

ORIGINAL

Decision No. 25807.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SACRAMENTO NORTHERN RAILWAY,
a corporation,
Complainant,

vs.

CLAYTON C. DICKENSON, JOHN DOE,
RICHARD ROE, DOE COMPANY, a cor-
poration,
Defendants.

Case No. 3394.

SACRAMENTO NORTHERN RAILWAY,
a corporation,
Complainant,

vs.

W. W. O'DELL, an individual,
JOHN DOE, RICHARD ROE, DOE COMPANY,
a corporation,
Defendants.

Case No. 3395.

L. N. Bradshaw, for complainants.
R. S. Meyers, for Southern Pacific Company,
interested party.
Clayton C. Dickinson, in propria persona.
W. W. O'Dell, in propria persona.

WARE, Commissioner:

O P I N I O N

By complaint (Case No. 3394) filed on October 27, 1932,
complainant (being the same in each of the above entitled cases)
charges the defendant Clayton C. Dickinson with unlawful common
carrier operations by auto truck between Sacramento and Colusa

and intermediate points. Simultaneously, and in almost identical language, by complaint (Case No. 3395) filed on October 27, 1932, the complainant charges the defendant W. W. O'Dell with unlawful common carrier operations by auto truck between Sacramento and Colusa and intermediate points.

These cases, being closely related and involving the common problem of freight movements between two cities, were set for hearing at Colusa on March 21, 1933, at which time and place all parties stipulated, and an order was made by the presiding Commissioner, that the hearing of both matters be consolidated, whereupon the entire evidence was adduced and submitted and both matters are now ready for further order and decision.

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

More than nine years ago the defendant Dickinson ventured into the business of peddling perishable fruits and vegetables which he customarily bought wholesale in Sacramento, and hauled in his truck, and sold to the merchants in Colusa and vicinity and intermediate points. This pursuit originally constituted his only activity and avocation. With the advent of the chain stores, said merchants induced him to enlarge the scope of his hauling by carrying to their doors frequent supplies of wholesale freight and produce originating in numerous wholesale houses in Sacramento. This duplex service appeared necessary to his patrons in the furtherance of their competition with said chain stores which received by truck frequent renewals of fresh stock and supplies. With succeeding years, the peddling aspect of Dickinson's business decreased in direct proportion as his freight service increased. Notwithstanding, he has steadfastly confined his business to such

patrons who have continued, with more or less frequency, to buy from his truck the perishable supplies which he has continued in diminishing extent to peddle.

As distinguished from the Dickinson case, the defendant W. W. O'Dell inaugurated his trucking of peddled perishables and ordered freight several years later. O'Dell has been concerned chiefly with the freight feature of his business from the commencement of his hauling; and the record discloses a number of merchants who have variously engaged the O'Dell freight service while they have never bought anything from his truck.¹

Finally, the Dickinson business seems to have the greater expansion, and at the present time is the more favored and popular of the two services. Were it necessary that the community of Colusa should be permitted to perpetuate a motor truck freight service comparable to either, the Dickinson service would receive the more responsive support.

The record discloses that both operators have held themselves out to a distinct portion of the public as common carriers of freight between Sacramento and Colusa and intermediate points, over the public highways and a regular route; both receive pay for their hauls on a fixed schedule of rates; and neither possesses any certificate of public convenience and necessity permitting any such service.

Both operators endeavored to defend themselves and justify their operations by describing their freight hauling activities in this manner: Each calls upon his list of merchants, receives in-

¹ Numerous deliveries of coffee, pressed and smoked meats, batteries, tires, auto accessories, and service station supplies have been made by the defendant O'Dell to regular freight patrons who testified that they never had made a purchase of fruits, vegetables, merchandise or anything from him.

instructions to take delivery from a host of Sacramento wholesalers of a wide assortment of meats, groceries, foodstuffs, hardware and all kinds of merchandise, all of which is ordered and bought by, and on the account of, each respective merchant. Neither Dickinson nor O'Dell hazards any loss in the sale of such commodities. The purchase is plainly made by the retail merchant from the Sacramento wholesaler. The defendants charge and receive for their exceptional services an agreed rate. In each instance the dealer pays the carrier for his service of hauling.

In this behalf, it must be observed that this common and widespread practice by common carriers of taking orders from retail merchants, getting such orders filled and loaded upon their trucks at the wholesale houses, thereupon hauling said orders and charging for the transportation, constitutes an improved, modern and special variety of freight service and cannot be classified under any other camouflaged designation.

Each of these defendants is a common carrier, and to the extent that each is engaged in the unlawful transportation of freight as above described, should be ordered to cease and desist.

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; 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.

The following form of order is recommended:

O R D E R

IT IS HEREBY FOUND that Clayton C. Dickinson (Case 3394) and W. W. O'Dell (Case 3395) are operating, and each of them 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 Sacramento on the one hand, and Colusa and intermediate points 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 in the case of Clayton C. Dickinson (No. 3394) that defendant Dickinson within sixty (60) days from date hereof cease and desist operation between Sacramento and Colusa and intermediate points, unless within thirty (30) days from date hereof he makes application to the Commission for a certificate of public convenience and necessity to conduct a common carrier service for the transportation of property between said points.

IT IS HEREBY FURTHER ORDERED that in the event such

application be filed, that further proceedings herein be suspended until the determination of such application on its merits and that this case (No. 3394) remain open for such further proceedings herein and the entry of such further order or orders as may be meet in the premises.

IT IS HEREBY FURTHER ORDERED, in the case of W. W. O'Dell (No. 3395) that defendant O'Dell 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 Clayton C. Dickinson (Case No. 3394) and W. W. O'Dell (Case No. 3395); and that he cause certified copies thereof to be mailed to the District Attorneys of Sacramento, Yolo, Sutter and Colusa Counties, and to the Department of Public Works, Division of Highways, at Sacramento.

The effective date of this order shall be sixty (60) days after the date of service upon each defendant.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of May, 1933.

W. C. Leary
Leon C. Whidby
W. J. Kim
W. B. Harris
W. H. [Signature]
Commissioners.