Decision No. 2616

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

COAST TRUCK LINE, a corporation,

Complainant,

vs.

CALIFORNIA MERCHANTS ASSOCIATION, LTD., a corporation, WHITE TRUCK AND TRANSFER COMPANY, a corporation, C. J. CAMBLE, doing business as SAN DIEGO FORWARDING COMPANY,

Defendants.

Case No. 3533

ORIGINAL

M. J. Bischoff, for Plaintiff.

Leland S. Bower, for California Merchants Association, Defendant.

C. J. Camble, for San Diego Forwarding Company, Defendant, also appearing for White Truck and Transfer Company.

Wallace K. Downey, for Motor Freight Terminal Company, Intervenor in behalf of Plaintiff.

E. T. Lucey and W. E. Mc Millen, for The Atchison, Topeka & Santa Fe Railway Company, Interested party.

BY THE COMMISSION -

O P I N I O N

By complaint filed on March 7, 1933, complainant charges California Merchants Association, Ltd., a corporation, White Truck and Transfer Company, a corporation, and C. J. Camble, doing business as San Diego Forwarding Company, with unlawful common carrier operations by auto truck between Los Angeles on the one hand and Vernon and the Central Manufacturing District on the other.

Public hearing thereon was conducted by Examiner Kennedy at Los Angeles.

California Merchants Association, Ltd.is an express corporation with tariffs duly filed with this Commission for

express carriage between Los Angeles and San Diego over the certificated lines of Motor Freight Terminal Company. The express corporation makes its own pickup and delivery by truck in Los Angeles and performs a similar service in Vernon and the Central Manufacturing District, the latter an unincorporated territory in Los Angeles county. It has no certificate of public convenience and necessity authorizing it to transport property between Los Angeles and Vernon and the Central Manufacturing District.

C. J. Gamble operates under the fictitious name of San Diego Forwarding Company with tariffs duly filed for express transportation between Los Angeles and San Diego. The pickup and delivery in Los Angeles, Vernon and Central Manufacturing District was formerly performed by defendant White Truck and Transfer Company, but the contract expired January 31, 1933. Since then the pickup and delivery service has been performed by the J. A. Clark Draying Company.[1] This defendant testified that his contracts for pickup and delivery specified Los Angeles only (copies filed as Exhibits sustain this), and that he had not authorized other services, and if such were performed, it was without his knowledge. Bills are made out for all shipments on forms of San Diego Forwarding Company and the pickup company, J. A. Clark Draying Company, is paid at a specified rate per 100 pounds. The J. A. Clark Draying Company has no certificate authorizing the service performed.

Neither defendant forwarding company, under its filed rates, offers more than express service between Los Angeles and San Diego. If either wishes to extend the service to Vernon or Central Manufacturing District, it must be done over the lines of an authorized common carrier. Neither is doing so now, but

1 This carrier is not named as a defendant.

is accummulating tonnage from both places by unauthorized carriers. It is plain, therefore, that service shown to exist is illegal.

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. 284; re Bull and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 456; 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 California Merchants Association, Ltd., a corporation, and C. J. Gamble, doing business as San Diego Forwarding Company, 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 between Los Angeles and Vernon and Central Manufacturing

District 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 California Merchants Association, Ltd., a corporation, and C. J. Gamble, doing business as San Diego Forwarding Company, and each of them 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 California Merchants Association, Ltd., a corporation, and C. J. Gamble, doing business as San Diego Forwarding Company; that he cause certified copies thereof to be mailed to the District Attorney of Los Angeles County, to the Board of Public Utilities and Transportation of the City of Los Angeles 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 defendants.

Dated at San Francisco, California, this 17th day of July, 1933.

COMMISSIONERS