

ORIGINAL

Decision No. 26836

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

REGULATED CARRIERS, INC., a corporation,)

Complainant,)

vs.)

Case No. 3454.)

JOHN L. YOUNG, FOREST H. YOUNG, FRED)
YOUNG, and FOREST H. YOUNG and FRED)
YOUNG doing business under the ficti-)
tious name and style of Young Brothers;)
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.)

Reginald L. Vaughan for Regulated Carriers,
Complainant.

Richard T. Eddy for Defendants.

BY THE COMMISSION:

O P I N I O N

By complaint filed on May 31, 1933, complainant charges George Young, Forest H. Young and Fred Young with unlawful common carrier operations by auto truck between Niland and other points in the Imperial and Coachella Valleys on the one hand, and Los Angeles and San Francisco, Oakland and other East Bay points on the other hand; and between Los Angeles and adjacent territory on the one hand, and San Francisco and East Bay points on the other hand, serving also intermediate points enroute.

Public hearings were had before Examiner Kennedy at Los Angeles on June 28, 1933; and before Examiner Johnson in San Francisco on August 15, 1933, and again at Los Angeles on September 11,

1933, on which latter date the case was submitted on briefs.

The facts as developed at the hearing may be summarized briefly as follows: The defendants had been performing transportation services for a number of shippers in Los Angeles to various produce houses in San Francisco and Oakland. At least six different produce companies in Los Angeles shipped to five San Francisco houses. In addition to that, Young Brothers' firm hauled for four separate concerns located at Livingston and adjacent towns in Merced County. Some shipments were made from San Leandro to Los Angeles. Growers in the Imperial Valley paid charges to Young Brothers on shipments to Los Angeles. Sometimes it was the consignors and sometimes the consignees who paid the freight bills. Invoices and freight bills introduced in evidence showed several score growers who indirectly paid Young Brothers the transportation charges. None of these firms had any contracts with Young Brothers except Levy Zentner of San Francisco and San Leandro, who had an oral arrangement. Testimony showed that the transportation service was regular in the summer time but operations were seasonal.

During the course of the hearing, it appeared that the complaint erroneously named George Young as one of the defendants in the place of John L. Young and a request is made that the complaint should accordingly be amended to substitute John L. Young for George Young. The amendment is hereby allowed as the evidence shows that the firm of Young Brothers is a partnership composed of John L. Young, Fred Young and Forest E. Young. The order therefore will be against the three named defendants herein.

The defendant had claimed that because the partnership owned a ranch at Merced on which peaches and sweet potatoes are grown, which products are shipped to Los Angeles and San Francisco, the remainder of their operations were private carrier operations, merely hauling the products of neighbors or furnishing a contract service to wholesalers. Transportation of the Imperial Valley

produce was admittedly a common carrier operation as the defendant's attorney had caused the discontinuance of such business after the complaint was filed herein. The hauling between Atwater and Los Angeles and San Francisco was for several parties without contract and the transactions with the produce houses covering a large number of shippers certainly bore no evidence of private contract hauling. The evidence is very well summarized in the opening brief for complainant, which is the only one on file in the case. No reply was submitted to the opening brief for complainants. 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., or he may be imprisoned for five (5) days, or both. C.C.P. Sec. 1219; 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, Chap. 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 John L. Young, Forest H. Young,

and Fred Young, doing business under the fictitious name and style of Young Brothers, 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 for compensation over the public highways of the State of California between fixed termini and/or over regular routes, to-wit: usually and ordinarily between (a) Niland, Calipatria, El Centro, Calexico, Inyo, Mecca, Thermal and Coachella on the one hand, and Los Angeles, San Francisco, Oakland and other East Bay points on the other, serving also as intermediate points various cities, towns, communities and other points en route;

(b) Los Angeles and adjacent territory on the one hand and San Francisco, Oakland and other East Bay points on the other, serving also as intermediate points various cities, towns, communities, and other points en route.

Based upon the finding herein and the opinion,

IT IS HEREBY ORDERED that John L. Young, Forest H. Young, and Fred Young, doing business under the fictitious name and style of Young Brothers, 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 John L. Young, Forest H. Young and Fred Young (Young Brothers), that he cause certified copies thereof to be mailed to the District Attorneys of Imperial, Inyo, Riverside, San Bernardino, Los Angeles, Kern, Tulare, Kings, Fresno, Madera, 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.

The effective date of this order shall be twenty (20)
days after the date of service upon defendants.

Dated at San Francisco, California, this 11th day of
December, 1933.

C. L. Leary
Leon. O. O'Brien
W. H. Linn
M. B. Harris
M. L. O'Connell
Commissioners.