

DECISION No. 26533

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

REGULATED CARRIERS, INC., a corporation, )  
Complainant, )

-vs-

O. P. MOYE, G. C. SCRIBNER, CLAYTON SHAW, )  
F. M. JONES, CHARLES A. SUMNER, MORRIS HANER, )  
PETER O. RIESE, A. P. MUNDI, HALE L. MORGAN, )  
E. T. HENDRICKS, JOHN WALSH, O. A. KIRSTEN, )  
CRISWELL & HAZZARD, RALPH MORSE, and O. P. )  
MOYE, G. C. SCRIBNER, CLAYTON SHAW, F. M. )  
JONES, CHARLES A. SUMNER, MORRIS HANER, )  
PETER O. RIESE, A. P. MUNDI, HALE L. MORGAN, )  
E. T. HENDRICKS, JOHN WALSH, O. A. KIRSTEN, )  
CRISWELL & HAZZARD, RALPH MORSE, doing )  
business under the fictitious name and )  
style of TERMINAL DISTRIBUTING COMPANY, )  
First Doe, Second Doe, Third Doe, Fourth )  
Doe, Fifth Doe, Sixth Doe, Seventh Doe, )  
Eighth Doe, Ninth Doe, Tenth Doe, Elev- )  
enth Doe, Twelfth Doe, Thirteenth Doe, )  
Fourteenth Doe, Fifteenth Doe, First Doe )  
Corporation, Second Doe Corporation, )  
Third Doe Corporation, Fourth Doe Cor- )  
poration, Fifth Doe Corporation, )

Case No. 3466.

Defendants.

Reginald L. Vaughan and Scott Elder,  
by Scott Elder, for Complainant.

Richard N. Mather for Terminal Dis-  
tributing Company, O. P. Moye,  
Clayton Shaw, F. M. Jones,  
Morris Haner and Ralph Morse,  
Defendants.

Harry A. Encell for G. C. Scribner,  
Defendant.

BY THE COMMISSION:

O P I N I O N

Regulated Carriers, Inc., a corporation, herein complains  
that defendants, and each of them, are operating as transportation

companies as that term is defined by Chapter 213, Statutes of 1917 as amended, and particularly between the San Francisco Bay District and between Stockton and Sacramento and also between the San Francisco Bay District and Los Angeles and adjacent points, serving also intermediate points en route, and that said defendants, nor any of them, are the holders of certificates of public convenience and necessity or by way of a prescriptive right or any other right to control or operate over the public highways of this state.

Answer was duly filed by O. P. Moye, Clayton Shaw, F. M. Jones, Morris Haner and Ralph Morse, said answer denying the material allegations of the complaint.

Public hearings on this complaint were conducted by Examiner Handford at San Francisco and Oakland, and the matter was submitted, after the filing of briefs by counsel, and it is now ready for decision.

At one of the hearings at San Francisco defendant G. C. Scribner filed an answer herein. Complainant agreed to the dismissal of the complaint against this defendant. At one of the hearings Terminal Distributing Agency, Inc., a corporation, was substituted as defendant in place of First Doe Corporation.

Witnesses for complainant testified that they had used truck service and that business was conducted with Terminal Distributing Agency, Inc. at present and formerly with Terminal Distributing Company. These witnesses were employed by or represented the following firms:

Western Waxed Paper Company, Emeryville;  
Ajel Manufacturing Co.; Plannett Manufacturing Co., Oakland;  
Firestone Tire & Rubber Co., Auto Parts Company, Oakland;  
Decorative Supply Co., Oakland; Solano Iron Works, Berkeley,  
Oliver Tire & Rubber Company, Emeryville; Perfection  
Stove Company, Oakland; California Ink Company, Oakland;  
B. F. Sterdevant Company, Berkeley; Germain Seed & Plant Co.,  
Oakland; Aluminum Cooking Utensil Company, Oakland;  
Sherwin, Williams Co., San Francisco; Acme Lead & Color  
Works, San Francisco;  
Andrew Brown, Company, San Francisco;  
F. H. Kress Company, San Francisco.  
Rheem Manufacturing Co., Richmond, California.

All the above firms have either received goods or shipped same by the Terminal Distributing Agency, Inc. Shipments have been made to or received from Los Angeles and adjacent territory and Sacramento and have been forwarded from San Francisco, Oakland, Emeryville, Berkeley and Richmond. The majority of complainants' witnesses testified that they had used the service of Terminal Distributing Agency for some time and formerly used the same service when under the name of Terminal Distributing Company. Many of the witnesses were originally solicited for business by representatives of Terminal Distributing Agency. There is ample evidence as to the existence of regular service between San Francisco Bay Points and adjacent Los Angeles territory, particularly to the City of Los Angeles.

