

Decision No. 25816

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

REGULATED CARRIERS, INC., a corporation,)

Complainant,)

vs.)

J. J. SMITH, doing business under the)

fictitious name and style of J.J.SMITH)

TRUCKING COMPANY, First Doe, Second Doe,)

Third Doe, Fourth Doe, Fifth Doe, First)

Doe Corporation, Second Doe Corporation,)

Third Doe Corporation, Fourth Doe Cor-)

poration, Fifth Doe Corporation,)

Defendants.)

Case No. 3338.

R. L. Vaughan and Scott Elder, by
Scott Elder, for Complainant.

Frank L. Guereña for J. J. Smith, Defendant.

BY THE COMMISSION:

O P I N I O N

Regulated Carriers, Inc., a corporation, has complained of J. J. Smith, doing business under the fictitious name and style of J. J. Smith Trucking Company, First Doe, Second Doe, Third Doe, Fourth Doe, Fifth Doe, First Doe Corporation, Second Doe Corporation, Third Doe Corporation, Fourth Doe Corporation and Fifth Doe Corporation, alleging that said defendants were operating an automobile trucking service between San Francisco and points on the west side of the San Joaquin Valley as a transportation company

as such is defined in Chapter 213 Statutes of 1917, as amended, without having secured a certificate of public convenience and necessity so to do or without possessing any prescriptive right for said operation.

Public hearings on this complaint were conducted by Examiner Handford at Los Banos and Newman, the matter was duly submitted on the filing of briefs by interested counsel and is now ready for decision.

J. J. Smith is, and has been for some years, engaged in the trucking business, having his principal place of business at his residence at Newman. One truck leaves the west side San Joaquin Valley points three times each week for Oakland and San Francisco and transports eggs for the Central California Poultry Association and fresh meats, principally veal, for buyers at Dos Palos and Patterson to the San Francisco wholesale meat dealers. On the return from San Francisco there is hauled such groceries, dry goods, hardware and general merchandise as may be destined to merchants and stores at Westley, Patterson, Newman, Gustine, Los Banos, Dos Palos and generally to west side valley towns. The trucking orders for these shipments are given to Mr. Smith either by salesman for the wholesale houses which ship the goods or direct by the consignees of the shipments. The operations of the regular tri-weekly truck to and from San Francisco are sometimes supplemented by two other and larger trucks and at times as many as eight trips are made from San Francisco Bay points to San Joaquin Valley west side points. About 50 consignees are served as receivers of freight and no advertising or active solicitation is employed to increase the number of

consignees which are being served. Regular service tri-weekly has continued for a number of years.

On Thursday of each week shipments are made from Swift & Company at South San Francisco to points on the west side of the San Joaquin Valley, such shipments being prepaid by the shipper and being made under a written agreement dated April 5, 1932. This arrangement has existed for a number of years being covered by agreements executed yearly.

Receivers of shipments at the following west side San Joaquin Valley points testified regarding their use of J. J. Smith's truck service from San Francisco and San Francisco bay points: Gustine 5; Los Banos 1; Dos Palos 1; Westley 1; Patterson 7; Crows Landing 1 and Newman 11. These witnesses have used the service from once to a period of about eight years, some using it as often as two or three times per week, others less frequently. The shipments northbound to Oakland and San Francisco for the Central California Poultry Association are governed by a written agreement dated March 1, 1932.

It is the contention of defendant, J. J. Smith, that all hauling between San Francisco Bay points and west side San Joaquin Valley points is the result of verbal arrangement made as regards each shipment in which arrangements it is agreed as to the rate, time of delivery, time of shipment and that each shipment is arranged for in advance by the party making same. No solicitation of shipments is made nor is there any advertising of the business to procure additional business or patrons.

We have carefully considered the record in this proceeding and it is our conclusion after a full consideration that the service now rendered by the truck line of defendant J. J. Smith between San Francisco Bay points to merchants and stores in towns on the west side of the San Joaquin Valley is that of a common carrier and as a transportation company as such company is defined in Chapter 213, Statutes of 1917, as amended. An order to cease and desist such service will be issued.

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; Wernuth 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, Chap. 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 J. J. Smith is operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Stage and Truck Transportation Act (Chapter 213, Statutes 1917, as amended), with common carrier status between San Francisco Bay points and west side San Joaquin Valley points, including Westby, Patterson, Gustine, Newman, Los Banos and Dos Palos, and without a certificate of public convenience and necessity or prior right authorizing such operations.

Based upon the findings herein and the Opinion, IT IS HEREBY ORDERED that J. J. Smith 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 J. J. Smith, and that he cause certified copies thereof to be mailed to the District Attorneys of Alameda, Contra Costa, Stanislaus, Merced and the City and County of San Francisco, and to the Department of Public Works, Division of Highways at Sacramento.

IT IS HEREBY FURTHER ORDERED that this proceeding in so far as it refers to defendants First Doe, Second Doe, Third Doe, Fourth Doe, Fifth Doe, First Doe Corporation, Second Doe Corporation, Third Doe Corporation, Fourth Doe Corporation and Fifth Doe Corporation be and the same is hereby 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 10th
day of April, 1933.

C. J. [Signature]
Leon [Signature]
W. A. [Signature]
M. B. [Signature]
[Signature]
Commissioners.