

Decision No. 25846

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

-000-

REGULATED CARRIERS, INC., a corporation,
Complainant,

vs.

JOSEPH COHEN, doing business under the
fictitious name and style of Joseph
Cohen Truck Line, 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.

ORIGINAL

) Case No. 3450

BY THE COMMISSION:

SUPPLEMENTAL OPINION ON PETITION
FOR REHEARING

Decision 25817 (April 10, 1933) found that Joseph Cohen was operating a common carrier trucking service between San Francisco and Ukiah and certain intermediate points and ordered that he cease such common carrier operation in the absence of a certificate. His petition for rehearing alleges that the desist order is not supported by the evidence.

A review of the record shows that petitioner owns a new and secondhand business at Ukiah and buys and sells junk. He also buys and sells fresh fruit and has warehouses at Ukiah and San Francisco. He hauls his own goods and pro-

duce by truck between Ukiah and San Francisco and other points. In 1931 he entered into a written contract with the Department of Finance, Division of Service and Supply, State of California, for the hauling of freight from San Francisco to Mendocino State Hospital at Talmage, three miles east of Ukiah. Under this contract, if there are any perishable goods to be transported to the hospital, petitioner must leave San Francisco at six p. m. and arrive at the hospital not later than seven thirty a.m. the next day. Had petitioner restricted his hauling for others to the transportation of freight to and from the hospital there would have been no question as to his status as a private carrier.

Paramount Market at Ukiah receives groceries from United Grocery at San Francisco two or three times each week and witness Porreda signed a "contract", which was not presented in evidence. ⁽¹⁾ J. A. Jamison, merchant at Ukiah, receives "most every commodity in the grocery line" from San Francisco via petitioner's trucks "most every day" (Tr. 17), the average shipment being five or six hundred pounds. Barker Hardware Company, Ukiah, receives general hardware, implements, paints, etc., from San Francisco "about five days a week" (Tr. 21), the average shipment weighing from 500 to 1000 pounds. R. H. LIEURANCE, merchant at Ukiah, receives groceries two or three times per week from San Francisco, and entered into a written agreement

(1) "Q. All the understanding is that the rate will be so much? A. Yes.

Q. That is all the understanding amounts to, isn't it?

A. Yes, that is the main thing." (Tr. p. 14.)

(2)
with petitioner.

T. W. Poulos of Ukiah receives food supplies and groceries from San Francisco "twice a week, sometimes three times, and sometimes none." (Tr. 38.) Simoncini Hardware Company, Ukiah, receives hardware from San Francisco "sometimes a couple or three times a week, sometimes once." (Tr. 39.)⁽³⁾

(2) Exhibit 1 reads as follows:

"AGREEMENT TO HAUL MERCHANDISE

This agreement this 10th day of February, 1932 between Joseph Cohen of Ukiah, California, party of the first part and Lieurance Stores Inc. of the same place, party of the second part:

W I T N E S S E T H:

The party of the first part agrees to receive goods of the party of the second part for hauling, at the warehouse of Joseph Cohen at 74 Girard Street, San Francisco, California.

Joseph Cohen agrees to haul and deliver said goods at Ukiah, California, at a place designated by the party of the second part. The party of the second part agrees to pay the said Joseph Cohen the sum of 45¢ per hundred weight upon delivery of said goods.

In Witness Whereof the parties have set their hands this 10th day of February, 1932. The party of the second part has the right to cancel this agreement at any time that the service is not satisfactory.

Joseph Cohen
Party of the First Part
Lieurance Stores, Inc.
Party of the Second Part
By: R. H. Lieurance "

(3) Exhibit 2 reads as follows:

"HAULING CONTRACT

I agree to do the following hauling:

For: Simonsini Bechtol Hardware
From: S.F. To: Ukiah
Price: 40¢
When completed: August 1933
DATED: August 17, 1932

Joseph Cohen

Accepted:
SIMONCINI-BECHTOL HARDWARE CO.

Successors to Cox Edw. Co.
107 S. State St. Ukiah, Calif.

P.E.S. "

It was stipulated that the following persons present under subpoena would testify the same as Witnesses Lieurance and Bechtol: Joe Brown; J. Newman of Purity Stores; R. B. Johnson of Safeway Stores; G. E. Ward of City Market and Ward's Market; and Lewis Hoffman, wholesale and retail cigars and candies.

The record shows that petitioner operates two trucks between San Francisco and Ukiah every day in the summer and three or four trips per week in the winter season. Exhibit 3 is a card reading "Joe Cohen - Contract Hauling", which shows a main office at Ukiah and a branch office at San Francisco. (4) Exhibit 4 is a copy of an advertisement in a Ukiah newspaper. Petitioner named several shippers other than those named above at San Francisco, Cloverdale, Healdsburg, Hopland, and intermediate points. Petitioner has refused to haul southbound from Ukiah, because "My time was too valuable to fool around in the city, because I had to pick up what I had contracts for, and I could not do it." (Tr. 60.) As to hauling northbound from San Francisco petitioner has 26 "contracts", and regarding re-

(4) The following appears on the reverse side of this card:

" TIME SCHEDULE

Leave	San Francisco
Monday	2:30 P.M.
Tuesday.	2:30 P.M.
Wednesday.	5:00 P.M.
Thursday	2:30 P.M.
Friday	2:30 P.M.

STOP - OVERS

Healdsburg
Geyserville
Cloverdale
Hopland

Give us a ring and we will pick up
your freight"

fusals to haul

"Q. All right, You refer me to somebody that came to you and wanted you to do hauling for them and you told them that you wanted a contract first, and that you refused to haul until you had a contract? A. I did not refuse; they came after me.

Q. Did you never refuse to haul for anybody?

A. No, sir, not when I had a contract, I didn't refuse at all." (Tr. 30.)

Reference has been made herein to written agreements because of the contention of petitioner that he is a "contract hauler of freight". While that term has often been used with respect to trucking activities, strictly speaking there is no legal status known as "contract hauler" or "contract carrier". A truck operator hauling other than his own goods may be a private carrier (Frost v. Railroad Commission, 271 U. S. 583); a common carrier within the meaning of the regulatory statute; or a common carrier of a type not subject to regulation under the Auto Truck Transportation Act, such as one operating exclusively within the limits of a single municipality. As stated in Forsyth v. San Joaquin L. & P. Corp., 208 Cal. 409:

"It was the manner in which he carried on his business that determined his status as a common carrier and not the fact that he was transacting business with his customers under a written contract." See also M. F. T. Co. v. McClain Truck Co. (May 1, 1933), Dec. 25904, Case 3178.

It clearly appears from the record that petitioner herein is operating as a common carrier within the meaning of the Auto Truck Transportation Act.

SUPPLEMENTAL ORDER AND ORDER DENYING REHEARING

IT IS HEREBY FOUND AS A FACT that Joseph Cohen, doing business under the fictitious name and style of Joseph Cohen Truck Line, is operating as a transportation company as defined in Section 1(c) of the Auto Truck Transportation Act (Statutes 1917, chapter 213, as amended) with common carrier status from San Francisco to Healdsburg, Geyserville, Cloverdale, Hopland, Ukiah and intermediate points 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 Joseph Cohen cease and desist directly or indirectly or by any subterfuge or device from continuing such common carrier operation.

IT IS FURTHER ORDERED that the petition for rehearing is hereby denied and that the effective date of the desist order contained in Decision 25817 is hereby extended thirty days from the date hereof.

Dated at San Francisco, California, this 15th day of May 1933.

O. C. Vancey
Leon ...
W. B. ...
W. B. ...
Commissioners