to discredit the testimony of witnesses as to the business handled for the public prior to November 4, 1932. It is clearly proven from this record that with the exception of agreements with the Standard Oil Company, these defendants, although claiming to have made oral contracts with a few shippers, nevertheless did haul for the general public and were without question previous to November 4, 1932, conducting a common carrier service without authority of law. They now contend that because of the two contracts dated November 4, 1932, subsequent to the filing of this complaint, plus the agreements with the Standard Oil Company, they have placed themselves within the category of private or contract haulers and are without the jurisdiction of the Commission, upon the theory that they have limited their contractual relations to three entities only. The contracts with the olive growers' associations provide principally for the movement to San Francisco Bay of canned goods, olive oil and other commodities necessary to the industry. They read in part:

"This contract shall be in full force and effect for a period of one year from this date provided that either party may terminate the same by giving ten days' notice in writing to the other.

"So long as this contract remains in effect hauler shall have the exclusive right to haul all of the goods of the description above set forth that owner desires to have hauled between the points as above specified."

A witness for the olive shippers stated it was not his

understanding that the organizations would be obligated to make all shipments via the trucks of these defendants.

The facts of record lead to the conclusion that defendants' operations as complained of were conducted as a common carrier for compensation between San Francisco, Oakland, San Leandro and Richmond on the one hand, and Sacramento, Marysville, Yuba City, Oroville and Chico on the other. 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. vs. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wermuth vs. Stamper, 36 C.R.C. 458; Pioneer Express Company vs. 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, as amended), a person who violates an order of the Commission is

guilty of a misdemeanor and is punishable by a fine not exceeding \$1,000.00, 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 Walter J. Johnson and Rose A. Johnson, partners doing business under the name of P. F. Johnson & Son, were operating as complained of 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, Oakland, San Leandro and Richmond on the one hand, and Sacramento, Marysville, Yuba City, Oroville and Chico on the other, 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 Walter J. Johnson and Rose A. Johnson, partners doing business under the name of P. F. Johnson & Son, 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 Walter J. Johnson and Rose A. Johnson, that he cause certified copies thereof to be mailed to the District Attorney of the City and County of San Francisco, to the District

Attorneys of the Counties of Alameda, Contra Costa, Napa, Solano, Sacramento, Yolo, Yuba, Sutter, Placer and Butte, 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.

Dated at San Francisco, California, this 20th day of March, 1933.

CC Seaman

Leon Whitely

W. J. Curran

M. B. Harris

Commissioners.