The record shows that the Terminal Distributing Agency, Inc. is a corporation with the following officials:

F.M. Jones, Isabelle Clark, O.P. Moye,  
R.M. White, Directors;  
Richard N. Mather, Director and General Counsel;  
C. McHenry of Oakland is Manager and Vice President.

Offices are maintained in San Francisco, Oakland and Los Angeles.

The Terminal Distributing Company was a copartnership consisting of O. P. Moye, G. C. Scribner and F. M. Jones.

The business of the Terminal Distributing Company was evidently taken over by the Terminal Distributing Agency, Inc., by whom it is now being conducted.

Shippers are asked to sign a printed form entitled "Agency Agreement". Exhibit 4 reads as follows:

No. \_\_\_\_\_

#### AGENCY AGREEMENT

THIS contract of agency made and entered into this 9th day of February, 1933, by and between Terminal Distributing Co and The Sherwin Williams Co hereinafter designated as the Shipper and Terminal Distributing Agency, Inc., hereinafter designated as the Agent,

#### WITNESSETH

THAT WHEREAS, the Agent is especially qualified to supervise, handle, and expedite the shipment of goods by common and contract carriers; and,

WHEREAS, it is the desire of the Shipper to secure the services of the Agent to supervise, handle and/or forward various shipments of goods for the Shipper;

NOW, THEREFORE, for and in consideration of the promises, covenants and agreements hereinafter set forth, and for other good and valuable consideration, the parties hereto contract and agree as follows:

1. The Shipper, by these presents, hereby constitutes and appoints the Agent its attorney in fact with full authority to contract for the shipment of all goods, wares and merchandise delivered to the Agent by the Shipper, subject, however, to the limitation that the obligation of the Shipper for the payment of the charges of carriage shall not exceed the schedule attached hereto and made a part hereof.

2. The Agent agrees to promptly accept all goods, wares and merchandise delivered to it by the Shipper, and to immediately contract for the shipment of the same to the points of destination via responsible carriers.

3. The Agent further agrees to have all shipments of goods adequately insured for the account of the Shipper and to settle, adjust and collect for the account of the Shipper all losses arising from any insurable cause, and to reimburse the Shipper for any loss or damage to goods, wares and merchandise that arises while said goods, wares and merchandise are in the possession of the Agent.

4. It is expressly understood and agreed that the liability of the Shipper to the Agent for his services and

to any carrier with whom the Agent may contract for the carriage of goods shall be limited to the schedule of charges hereto attached and made a part hereof.

5. This contract and agreement shall remain in effect for one year from date unless terminated by either party upon five days' written notice to the other party hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above mentioned.

(Signed) The Sherwin Williams Co  
(Signed) Per J E Miller Shipper

TERMINAL DISTRIBUTING AGENCY, INC.,

By (Signed) O. P. Mowe  
Agent "

It will be noted from the above that a schedule of charges or rates is issued to shippers. Business is solicited, and the record shows that at least eighteen such "agency agreements" have been signed in Oakland and twenty-two by Los Angeles firms.

Shipments move between termini on trucks owned by numerous individuals. The truck owners sign a second printed form. Following is one signed by Al Beckworth, being one of several introduced as Exhibit 10:

"No. 305

THIS contract and agreement made and entered into by and between TERMINAL DISTRIBUTING AGENCY, INC., as party of the first part, hereinafter designated as the Agent, and Al Beckworth as party of the second part, hereinafter designated as the Contractor,

WITNESSETH:

THAT WHEREAS, the Agent is the duly authorized shipping agent of various manufacturers and merchants in the State of California and is authorized to contract in their names, place and stead for the shipment of goods, wares and merchandise; and,

WHEREAS, the Contractor is the owner of the following described motor trucks, to-wit:

1930 Reo Semi-Trailer  
License # K 6830  
" Trailer 62137

and is desirous of entering into a contract for the carriage of goods, wares and merchandise for the account of the principals of the agent:

NOW, THEREFORE, for and in consideration of the promises, covenants and agreements hereinafter set forth, and for other good and valuable consideration, parties hereto contract and agree as follows:

1. The Contractor contracts and agrees to carry as an independent contractor, goods, wares and merchandise delivered to it by the Agent from the City of Oakland or San Francisco to the City of Los Angeles, and to perform such carriage in a prompt and efficient and safe manner.

