Decision No. 26418

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

REGULATED CARRIERS, INC., a corporation, Complainant, vs. A. LAMPSON and A. LAMPSON doing business under the fictitious name and style of Lampson Produce Company, 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. 3441.

Reginald L. Vaughan & Scott Elder, by Willard S. Johnson, for complainant.

Clifford A. Russell for defendants.

WARE, Commissioner:

O P I N I O N

By complaint filed on December 15, 1932, complainant charges the defendants A. W. Lampson and Tahoe Produce Company, Inc., a corporation, with unlawful common carrier operations by auto truck between Sacramento and points on or in the vicinity of Lake Tahoe and intermediate points, cities and towns. The issues having been joined and the matter having been publicly heard and submitted in Al Tahoe on June 21, 1933, the case is now ready for decision.

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

For the past ten years the defendant A. W. Lampson has hauled by motor trucks, over the public highways, from Sacramento, and sold to a wide range of customers engaged in various pursuits throughout the region of Lake Tahoe, perishable produce and supplies.

In 1926, for the purpose of adding revenue to his enterprise, he inaugurated a freight service between the same points. The record discloses a serious and sustained growth in his freight business, and impels the conclusion that this activity is in violation of law and must henceforth cease and terminate.

Complainant produced fourteen shippers who were among the great number of Lampson's freight customers. They came from diverse resorts (1) in the Lake Tahoe region; their pursuits (2) were various and inclusive of all who live in this section; and they regularly and extensively engaged the motor trucks of the defendant Lampson and "Tahoe Produce Company, Inc." to haul for them from Sacramento practically everything within the category of freight.(3)

These shippers paid an agreed freight rate to either Lampson or his driver, and frequently used this service which they uniformly described as being always available and regular as to route and schedule. Through the summer months, the busy season for lake and mountain resorts, Lampson sent his trucks over a regular route, and upon the public highways, between Sacramento and the points occupied by his Tahoe patrons on a fixed tri-weekly schedule. His rates were uniformly fixed and paid; he possessed no certificate of public convenience and necessity to engage in such business; and in so far as his equipment would permit and the available

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(1) The defendant's freight patrons who testified against him came from Kyburz, Camp Richardson, Meyers, Bijou, Phillips, Echo Lake, Fallen Leaf Lodge, and Al Tahoe.

(2) These witnesses were engaged in the following pursuits: Summer Resort, Sawmill, Grocery, Garage, Hotel, General Merchandise, Builder & Contractor, Auto Camp, Electrician, Service Station, Well Driller.

(3) The regular shipments testified to included: Groceries, general merchandise, ice cream, furniture, plumbing supplies, hardware, lumber, mill work, pipe, well casing, cement, paint, stoves, electrical supplies and drugs.

shippers would respond, he held himself out to the shipping public as a common carrier.

By way of defense Lampson claimed:

1st: That all of his freight hauling activity was that of a "contract carrier."

2d: That since the filing of this case, he incorporated his produce and "contract carrier" business under the name of "Tahoe Produce Company, Inc." under which name said enterprises have been continuously thereafter conducted; that process of this Commission has not been served upon the said corporation nor has any appearance been made herein upon its behalf; that therefore defendant has thwarted the object of complainant herein.

A few words should suffice in treating the second defense. Lampson's testimony was enough to show the "corporation" to be a mere veil behind which he now strives to engage as principal stockholder in a business from which the law precludes him as principal. Saving for a qualifying share reposed in his Lawyer, all of the stock in this conjured corporation is owned by himself and wife. Hence in point of real interest there is little, if any, distinction between Lampson the principal, and Lampson the stockholder. In the former instance, he admits full ownership and responsibility for the operation and conduct of his trucks; in the latter instance he fills the station of heavy stockholder and President of Tahoe Produce Company, Inc. plus its General Manager and factotum. If such legerdemain could successfully extricate those liable from the reach and jurisdiction of lawful regulation, the injured in quest of help would find themselves upon a dizzy merry-go-round. The purpose of

the law cannot be so aborted. Throughout the ten years of this trucking enterprise, Lampson has been the real owner, operator, and person in interest. Numerous witnesses and his own testimony conclude these facts. He was duly and regularly served by the process of this Commission. He entered his appearance by answer, and in person upon the hearing. At a belated hour, and while testifying, he promulgated for the first time the theory of his departure and escape into this "corporation." Thereupon an order was made granting complainant's motion to substitute "Tahoe Produce Company, Inc.," a corporation, in place of "First Doe Corporation" in the within proceedings. Thereafter no corporate veil of defense existed, and any appropriate order of this Commission herein must of necessity reach with full jurisdiction and effect the defendant A. W. Lampson and Tahoe Produce Company, Inc., a corporation.

