

Decision No. 25865.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC.,
a corporation,
Complainant,

vs.

L. ROSS, C. D. DE ROSE, L. ROSS and
C. D. DE ROSE doing business under the
fictitious name and style of Ross &
De Rose, 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. 3418.

ORIGINAL

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

Decoto and St. Sure, by Ezra W. Decoto, for
defendants.

BY THE COMMISSION:

O P I N I O N

By complaint filed on November 21, 1932, complainant charges L. Ross and C. D. De Rose with unlawful common carrier operations by auto truck between San Francisco, Oakland, Alameda, Berkeley, Emeryville, Richmond and San Leandro on the one hand, and Davenport, Felton, Santa Cruz, Soquel, Capitola, Aptos, Watsonville, Castroville, Monterey, Pacific Grove, Seaside, Carmel, Salinas, San Jose, Santa Clara and the intermediate points on the other hand.

A public hearing was had before Examiner Johnson on

January 12, 1933, on which date the case was submitted.

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

Defendants have been engaged in the trucking business since 1928. They do some local hauling in and about Aptos, but their main business is the hauling of farm produce from farms and ranches located in the vicinity of Santa Cruz and Aptos to San Francisco and Oakland. The bulk of this traffic originates at points within about five miles from Aptos. The record also shows that some hauling was done from Santa Cruz proper and from defendants' loading station at Aptos. The service is performed from approximately May to November of each year, with occasional loads during the off-season period. During the peak of the harvest season the trucks are operated daily, except Saturday, leaving the origin territory at various hours in the evening and arriving at the San Francisco and Oakland commission houses between 2 and 4 o'clock of the following morning. The trucks are operated to San Francisco and Oakland over regular routes via either Los Gatos or the Chittenden Pass.

At the time of the hearing defendants were hauling for approximately 18 shippers in the Aptos-Santa Cruz district. The service for 16 of these shippers was performed under certain written contracts and for the other two under alleged verbal agreements. These contracts and agreements, however, are nothing more than rate quotations and no way binding upon the consignors. With slight exceptions the rates charged to all the shippers were uniformly the same.¹ In some cases defendants solicited the hauling and in other cases the shippers requested the service. However, it appears clear from the testimony of defendant Ross that there

¹ The freight charges were actually paid by the consignee but deducted from the amounts due the consignor.

was a general holding out to haul for any shipper within the territory which they undertook to serve, provided the rates which they were willing to pay were satisfactory and provided that equipment was available.² This defendant testified that in some cases he had refused transportation for various shippers, but it appears that the reason for so refusing was because they were located in or about Watsonville, a territory defendants did not undertake to serve.³

A cease and desist order should issue.

An order of this Commission finding an operation to be

² The following is an excerpt from the testimony of witness Ross:

Q. Suppose you had equipment available, that there is space on your trucks, and suppose that I was responsible and would pay the freight charges to you at the time you pick them up, would you transport them for me? A. But I make the price so much you would not ship by me, that is all; I make a price that you would not agree to ship by me.

Q. Why would you charge me any more than you would charge Fasio? A. Because of something which may come up that I don't care to haul your stuff if you would give me a dollar.

Q. Because you don't like my looks? A. It may be so.

Q. Give me the reason why you would refuse to transport my goods at the same price that you would charge to anybody else? A. Maybe we had some words between ourselves, something else, quarrel, argument.

Q. In other words, you won't transport for your enemies; is that true? A. Certainly would not transport for enemies.

Q. All right. Who else wouldn't you transport for? A. Well, I wouldn't transport for - I would transport for all friends of mine that were willing to do right by me, stand by me.

Q. As a matter of fact, suppose I was a stranger, that I had just taken over a farm out there and wanted my produce shipped to the San Francisco market, and I was responsible and advanced the freight charges and told you I wanted my property transported at the same price you charged everybody else, would you take my goods, or would you refuse them? I am a stranger. A. If we get along, sure I would take them.

Q. If we get along? A. Certainly.

Q. So long as I pay you your price, your transportation charge, and you had equipment available you would transport it for me, wouldn't you? A. Certainly.

³ Defendant also refused to haul groceries for his father-in-law from San Francisco to Aptos. He received no compensation for this service and discontinued because it interfered with his other hauling.

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 L. Ross and C. D. De Rose are 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 from Aptos, Santa Cruz and points within five miles of Aptos to San Francisco and Oakland 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 L. Ross and C. D. De Rose 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 L. Ross and C. D. De Rose, that he cause certified copies thereof to be mailed to the District Attorneys of Santa Cruz, Santa Clara, San Mateo and Alameda Counties and San Francisco City and County, 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 24th day of April, 1933.

C. L. Levey
Leon A. White
W. J. Con
M. B. Lewis
Robert M. ...
Commissioners.