

Decision No. 26434

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,

Complainant,

v.

Case No. 3524

C. W. SAWYER, FIRST DOE, SECOND DOE,
THIRD DOE, FOURTH DOE, FIFTH DOE, FIRST
DOE CORPORATION, SECOND DOE CORPORATION,
THIRD DOE CORPORATION, FOURTH DOE CORPOR-
ATION, FIFTH DOE CORPORATION,

Defendants.

Reginald L. Vaughan, Scott Elder, for Complainants,
Sanborn & Roehl, by Frank B. Austin, for Defendant.

BY THE COMMISSION -

OPINION

By complaint filed on February 24, 1933, complainant charges C. W. Sawyer with unlawful common carrier operations by auto truck between San Francisco and South San Francisco on the one hand, and San Jose on the other hand, serving also at intermediate points various cities, towns, communities and other points enroute.

Public hearings were had before Examiner Johnson on May 25th and 26th, 1933, on which latter date the case was submitted with the understanding that briefs and copies of contracts might be filed within thirty (30) days. No briefs were filed in said matter.

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

The defendant is in the auto trucking business carrying freight between San Jose and San Francisco and intermediate points for quite a number of wholesalers and a few retailers.

The defendant produced written contracts with all of his customers. The contracts, however, are merely price quotations and do not establish private carrier status or preclude common carrier status. (Rice Trans. Co. v. Ind. Truck Owners Service, 36 C.R.C. 840). It seems as if the public carrier status of the defendant is well established by his own testimony and the fact that he is willing to haul for anyone located in the peninsular territory between San Francisco and San Jose who will offer him goods of similar character to that which he has been hauling for the past several years and if he signs a so-called contract such as described above.

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 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 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 \$1,000.00, 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 C. W. Sawyer is operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Transportation Act (Chapter 213, Statutes 1917, as amended), with common carrier status between San Francisco and South San Francisco on the one hand and San Jose and intermediate points on the other hand 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 C. W. Sawyer 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 C. W. Sawyer; that he cause certified copies thereof to be mailed to the District Attorneys of San Francisco, San Mateo and Santa Clara 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.

Dated at San Francisco, California, this 16th day of October, 1933.

C. W. Sawyer
Leon Overman
M. G. Linn
M. B. Hurl
William M. Mow
COMMISSIONERS.