

Decision No. 26480

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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REGULATED CARRIERS, INC., a corporation,  
Complainant,

vs.

H. V. HULL, 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.

**ORIGINAL**

) Case No. 3630

Reginald L. Vaughan and Scott Elder, for  
Complainant

Homer W. Buckley, for Defendant H. V. Hull.

CARR, Commissioner:

O P I N I O N

The amended complaint charges H. V. Hull with unlawful common carrier operations by auto truck between San Francisco and Oakland, Berkeley, Alameda, Piedmont, Emeryville, Fruitvale and Melrose. The answer admits the common carrier operations but pleads that Hull has a prescriptive right to conduct the same by reason of operations in good faith on and prior to May 1, 1917.

Public hearing was had on October 6, 1933 and the case has since been submitted on briefs filed by the parties.

The facts on the issue of prescriptive right, being the only issue presented, are briefly as follows:

The defendant, E. V. Hull and one Weider on and prior to May 1, 1917 operated as a transportation company between San Francisco, Oakland, Berkeley, Alameda, Piedmont, Emeryville, Fruitvale and Melrose. Such operations were carried on under the fictitious name of Hull-Weider Transportation Company. In August, 1916, the defendant Hull individually acquired a transfer business similar to that conducted by himself and Mr. Weider. This was conducted under the name of Oakland Transfer Company. The two businesses on and prior to May 1, 1917 were carried on from 1035 Thirty-Seventh Street, Oakland. The telephone directory of February 1917, carried the names of Hull-Weider Transfer Company, Oakland Transfer Company and E. V. Hull, the number and address being the same for each of these listings. The trucks and equipment of the two businesses were used interchangeably, the name under which orders were booked being the basis for segregating the earnings so that the Weider interest would be protected.

In the spring of 1917 or of 1918 (probably in 1918) Mr. Hull acquired the Weider interest. On September 19, 1918 a tariff was filed with the Railroad Commission covering operations between the points mentioned, such tariff being filed under the name of Hull-Weider Transfer Company. Following Mr. Weider's retirement the business was carried on by the defendant until 1923, all of the equipment being registered in his name. However, some of the business was transacted under the name of Hull-Weider Transfer Company and some under the name of Oakland Transfer Company.

On April 4, 1923 there was filed with the Railroad Commission a joint application by E. V. Hull and A. Pasteris

alleging that Hull "proposes to sell" and Pasteris "proposes to purchase, the operative rights and equipment used in the business of transporting freight between San Francisco and Oakland, Berkeley, Alameda, Piedmont, Emeryville, Fruitvale and Melrose." The consideration was alleged to be \$5750, of which \$4500 represented the value of the equipment and the balance the value of the "operative right." Attached to the application was a copy of the agreement which, in addition to referring to miscellaneous property and trucks, covered "the transfer business known as Hull-Weider Transfer Company, its franchises and good will." Permission to make the transfer was requested. This was granted by Decision No. 11957, dated April 24, 1923, the order requiring Hull to cancel his tariffs and Pasteris to either file new tariffs or adopt the tariffs theretofore filed by H. V. Hull.

On April 28, 1923 there was executed and acknowledged by H. V. Hull and A. Pasteris an instrument entitled "Bill of Sale" by which "H. V. Hull, owner of and doing business under the fictitious name of Hull-Weider Transfer Company" in consideration of the sum of \$5750 transferred to A. Pasteris "that certain automobile stage line for the transportation of freight between San Francisco and Oakland, Berkeley, Alameda, Piedmont, Emeryville, Fruitvale, Melrose and East Bay points \* \* \*" also certain trucks and personal property, "together with the business and everything appertaining and belonging to said business, including the good-will thereof, together with the name of H. V. Hull or Hull-Weider Transfer Company; also the franchises and all privileges and rights thereunder and appertaining thereto, together with all rights and privileges which the party of the first part may heretofore have had and now has in the transfer of freights of every kind in the ter-

ritory hereinbefore mentioned, the party of the first part giving and granting and relinquishing unto the second party his right and privilege to transfer freight of any kind or description in, between, to or from one of the above cities to any of the others." The agreement also carried a covenant on the part of Hull not to engage in similar business for a period of five years.

Mr. Hull, who is blind, insists that he did not knowingly sign any document or agreement which by its terms precluded him from continuing the Oakland Transfer Company business and that he has conducted such business to the present time. Mr. Pasteris, while insisting the agreement in question was read to Mr. Hull and was understood by him, admits that Mr. Hull told him he was going to continue doing a business in the East Bay under the name of Oakland Transfer Company, consisting of the moving of second-hand household furniture. Apparently Mr. Pasteris was not particularly concerned with his doing this.

It is clear that in 1918 defendant Hull was fully aware of the necessity of filing a tariff in order to perfect his prescriptive operative right. Upon the sale of such perfected right the parties were aware of and obtained the necessary authorization for the transfer. After the transfer defendant Hull was without any right, certificated or prescriptive, to conduct a common carrier trucking operation between San Francisco and the East Bay cities. The theory of defendant appears to be that, because in conducting his transportation business prior to its transfer in 1923, he used two fictitious names (Hull-Weider Transfer Company and Oakland Transfer Company),

and because in the application for authority to transfer "the operative rights and equipment used in the business of transporting freight between San Francisco and Oakland", etc., but one of these fictitious names was mentioned, defendant had the right to continue operating after the transfer in identically the same manner and to the same extent as prior to the transfer. Such theory is untenable. In so far as operation between San Francisco and the East Bay cities is concerned, 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 H. V. Hull is operating as a transportation company as defined in Section 1(c) of the Auto Truck Transportation Act (Statutes 1917, chapter 213, as amended), with common carrier status between San Francisco on the one hand and Oakland, Berkeley, Alameda, Piedmont, Emeryville, Fruitvale and McIrose on the other hand, and without a certificate of public convenience and necessity or prior right authorizing such operation.

Based upon the finding herein and the opinion,  
IT IS HEREBY ORDERED that H. V. Hull 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 the Commission cause a certified copy of this decision to be personally served upon H. V. Hull and certified copies thereof to be mailed to the District Attorneys of the City and County of San Francisco and to the County of Alameda, and to the Department of Public Works, Division of Highways.

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 30<sup>th</sup> day of October 1933.

C. L. Seavey  
Leon Arthur  
M. J. Carr  
W. B. Lane  
J. H. [unclear]  
Commissioners