

Decision No. 25300.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

GUY JAMESON, an individual  
doing business under the name  
and style of PETALUMA-TOMALES-  
FALLON FREIGHT LINE,

Complainant,

vs.

H. F. SIEMSEN,

Defendant.

ORIGINAL

Case No. 3483.

Toland C. McGettigan, for complainant.

Louinibos, Schwoboda & McGoldrick, for defendant.

BY THE COMMISSION:

O P I N I O N

Guy Jameson, an individual doing business under the fictitious name of the Petaluma-Tomales-Fallon Freight Line, complains that H. F. Siemsen, defendant, operates auto trucks between fixed termini and over a regular route in the business of transporting property for compensation over the public highways between Petaluma and Tomales and Fallon; that he has been and now is conducting without a certificate of public convenience and necessity the services of a common carrier in violation of Chapter 213 of the Statutes of 1917, within the territory certificated to complainant.

A public hearing was held before Examiner Geary at Petaluma April 14, 1933, on which date the case was submitted.

The record discloses fully the nature of Siemsen's operations. He owns two Reo trucks, and commenced operations in June 1932. The services performed by defendant are alleged to be similar to those conducted for some three years prior to June 1932 by a Mr. Thornberry, from whom this defendant purchased a truck and thereafter continued to serve the milk and cream shippers of his predecessor, some 25 in number. Since beginning operations a second truck was purchased and new customers secured, some of them from complainant's certificated route. The service consists of a round trip daily for the hauling of milk and twice a week for the transportation of cream. Other commodities are accepted, such as eggs from the ranches, and in the opposite direction empty cans, feed and general farm supplies. The charge for cream is 20 cents per 10-gallon can regardless of distance. The charge for the other commodities varies with the distance of the hauls.

Defendant has published no tariffs, gives no receipts for the property transported, and has no definite contracts, either written or verbal, with the shippers. Defendant testified that he did not solicit or advertise for business, and that although there is no holding out of the services to the public as a common carrier, he is willing to and does regularly accept any tonnage offered. The territory served extends from Petaluma via Tomales and Fallon to Valley Ford and thence west to the Pacific Ocean, and use is made of the three roads in the intervening territory between Petaluma and Valley Ford. Milk and cream is transported between Petaluma and Tomales-Fallon, points certificated to complainant Jameson.

A number of witnesses further testified that they regularly used defendant's trucks for the transportation of milk and

cream because an added service was performed into the ranches, as against the terminal station service given by Jameson; also that defendant would make detours of from two to five miles from the main highway and pick up the milk and cream without extra charge.

Authority for the services rendered by complainant Jameson was originally granted to Woodson Bros. by Decision 11066, Application No. 7948, October 7, 1922, and the operating rights were transferred to Guy Jameson, the complainant in this proceeding, by Decision 20218, Application 15678, June 10, 1929. The original authorization to Woodson Bros., which has not been changed, was limited by its terms and granted permission to establish services only for the transportation of cream, live chickens in crates, and feed, between Petaluma, Fallon and Tomales, with the further restriction that no tonnage be handled between Petaluma and Two Rocks and the points intermediate thereto. The testimony advanced in the instant proceeding shows that complainant is not in court with clean hands for he has not obeyed the limitations contained in his certificate of convenience and necessity, inasmuch as many commodities not permitted by the certificate are being hauled, and also transportation services are being rendered between points not authorized. This complainant should immediately discontinue his unlawful operations and comply strictly with the tariff rates as legally filed and with the terms of the certificate issued in Application 7948, October 7, 1922.

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 (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 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 H. F. Siemsen is operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Transportation Act (Chapter 213, Statutes 1917, as amended), with common carrier status between Petaluma and Tomales and Fallon 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 H. F. Siemsen 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 H. F. Siemsen, that he cause certified copies thereof to be mailed to the District Attorneys of Sonoma and Marin 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 1st  
day of May, 1933.

CC Levey  
Leon Aubrey  
W A Lee  
W B Lewis  
W H ...  
Commissioners.