

Decision No. 28414

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

SACRAMENTO NORTHERN RAILWAY,
a corporation,

Complainant,

vs.

ARTHUR GREEN, an individual,
JOHN DOE, RICHARD ROE, JANE DOE,
and DOE COMPANY, a corporation,

Defendants.

Case No. 3462.

SACRAMENTO NORTHERN RAILWAY,
a corporation,

Complainant,

vs.

CHARLES F. RAMBAUD, an individual,
JOHN DOE, RICHARD ROE, JANE DOE
and DOE COMPANY,

Defendants.

Case No. 3463.

SACRAMENTO NORTHERN RAILWAY,
a corporation,

Complainant,

vs.

K. D. CROWDER, an individual,
JOHN DOE, RICHARD ROE, JANE DOE,
and DOE COMPANY, a corporation,

Defendants.

Case No. 3464.

- L. N. Bradshaw for Complainant.
- T. E. O'Hara for Defendant K. D. Crowder.
- W. A. Latta for Defendant Arthur Green.
- Charles F. Rambaud, in propria persona, Defendant.

WARE, Commissioner:

O P I N I O N

Each of these defendants is charged by the same complainant with unlawfully operating as common carriers of property over the public highways between fixed termini, to wit between Sacramento on the one hand, and Oroville & Chico on the other,

servicing as intermediate points various cities and communities enroute. All of these cases were consolidated and heard together, and are now ready for decision.

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

Five Chico merchants testified as to the extent of the common carrier practise of the defendant Green (Case No. 3462); four likewise testified against the defendant Rambaud (Case No. 3463); and twelve completed the record against the defendant Crowder (Case No. 3464).

The status of these three defendants in the instant cases are practically identical. They each typify the petty common carrier who procures and hauls freight to the full extent of his equipment and limitations. Each one has dedicated his trucks to the shippers of Chico to the full extent of his capacity to haul and enjoy profit by so doing. In no case is there any certificate of public convenience and necessity. Each defendant maintains a tri-weekly service when warranted by sufficient patronage and the termini for the three defendants are Sacramento on the one hand and Chico upon the other. They acknowledge that the route pursued by their trucks is regularly over the main highways by way of Marysville. Each defendant charges the same freight rate from his patrons and regularly collects therefor.

The defendants Green and Rambaud offered no defense whatsoever. The defendant Crowder, through his attorney, vainly seeks to establish that he is a private carrier and has never made any public dedication of his trucking service. In fairness to all, it should be stated here that there is no distinguishing difference between any of these defendants. If Crowder in fact has a meritorious defense, so also have Green and Rambaud, but there is no merit

to the Crowder theory. Like the other two defendants, Crowder boldly entered the field of freight transportation more than a year ago, solicited and held all of the patronage from the shipping public in the vicinity of Chico that his equipment would accommodate, and upon the stand explained why he limited his services to 12 or 14 shippers with the cryptic confession: "That gives me enough." "Enough" is a relative term depending upon one's capacity. These petty common carriers who have unlawfully encroached upon the field paralleled by certificated common carriers, present a menace that grows in the ratio of their multiplication.

In each case, all of the elements essential to support the charges embraced in the respective complaints have been established as between the points Sacramento and Chico. The evidence is insufficient to include any inhibitions as against common carrier practices affecting Oroville. Therefore, a cease and desist order should issue as against each of the three defendants restraining them from engaging further in the enterprise of the transportation of property by motor truck over the public highways between these termini.

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 \$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 Arthur Green, Charles F. Rambaud and K. D. Crowder 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 on the one hand, and Chico on the other, 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 Arthur Green, Charles F. Rambaud and K. D. Crowder 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 Arthur Green, Charles F. Rambaud and K. D. Crowder, that he cause certified copies thereof to be mailed to the District Attorneys of Sacramento, Placer, Yuba, Butte and Sutter

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 of the State of California.

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

C. C. Deane
Leon Swisher
W. J. Carr
M. B. Harris
Walter H. ...
Commissioners.