Decision No. 26268

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

REGULATED CARRIERS, INC., a corporation,

Complainant,

vs.

B. H. BROWNLEE, ALBERT BILLA and B. H. BROWNLEE and ALBERT BILLA, doing business under the firm name of BROWNLEE and BILLA, 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.

Case No.3442

R. L. Vaughan and Scott Elder, for Complainants.
Sanborn & Roehl and Frank B. Austin, for Defendants.

WHITSELL, Commissioner -

O P I N I O N

By complaint filed on December 16, 1932, complainant charges defendants, B. H. Brownlee and Albert Bills, co-partners, with unlawful common carrier operations by auto truck between Monterey and San Francisco and Oakland, California.

Public hearings were held at San Francisco on March 21, 1933, on which date the case was submitted upon briefs, which have been filed.

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

Defendants hage been and are now engaged in transporting certain commodities, particularly fresh fish, between Monterey and adjacent points, on one hand, and San Francisco, Oakland and other Bay points, on the other hand, with some service to and from San Jose. The business began six years prior to the

instant proceeding and has been continued without complaint, either by shippers or competing carriers, ever since. Rates were established (Exhibit "A", filed subsequent to hearing) and service computed on their basis, and defendants collected the amounts. Service was performed with varying frequency for about twenty (20) patrons but in such volume that defendants at one time required three trucks in operation five days each week. At the time of the hearing the volume had decreased until only one truck of 6½ tons capacity has been needed. That the operations during the six years have been usually and ordinarily between fixed termini and over regular routes for compensation was admitted by defendants.

The defense urged is that the operation is and always has been private carriage and as such requires no certificate from this Commission. Until March, 1933, the business was conducted without written contracts. At the time of filing the complaint no written contracts existed. Such writings were entered into, in several instances, just prior to hearing and the showing of defendants was that all services would be reduced to similar contract basis.

The contract form used and to be used, admitted in evidence in this case, provided that the shipper shall furnish a minimum quantity per month for transportation between points, at rates shown on a schedule. The contract is for one year (paragraph VIII), with automatic extension until canceled by thirty days' notice by either party. I am satisfied that the record justifies a finding that on the date the complaint was filed, and before, the operations of defendants were common

carrier operations between fixed termini and over regular routes. The attempt of defendants now is to transmute these operations to private character by entering into written contracts for exactly the same service that has been rendered for six years. Such process could be extended indefinitely and thus, in effect, nullify the statute providing for the regulation of such services over the public highways. (Haynes v. Mac Farlane, 207 Cal. 529). The cure attempted by defendants is ineffective under the facts, even if limited only to the shippers who have been served in the past.

While I must find that the operations are and have been such that they justify an order to cease and desist, I am impressed with the fact that the record shows no bad faith on the part of defendants. They established and continued operations without legal advice and have been unchallenged for six years. While they began with only one or two shippers, their business expanded without solicitation. They refused some shipments that were not desirable (trunks, etc.,) and others of meager quantity. But there is no question that they have maintained efficient service. The bulk of their commodities is fresh fish produced in Monterey Bay and requring rapid transportation to the distributing centers, not only for commercial advantage but for the sanitary benefit of the consuming public. Defendants made these hauls at any time the fish were brought into port and made ready for shipment and by expeditious movement maintained the wholesome quality of a highly perishable and easily deteriorated commodity. While there is reference in the record to the rail service maintained by Railway Express Agency, Inc., witness testified that it operates on schedule and the fish catches often are brought in too late for the train.

It is my opinion that, while the record justifies an order to cease and deist, public interest may require the continuation of the service for the sanitary movement of this important perishable food. The record, however, is indecisive of this point.

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.

O R D E R

IT IS HEREBY FOUND that B. H. Brownlee and Albert Billa, co-partners, 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 Monterey, San Francisco, Oakland, Emeryville and San Jose, 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 B. H. Brownlee and Albert Billa, co-partners, and each of them, shall cease and desist, within thirty (30) days from the date hereof, directly or indirectly or by any subterfuge or device from continuing such operations unless and until said B. H. Brownlee and Albert Billa, co-partners, shall have obtained from the Commission a certificate of public convenience and necessity.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon B. H. Brownlee and Albert Billa, that he cause certified copies thereof to be mailed to the District Attorneys of Monterey, Salinas, Santa Clara, Santa Cruz, San Mateo, San Francisco and Alameda counties, and to the Department of Public Works, Division of Highways at Sacramento.

The above 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 thirty (30) days after the date of service upon defendants.

Dated at San Francisco, California, this 25th day of September, 1933.

C. L. Seavey

Leon O. Whitsell

M. B. Harris

Wallace Ware

COMMISSIONERS.