

Decision No. 25959

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,
Complainant,

vs

JAMES S. TRIOLA, an individual,
JAMES S. TRIOLA, doing business under the
firm name and style of MARKET TRANSFER
COMPANY, BERT CAMOZZI, an individual,
FIRST DOE, SECOND DOE, THIRD DOE,
FOURTH DOE, FIFTH DOE, FIRST DOE CORPORATION,
SECOND DOE CORPORATION, THIRD DOE CORPORATION,
FOURTH DOE CORPORATION and FIFTH DOE
CORPORATION,

Case No. 3335

Defendants.

Reginald L. Vaughan and Scott Elder,
for Complainant.
L. N. Bradshaw, for Western Pacific Railroad
Company and Sacramento Northern Railway,
intervenor on behalf of complainant.
Mc Cutchen, Olney, Mannon & Greene, by
John C. Moran, for the River Lines.
Louttit, Marceau and Louttit by
Thos. S. Louttit, for Defendant.

HARRIS, Commissioner -

O P I N I O N

Complainant charges James S. Triolo, (erroneously spelled Triola in the complaint), doing business under the name Market Transfer Company, with unlawful common carrier truck operations between San Francisco, Oakland, Alameda, Emeryville, Berkeley, Richmond, San Leandro and San Jose on the one hand and Stockton and intermediate points and Sacramento on the other. Other defendants are named but the proceeding should be dismissed as to them.

The defense is that defendant operated as a private or contract carrier and was not operating over the public highways or between fixed termini or over a regular route.

The evidence shows that defendant operates and for sometime has operated trucks over the public highways between certain of the points named in the complaint, viz: San Francisco, Oakland, Alameda, Emeryville, Berkeley on the one hand and Stockton and intermediate points and Sacramento on the other hand as a common carrier for compensation.

The service to Stockton and intermediate points was daily except Sunday; to Sacramento several times a week.

With some shippers defendant entered into written contracts, with some into verbal contracts, with some no contract was made, other than a mere quotation of the rate to be paid. Most of the so-called written and verbal contracts were merely rate quotations and did not provide a specific time of service or definite tonnage to be hauled.

Defendant accepted practically all shipments offered him and hauled practically all kinds of commodities. His occasional refusals to accept such offers were because of lack of equipment or the dangerous character of the commodity tendered or the insufficiency of the rate.

In addition to the operations between the fixed termini, above referred to, defendant presented evidence that he operated between other points no matter where located whenever he could make satisfactory terms and contends that he is therefore a radial operator and not subject to certification.

If it be conceded that certain of defendant's operations are radial, it still remains true that the operations complained of in this proceeding are between fixed termini and come within the provisions of the law requiring certification. The radial operation, if there is one, does not change the character of the operations between fixed termini.

Defendant does not possess a certificate of convenience and necessity and has no operating right.

At the conclusion of complainant's testimony, defendant moved to dismiss on the ground that the evidence did not sustain the complaint. This motion should be denied.

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. or he may be imprisoned for five days or both. C.C.P. Sec. 1218; Motor Freight Terminal Co. vs. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wermuth vs. Stamper, 36 C.R.C. 458; Pioneer Express Company vs. Keller, 33 C.R.C. 571.

It should also be noted that under section 8 of the Auto Stage and Truck Transportation Act (Statutes of 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 \$1,000, 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

The proceeding is dismissed as to all defendants other than James S. Triolo, doing business under the name Market Transfer Company;

The motion to dismiss is denied. . .

IT IS HEREBY FOUND that defendant James S. Triolo, doing business under the name of Market Transfer Company, is operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Stage and Truck Transportation Act (Chapter 213, Statutes of 1917, as amended) with common carrier status between San Francisco, Oakland, Alameda, Emeryville and Berkeley on the one hand and Stockton and intermediate points and Sacramento on the other hand and without a certificate of public convenience and necessity or prior right authorizing such operations.

Based upon the findings herein and in the opinion,

IT IS HEREBY ORDERED that James S. Triolo 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 James S. Triolo, and that he cause certified copies thereof to be mailed to the District Attorneys of San Francisco, Alameda, Contra Costa, Santa Clara, San Joaquin, and Sacramento counties, and to the Department of Public Works, Division of Highways, at Sacramento.

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.

The effective date of this order shall be twenty (20) days after the date of service upon defendant.

Dated at San Francisco, California, this 22nd day of May, 1935.

C. L. Seaver
Leon A. ...
W. A. ...
W. B. Harris
...
COMMISSIONERS.