The "contract" relied upon in his first defense appears in "Exhibit 1." (4) The necessity for and institution of these contracts did not occur until the Lampson freight business had flourished for several years. It is fair to deduct from the evidence that they were discovered and used to afford a "contract carrier" front for an enterprise that was in reality a common carrier operating without a certificate. The great majority of the Lampson patrons signed these slips of paper in perfunctory response to the defendant's solicitation.

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(4) Exhibit 1 was offered during the testimony of the witness Fred Spriggs, and was identified as being identical in all instances where any testimony refers to the "contract" of hauling. It follows:

> "I hereby give Lampson Truck Co. of Al Tahoe the exclusive right to haul my freight from Sacramento to my place at Lake Tahoe at the rate of Ten Dollars ($10.00) per ton. It is agreed that there is no special time or schedule and that the freight will be hauled whenever there is a load to justify a trip. It is also agreed that the minimum charge will be fifty cents ($.50). This contract may be cancelled by either party by thirty days written notice.
> Fred Spriggs."

Two of the fourteen shippers testifying were apparently overlooked and had never subscribed their names to such memorandums. That these unilateral commitments were never intended to be respected by the signatories thereto clearly appears from the testimony of eight shippers.(5) Notwithstanding these existing "exclusive rights to haul" Lampson's patrons were at all times free to ship and most of them did in fact ship, whenever they desired, their freight by El Dorado Motor Transportation Co., a certificated common carrier paralleling the defendant's service. Lampson knew and approved of this practise and never once claimed nor asserted any "exclusive right to haul" the freight of any patron.

His claim to innocence because of isolated instances of refusals to haul odd items is untenable. On one occasion he declined to haul a barber chair for a Bijou barber and explained that he only hauled for resorts. Taking him at his word, Lampson thereby admitted dedication of his service to a definite portion, class and field of the shipping public. On another occasion he refused to carry some stove pipe for a laborer at Meyers. This conduct merely illustrates a common carrier who becomes choosey. He once told a third party, also from Meyers, that he wouldn't haul from Placerville because he was not licensed to do so. What better license had he to haul from Sacramento? For answer, the record offers no clue.

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(5) The following witnesses signed contracts identical to Exhibit 1 and testified:

Fred Spriggs testified that Lampson never demanded or received all of his hauling.

Mrs. M. J. Sickles said that at all times most of her freight was hauled by El Dorado Motor Transportation Co.

J. E. Burnett, W. R. Young, Mrs. Wilson Craven, H. B. Curle and Frank Globin all stated that during the existence of their contracts with Lampson other carriers had hauled various shipments for them.

W. F. Ham testified that Lampson hadn't hauled all of his freight but that he had had an understanding that any quicker service would be available to him.

If further proof were necessary to establish the unlawful status of this defendant as common carrier, it comes in his own printed declaration of September 26, 1931, written and subscribed by him, and broadcast among a hundred and one patrons. At a time when the defendant was being harrowed on the one hand by a threat to institute a proceeding similar to the instant case, and was being importuned upon the other hand by El Dorado Motor Transportation Company to sell his equipment and "freight business" to the latter common carrier, Lampson mailed to his extensive clientele a significant pronouncement and capitulation. Its language affords no chance for cavil and leads irresistably to the conclusion herein adopted. Excerpts from this document (Exhibit #3) will suffice:

"Sept. 26, 1931.

I wish at this time to thank you for your patronage during the season now closing and to take this means of advising you of my future plans.

My business as you know was established primarily as a produce business and it is my desire to continue in and enlarge that line.

As this will necessarily take all of my time and as I have been ordered by the Railroad Commission of the State of California to discontinue my freight service, I wish to hereby cancel any and all my agreements for hauling.

The El Dorado Motor Transportation Co. are duly authorized to serve you in this capacity. They hold the only franchise for delivery of freight in your community, they are fully equipped to serve your needs efficiently and reliably, and they merit your support.

In withdrawing from the freight hauling field in favor of the El Dorado Motor Transportation Company I solicit your support for them.

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Respectfully,

A. W. Lampson."

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. 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 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 $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.

O R D E R

IT IS HEREBY FOUND THAT A. W. Lampson, and Tahoe Produce Company, Inc., a corporation, are operating as transportation companies as defined in Section 1, Subdivision (c) of the Auto Truck Transportation Act (Chapter 213, Statutes 1917, as amended), with common carrier status between Sacramento and points on or in the vicinity of Lake Tahoe and intermediate points, cities and towns, 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 A. W. Lampson, and Tahoe Produce Company, Inc., a corporation, 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 A. W. Lampson and Tahoe Produce Company, Inc., a corporation, that he cause certified copies thereof to be mailed to the District Attorneys of Sacramento and El Dorado Counties, 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 defendant.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 9th day of October, 1933.

Commissioners.