

Decision No. 26522

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,

Complainant,

vs.

ELMER SAID, BERTHA SAID, TAY SAID,
JOHN MOSER, BIG 4 TRANSFER COMPANY,
UNITED STATES SHIPPERS ASSOCIATION,
A. J. MCFADDEN; EUGENE VACHE, GEORGE COOK,
DAN ROONEY, W. C. JENNERICH, M. O. MARIN,
EDWIN CLEVELAND, ORVILLE DRAKE,
HUGH CLENN, H. C. HAWKINS, CHARLES S. PIPER,
and ELMER SAID, BERTHA SAID, TAY SAID,
JOHN MOSER, BIG 4 TRANSFER COMPANY,
A. J. MCFADDEN, EUGENE VACHE, GEO. COOK,
DAN ROONEY, W. C. JENNERICH, M. O. MARIN,
EDWIN CLEVELAND, ORVILLE DRAKE, HUGH CLENN,
H. C. HAWKINS, CHARLES S. PIPER, doing busi-
ness under the fictitious name and style
of United States Shippers Association, a
benevolent trust estate organized under
the Constitution of the United States,
FIRST DOE, SECOND DOE, THIRD DOE, FOURTH
DOE, FIFTH DOE, SIXTH DOE, SEVENTH DOE,
EIGHTH DOE, NINTH DOE, TENTH DOE, ELEVENTH
DOE, TWELFTH DOE, THIRTEENTH DOE, FOURTEENTH
DOE, FIFTEENTH DOE, FIRST DOE CORPORATION,
SECOND DOE CORPORATION, THIRD DOE CORPORATION,
FOURTH DOE CORPORATION, FIFTH DOE CORPORATION.

Defendants.

R. L. Vaughan and Scott Elder for Complainant.
A. E. Nichols and K. I. Perky, for Defendants United
States Shippers Association, Elmer N. Said and
Bertha Said.
W. G. Cram for Defendant W. C. Jennerich.
J. J. Driscoll for United States Touring Association,
Intervenor.

BY THE COMMISSION -

OPINION

By complaint filed on February 2, 1933, complainant
charges defendants with unlawful common carrier operations by
auto truck between Los Angeles and San Francisco and other
points.

Case No. 3497

Public hearings were had before Examiner Kennedy on May 9 and June 1, 1933. The case was submitted upon briefs which have been filed.

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

Complainant's proof was particularly directed against defendants United States Shippers Association, Elmer Said, Bertha A. Said and Charles F. Boehme and there is no proof as to "Tex" Said, W. C. Jennerich, Orville Drake and H. C. Hawkins, who filed answers. The record compels dismissal as to these defendants.

There is little disagreement as to the fact of conducting transportation by truck of shipments of freight between terminal and certain intermediate points. Elmer Said testified that shipments were accepted from about 750 shippers, at established rates (Exhibit No.5); that three trucks were maintained at each terminal, some owned by Elmer Said and others by drivers, that daily movements based on overnight delivery but without schedule, were made from either end. The operations were practically the same as conducted by Said previously through National Shippers Association, Ltd., a corporation, and as shown in our Decision No.25034, dated August 1, 1932, on Case No.3201, wherein the corporation (but not Said) was ordered to cease and desist. The facts appear the same except for greater volume of business, the National Shippers having had only 244 shippers.

It was admitted that defendants possessed no certificate of public necessity and convenience granted by this Commission, nor any prior right.

The special defense urged was membership in the United States Touring Association, a so-called benevolent trust "organized under the Federal Constitution and laws" and thus claimed exempt from the jurisdiction of this Commission and amenable only to

Federal jurisdiction. The United States Shippers Association, of which Elmer Said, his wife and Chas. F. Boehme were "trustees," held this membership. In turn, anyone who wished to ship by the association signed a "membership" slip. Business was solicited on the basis of low rates and business thus acquired was reduced to a membership by the signature of some one -- in one case a laborer in a warehouse. Some shipments from non-members were transported. Membership incurred no responsibility,-- only the benefit of low rates. The facts do not distinguish it from a score of cases heard by this Commission presenting similar subterfuges. (Pacific Greyhound Lines, Inc. v. U. S. Touring Assn., Decision No.26437, Case No.3618, October 16, 1933; Regulated Carriers, Inc. v. Universal Forwarders, Ltd., Decision No.26236, Case No.3544; Motor Freight Terminal Co. v. Burke, 37 C.R.C. 59; Coast Truck Line v. Calif. Mchnts. Assn., 37 C.R.C. 434).

The special defense urged, membership in the United States Touring Association, a "benevolent trust," is without merit. At the time of submission, this "trust," so-called, was complainant in the United States District Court for the Southern District of California, Central Division, against this Commission (No.Y-34-J) for an injunction to forbid this Commission from exercising any jurisdiction over this "trust" or its "members." On August 1, 1933, order to show cause why a temporary restraining order should not issue was discharged and interlocutory injunction denied.

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. 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 6 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 United States Shippers Association, Elmer N. Said, Bertha A. Said and Charles F. Boehme and their agents and representatives are 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 Los Angeles, Vernon and Huntington Park and San Francisco, Oakland, Alameda, Berkeley, Emeryville, Albany, Richmond and San Leandro 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 United States Shippers Association, Elmer N. Said, Bertha A. Said, and Charles F. Boehme, as individuals and as "trustees" for said Association, their agents or represent -

atives 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 United States Shippers Association, Elmer N. Said, Bertha A. Said, and Charles F. Boehme; that he cause certified copies thereof to be mailed to the District Attorneys of Los Angeles, Kern, Tulare, Fresno, Kings, Merced, Stanislaus, San Joaquin, Alameda and San Francisco 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.

IT IS HEREBY FURTHER ORDERED that this proceeding is hereby dismissed without prejudice as to all other defendants.

The order shall become effective twenty (20) days after the date of service.

Dated at San Francisco, California, this 13th day of January, 1933.

O. S. Sawyer
Leon Sawyer
M. J. C.
M. B. Hawkins
Walter W. Moore
COMMISSIONERS.