

Decision No. 23864.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC.,  
a corporation,  
Complainant,

vs.

J.F. PRESTON, 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.

Case No. 3415.

**ORIGINAL**

Reginald L. Vaughan and Scott Elder  
for Complainant.

Rittenhouse & Snyder and Harry Encell  
for Defendant.

BY THE COMMISSION:

O P I N I O N

By complaint filed on November 21, 1932, complainant charges J.F. Preston, et al, with unlawful common carrier operations by auto truck between Santa Cruz and San Francisco.

A public hearing was had before Examiner Johnson on February 15, 1933, on which date the case was submitted.

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

Defendant Preston began the transportation of property between Santa Cruz and vicinity and San Francisco approximately four years ago purchasing a business of similar character previously operated by James Ward. He testified that he has two pickup trucks and one truck and trailer for line haul; that he operates six days a week leaving Santa Cruz every evening and reaching San Francisco in time for the early produce market; that he usually uses the route through Los Gatos and Sunnyvale

and Highway No. 101 or the Bayshore Highway to San Francisco. He further testified that in all he has 50 customers and that all except one are under contract. Preston also testified that:

"I have only a certain amount of customers that I can take care of with what equipment I have and I don't intend to get any more customers, that is, more than I would be able to take care of. I keep it down to a certain amount, just what I can handle."

Defendant testified that he had refused shipments for the following reasons:

"I did not have time to run around and pick it up"; "it was not convenient for me to pick them up;" "Because he had shipped by somebody else and it was out of my territory, out of my route;" "because I did not have time."

"MR. JOENSON: You refused all these people because you did not have the time or the equipment to do it with, isn't that a fact?"

A. Yes."

The contract form (Exhibit No. 1) is little more than an agreement to give Preston "the first opportunity to do all hauling for the second party" and is terminable in fifteen days by either party. No period is fixed for the contract. Rates are charged according to the commodity transported and Preston testified that he charges uniform rates on each of the commodities transported. Fifteen witnesses were produced by complainant, eleven of whom testified they used defendant's service to ship flowers, produce or poultry to San Francisco on consignment to wholesale produce merchants who deducted the transportation charges in making remittances to the witnesses. Four of the witnesses testified they received principally groceries and meat from San Francisco, which were delivered at Santa Cruz by defendant and on which they paid him the freight charges. In addition

to these witnesses Preston admitted that he hauled for nine other shippers, producers of vegetables and flowers almost wholly in the region served by him.

Defendant devotes his service to the origin territory between Santa Cruz and Davenport along the highway, a distance of 13 miles and has so devoted it during all the period of operation. Some of his customers have been with him during the entire period, while others had used his service only in 1932. Defendant collects by pickup truck the property to be transported and assembles his load on the highway north of Santa Cruz and from there transports it to San Francisco. It was also shown that he hauled for one customer near Capitola and another near Aptos. He further admitted he hauled for practically every producer between Santa Cruz and Davenport.

Consideration of the record sustains a conclusion that applicant is and has been for a long time past conducting a common carrier service between Santa Cruz and San Francisco with pickup and delivery (returning empty crates) in the area between Santa Cruz and Davenport for the transportation of property, particularly live poultry, artichokes, brussel sprouts, string beans, flowers and other products moving to San Francisco and return movement of various merchandise; that he operates practically on a daily schedule, six days in the week and that his service is available to shippers within that area which he has undertaken to serve. It further appears that the contract on which defendant relies to give the character of private employment to his operations is little more than a rate quotation.

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

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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.

#### ORDER

IT IS HEREBY FOUND that J. F. Preston 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 Davenport, Santa Cruz and points in the vicinity thereof on the one hand and San Francisco 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 J. F. Preston 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.F. Preston, that he cause certified copies thereof to be mailed to the District Attorneys of Santa Cruz, Santa Clara, San Mateo and San Francisco Counties 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 24<sup>th</sup> day of April 1933.

*E. C. Stearns*  
*Leon O'Whidery*  
*M. J. Lee*  
*W. B. Lewis*  
*W. H. ...*  
Commissioners.