

Decision No. 25842

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,  
Complainant,

vs.

Case No. 3443

F. M. BOTCHER, LEO PENDER, JOHN DOE SMITH,  
doing business under the fictitious name  
and style of SAN FRANCISCO-LOS ANGELES  
FREIGHT FORWARDERS, FIRST DOE, SECOND DOE,  
THIRD DOE, FOURTH DOE, FIFTH DOE, FIRST  
DOE CORPORATION, SECOND DOE CORPORATION,  
THIRD DOE CORPORATION, FOURTH DOE CORPOR-  
ATION, FIFTH DOE CORPORATION,

Defendants.

ORIGINAL

Reginald L. Vaughan and Scott Elder,  
by Scott Elder, for Complainants,

R. H. Corman, for F. M. Botcher, Defendant.

BY THE COMMISSION -

O P I N I O N

By complaint filed on December 16, 1932, and amended  
complaint filed on April 4, 1933, complainant charges  
F. M. Botcher, Leo Pender, John Doe Smith, doing business  
under the fictitious name and style of San Francisco-Los  
Angeles Freight Forwarders, et al. with unlawful common  
carrier operations by auto truck for compensation over the  
public highways of the State of California between fixed  
termini and/or over regular routes, to-wit: usually and  
ordinarily between San Francisco, Oakland, Alameda, Berkeley,  
Richmond, Emeryville and San Leandro, on the one hand, and  
Los Angeles, Vernon, Walnut Park, Pasadena, Alhambra, Highland  
Park, San Pedro, Santa Monica, Sawtelle, San Bernardino,

Pomona, Glendora, Huntington Park, Hollywood, Ocean Park, Montebello, Venice, San Fernando, Redlands, Uplands and Covina, on the other hand, serving also as intermediate points various cities, towns, communities and other points enroute.

A public hearing was held before Examiner Satterwhite at San Francisco on March 28, 1933, the matter was submitted, and is now ready for decision.

F. M. Botcher was the only defendant who filed an answer in the above entitled proceeding. No evidence was offered by complainants in support of their complaint against any of the other defendants named.

The record shows that ever since February 1, 1932, and continuously up to the present time, the defendant F. M. Botcher as an individual has been conducting a truck transportation business between San Francisco and Los Angeles under the fictitious name of San Francisco-Los Angeles Freight Forwarders. The volume of tonnage secured from numerous shippers and customers has been so large that at least five trips weekly have been made in order to meet their requests. Defendant maintains terminal depots, both at San Francisco and Los Angeles, where shipments are unloaded as a rule from the main line trucks and thereafter delivered to the consignees by smaller pick-up and delivery trucks to the business and manufacturing districts.

Business is solicited personally by the defendant and also by other solicitors employed by him at Los Angeles and San Francisco. Defendant owns no trucks or trucking equipment save and except one pick-up and delivery truck

operated in San Francisco. All main line trucks, including a pick-up truck at Los Angeles, are hired or leased from other truck owners or operators, none of whom operate under a certificate from this Commission. It appears that defendant has an available list of at least twenty individual truck operators who, upon request from the defendant, transport the shipments of defendant's patrons whenever called upon to do so. These available truck operators are at the disposal of defendant at either terminal and the owners of the trucks furnish all necessary drivers. Charges for the main line haul are paid by defendant on the basis of tonnage handled.

The trucking operations of the defendant have been carried on almost entirely under verbal arrangements at a rate quoted to the shipper and accepted or rejected in accordance with the character and amount of tonnage offered from time to time. Defendant testified that during the past year he has rendered trucking services between the above terminals to about 90 shippers upon request. His patrons thus far have constituted an ever changing list and at the present time he is serving about twenty regular customers. Representatives from the following business and manufacturing establishments at San Francisco, many of whom have warehouses or branch offices at Los Angeles, appeared at the hearing and testified that during the past year they had patronized the services of the defendant to a considerable extent in transporting their particular commodities or products both southbound and northbound between San Francisco and Los Angeles:

M. Sellar Company,	San Francisco
Pacific Coast Tag Co.	" "
C. L. Duncan Co.,	" "
Wm. Volker & Co.,	" "

U. S. Rubber Company,	San Francisco
A. Schilling & Co.	" "
John Finn Metal Works,	" "
Pacific Coast Paper Co.,	" "
Bergstrom Steel Co., Ltd.	" "
West Coast Sanitary Mfgs"	" "
Art Tile & Mantle Co.,	" "
Blake, Moffitt & Towne	" "
National Biscuit Co.,	" "
American Encaustic Tiling Co.,	San Francisco
Neptune Meter Co.,	" "

Refusals to transport freight are and have been made where the shipments are too small and the rate is not satisfactory to the shipper. The record shows and the defendant admitted that he particularly caters to the character of commodities that run to weight and not to bulk.

From time to time shipments have been given to the defendant consigned to points or communities beyond his terminals at Los Angeles and San Francisco, but the record shows that practically in all these instances he has used the services of certificated common carriers to make such deliveries.

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 days, or both. C. C. P. Sec. 1216; Motor Freight Terminal Co. vs. Bray, 37 C.R.C. 224; re Ball and Hayns, 37 C.R.C. 407; Wermuth vs. Stamper, 36 C.R.C. 458; Pioneer Express Company vs. Keller, 35 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 \$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 said defendant, F. M. Botcher, under the fictitious name of San Francisco-Los Angeles Freight Forwarders, is operating as a transportation company as defined in Section 1, subdivision (c) of the Auto Truck Transportation Act (Chapter 213, Statutes of 1917, as amended) with common carrier status between San Francisco and Los Angeles.

Based upon the finding herein and the opinion,

IT IS HEREBY ORDERED that said defendant F. M. Botcher, operating under the fictitious name of San Francisco-Los Angeles Freight Forwarders, 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 said defendant F. M. Botcher; that he cause certified copies thereof to be mailed to the District Attorney of the City and County of San Francisco, and the District Attorney of Los Angeles; 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 it is hereby dismissed.

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

Dated at San Francisco, California, this 17<sup>th</sup> day of  
April, 1933.

W. A. Stearns  
Leon White  
W. J. Con  
M. B. Con  
M. A. Con  
COMMISSIONERS.