2. The Contractor further agrees to employ at all times a sufficient number of truck drivers, to publish and enforce adequate rules for safe driving, and to properly reimburse the principals of the Agent for all loss and/or damage to goods, wares and merchandise carried by the Contractor that is due to the negligence of the Contractor, his agents and/or employees.

3. The Contractor further agrees to perform said carriage not less than Two times a Month on such days and hours as may be designated from time to time by the Agent, it being specifically understood and agreed, however, that the Agent shall not require the Contractor to perform more trips than he is able to do with the equipment which he owns.

4. The Agent contracts and agrees to deliver to the Contractor on behalf of the principals of the Agent sufficient goods, wares and merchandise to enable the Contractor to make Two trips a Month carrying a minimum tonnage of 8 to 10 tons per trip, and to pay said Contractor for said carriage at the rate of \$4.50 to 5 per ton per trip, said payment to be made on the following basis: ~~-----~~ amount of the total charges for carriage for each trip, to be paid at the time each truck is loaded, and the balance to be paid at the originating office of the Agency immediately after the load is delivered to its destination.

5. It is further specifically understood and agreed that this contract may be terminated by either party on one week's written notice to the other party hereto; otherwise to remain in full force and effect for a period of one year from date.

6. The Agent hereby acknowledges receipt from the Contractor of a deposit of \$ ~~-----~~ as a guarantee that the Contractor will deliver all goods, wares and merchandise received by him from the principals of the Agent, said deposit, less any amounts due said principals for lost or damaged goods to be returned to the Contractor upon the termination of this contract.

IN WITNESS WHEREOF, the parties have caused these presents to be duly executed on this, the 2 day of May, 1933.

TERMINAL DISTRIBUTING AGENCY, INC.

By

(Signed) C. McENEY  
Agent.

(Signed) Al Beckworth  
Contractor."

The present record shows that at least forty truck owners have signed such forms.

Defendants assert that no business is handled for any shipper unless an "agency agreement" is first signed. The record shows that in some instances property has been transported in the absence of such "agreement", and that service was discontinued to one firm because of its refusal to sign. Shipping receipts and freight bills are issued by and on forms of Terminal Distributing Agency, Inc. and shippers between the points involved deal entirely with that concern.

A method of operation under which a concern or individual solicits shipments from the public between certain termini and then "contracts" with individual truck owners for the physical movement of the goods between termini has already been held by this Commission to be common carrier operation as a transportation company within the meaning of the regulatory statute.

(M. F. T. Co. v. Moye Forwarding Company, 37 C.R.C. 857, petition for certiorari denied November 10, 1932, Moye Forwarding Company v. Railroad Commission, S. F. No. 14201; Regulated Carriers v. Universal Forwarders, Ltd., Decision 26236, Case 3544, petition for certiorari denied October 23, 1933, Universal Forwarders, Ltd. v. Railroad Commission, L. A. No. 14467.)

The operation here involved is in substance the same as in the cases cited. A common carrier service by truck between San Francisco Bay points and Los Angeles is being offered to and rendered for the public. The use of printed forms, to be signed by shippers and truck owners is a device under which it is sought to render a common carrier service without certification as required by statute. 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 Company v. Bray, 37 C.R.C. 224; re Ball & Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 450; 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 this 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 and 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 Terminal Distributing Agency, Inc., its directors, F. M. Jones, Isabelle Clark, O. P. Moye, R. M. White and Richard M. Mather, and C. McHenry, its manager and vice-president, are operating as a transportation company as designated in Section 1, Subdivision (c) of the Auto Truck



Transportation Act. (Chapter 213, Statutes of 1917, as amended) with common carrier status between San Francisco Bay points and Los Angeles and adjacent territory 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 Terminal Distributing Agency, Inc., its directors F. M. Jones, Isabelle Clark, O. P. Moye, R. M. White and Richard N. Mather, and C. McHenry, its manager and vice-president, 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 Terminal Distributing Agency, Inc., F. M. Jones, Isabelle Clark, O. P. Moye, R. M. White, Richard N. Mather, and C. McHenry; that he cause certified copies to be mailed to the District Attorney of the City and County of San Francisco, to the District Attorneys of Alameda, San Mateo, Santa Clara, Monterey, Santa Barbara and Los Angeles counties, to the Board of Public Utilities & 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 complaint, as to the other defendants named therein is hereby dismissed without prejudice.

This order, as to each defendant, shall become effective twenty (20) days after date of service upon said defendant.

Dated at San Francisco, California, this 13<sup>th</sup> day of November 1933.

C. J. Deane  
W. A. Cox  
M. B. Harris  
W. H. Mather  
Commissioners