

Decision No. 28727

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the
Commission's own motion into the rates,
rules, regulations, charges, classifications,
practices, contracts, operations and
schedules, or any of them, of KISO YASUNAGA,
NAMI YASUNAGA, J. UYEDA operating, as
PRODUCE TRANSFER COMPANY, an automotive
property service between San Jose and
Oakland and certain intermediate points.)
Case No. 3727)

Harry A. Encell, for Respondents.
J. E. Mc Curdy, for Maynard Bros., Intervenor.
Scott Elder, for Regulated Carriers, Inc., Intervenor.

BY THE COMMISSION -

O P I N I O N

By its order, issued December 11, 1933, the Railroad Commission cited respondents, above named, to appear before Examiner Johnson at San Jose, January 3, 1934, and show cause

- (a) Why the certificate for transportation of property, granted to Kiso Yasunaga in 1921, between certain Santa Clara county points and Oakland should not be revoked, and
- (b) Why respondents should not be ordered to cease and desist transportation operations conducted by them outside the scope of the certificate cited.

At the hearing respondents, through counsel, admitted the violation of the certificated rights and the enlargement of the operation,- "in every way,-" and consented to the revocation of the certificate. Intervenor's presented witnesses in addition, fully supporting the allegation of illegal operation.

As to the order to cease and desist, respondents were willing to agree to such an order, providing that it should affect only such operations as had been conducted prior to October 30, 1933. The basis of this provision was a letter

of counsel for respondents, in Case No.3702, (exactly the same as the instant proceeding but which was dismissed for jurisdictional reasons only), in which respondents consented to whatever order the Commission wished to enter, with the stated intention of respondents becoming exclusively legal private carriers. The only change since the hearing date fixed for Case No.3702 is the alleged transposition of respondents from a common carrier between fixed termini, under certificate in part, to a carrier alleged to be operating under contracts that removed them from common carrier status.

This change, legally, was based on a form of contract under which all transportation has been carried on since November 1, 1933. In this contract respondents operate under the fictitious name "Produce Transfer Company."

The record shows that Kiso Yasunaga was granted a certificate (Decision No.9490, dated September 12, 1921, on Application No.6774), for the transportation of farm products and fruit from "ranches in the vicinity of Santa Clara, Agnews, Alviso, Milpitas, Berryessa and Oakland, no local service between Milpitas and Oakland." This was the only right received by him. He did, however, make application to extend this right to San Francisco, in 1922. This was denied after hearing on its merits. In June, 1925, a second application to extend to San Francisco was filed and which was submitted after hearing on October 13, 1925. In 1926 the application was dismissed upon the statement of the then counsel for Yasunaga that the operation "was that of a carrier performing a transportation service under private contract."

In June, 1932, Yasunaga died and his widow, Nami Yasunaga, became his sole legatee. Since then the business has been managed by James Uyeda, an American born Japanese. Until Yasunaga's death the transportation had been almost wholly

for Japanese growers. Since then it has expanded indiscriminately and now includes areas as far south as Gilroy and the Cupertino and Mountain View districts. Admittedly, the service was illegal.

The record shows that annual reports concerning the certificated right of the Yasunaga operation were obtained only by repeated efforts on the part of the Commission. The 1932 report, although verified by J. Uyeda in March, 1933, was not filed until November, 1933, and then only on personal demand at San Jose. Rates were filed only in 1921. When a re-issue of rates was ordered by the Commission in 1932 Yasunaga's counsel advised that the operation was wholly private and not under the jurisdiction of the Commission, yet application was made that year, as in previous years, and also in 1933, for public service exemption license plates under the representation of certificated operation. It also appears from the record that rates were established (but not filed), less than those of other carriers, particularly De Marco and Maynard, and that the lower rates attracted business from them. This continued up to the time of hearing herein.

Respondents' counsel urges the form of contract (Exhibit No.2), as exculpation of the operations since October 30, 1933, and a now valid basis of private carriage. This form provides for seasonal term to be agreed upon by the carrier and shipper and at rates to be inserted for the various commodities listed, - all products of husbandry. The shipments are to be delivered to Oakland and San Francisco and are to be moved daily between 7 p.m. and 7 a.m. The final paragraph contains this provision:

"the shipper agrees to give all of his or their freight, including anything sold, destined for Oakland and San Francisco, whether sold to same dealer who may want to do his own hauling, or otherwise, and the shipper agrees to pay to the contractor, as liquidated damages, the full price per package on all shipments hauled by such buyer or any person, firm or corporation, other than the contractor, unless the contractor consents to the same in writing * * * ."

The manner of use of this contract method was explained by J. Uyeda on the witness stand. Whenever a new shipper sought transportation he was asked to sign one of these forms. If he signed, the transportation was conducted and he was accommodated thereafter. Uyeda said he alone made solicitation for business under such contracts and that during 1933, after October 30th, ninety contracts were entered into. Under such arrangements, according to testimony of J. D. Maynard, patrons of his certificated trucking service were lost through the lower rates established by Uyeda. Uyeda testified that the service is conducted on daily schedules.

We can find only that the contract and its use and effect represents a new device to disguise common carrier operations between fixed termini and over regular routes requiring a certificate from this Commission under the Auto Truck Transportation Act. To issue a cease and desist order, effective only as to operations prior to October 30, 1933, would be tantamount to recognizing such contract method as private carriage unimpressed with common carrier status. Rather, the record justifies the finding that the service conducted by Produce Transfer Company, under whatever ownership, has been and is now being conducted as a common carrier between fixed termini and over regular routes, in violation of law and should be ordered to cease and desist. Respondents' request that the order provide a reasonable time in which to make proper application to continue operations under certificate cannot be granted as respondents' history, as revealed in the record, does not justify such action. The injury to legal carriers now serving the area should not be continued pending hearing on an application.

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 8 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.

ORDER

IT IS HEREBY FOUND THAT Nami Yasunaga and J. Uyeda, operating under the name Produce Transfer Company, are operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Act (Chapter 213, Statutes 1917, as amended), with common carrier status between Gilroy, Cupertino and San Jose and other points in Santa Clara county, and Oakland and San Francisco 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 Nami Yasunaga and J. Uyeda 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 Nami Yasunaga and J. Uyeda; that he cause certified copies thereof to be mailed to the District Attorneys of Santa Clara, Alameda, San Mateo and San Francisco counties and to the Department of Public Works, Division of Highways, at Sacramento.

IT IS HEREBY FURTHER ORDERED that all rights for the transportation of property heretofore granted Kiso Yasunaga, by Decision No.9490, dated September 12, 1921, on Application No.6774, be and they are hereby revoked and annulled and no further operations may be conducted thereunder.

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

Dated at San Francisco, California, this 15th day of January, 1934.

C. C. Henry
Leon Whitney
W. H. Lee
M. B. Harris
W. H. Lee
COMMISSIONERS.