

Decision No. 26826

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC.,
Complainant,

vs.

K. C. BUCK, R. BUCK and C.L.BUCK,
doing business under the fictitious
name and style of Buck Transportation
Company, K. C. BUCK, an individual,
R. BUCK, an individual, J. C. ANDERSON,
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. 3337

R.L. Vaughan, by Scott Elder, for Complainant.

Harry A. Encell, for Defendants.

Edward Stern, for Railway Express Agency, Inc.,
Intervenor in behalf of Complainant.

HARRIS, Commissioner -

OPINION

The original complaint in this matter was filed
September 7, 1932. An amended complaint was filed
January 12, 1933. The complaint, as amended, charges
unlawful motor truck operations by defendants between
San Francisco on the one hand and Coalinga, Bakersfield,
Clovis and intermediate points on the other.

At the hearing on December 12, 1933, the complaint was
again amended to include operations between San Francisco
on the one hand, Ventura and intermediate points on the other.
Defendants answered, admitting that they had no certificate
of convenience and necessity and denying the other material
allegations of the complaint.

At the hearing it appeared that defendants K. C. and R. Buck had no interest in the Buck Transportation Company and the complaint is therefore dismissed as to them.

The defendant, C. L. Buck, claims that he does not own, operate, manage or control any auto trucks. His position is that he is a forwarding agent for third parties who supply the transportation facilities.

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

The defendant solicits the transportation of freight. He will accept for transportation any commodity which may be transported at a profit. His rates vary between commodities but are the same to all shippers for the same commodity.

Between San Francisco, Bakersfield and intermediate points loads are dispatched several times a week; between San Francisco and Santa Barbara at least twice a month; many shippers deliver their freight to defendant for shipment, thirteen of whom testified in this case. No contracts, written or oral, other than bills of lading were entered into relating to these shipments. Uniform straight bills of lading signed by "Buck" were introduced into evidence in which defendant was designated as "Buck Truck Company." In some cases the freight is paid by the consignee and others by the consignor. Defendant uses letterheads for business correspondence, having a printed heading as follows:

"San Francisco Office
490 Fifth Street,
Phone Sutter 9141

Contract Carriers

Fresno Office
3233 E. Tulare St.,
Phone

BUCK TRANSPORTATION COMPANY
'The Orange Belt Line'
San Francisco-Porterville
via
Visalia and Lindsay "

Bills or statements for service sent out by defendant are in the name of "Buck Transportation Company." In soliciting business shippers were offered a trucking service or freight service.

Freight is assembled for shipment at the depot maintained by defendant in San Francisco at 490 - Fifth Street. He owns no trucks. Defendant loads the freight at his depot on trucks owned by others. There are always trucks at his depot looking for freight. There are about five truck owners who spend most of their time hauling his freight, but he uses others, sometimes as many as twelve in one day. He chooses the trucks that he needs in the order in which they are lined up at the depot though sometimes selection is made on size of load. When a truck is loaded, the driver is given by the defendant a "waybill" which lists the separate shipments, the name of the consignee, the destination of each shipment, the amount of the charge and whether the shipment is "collect" or "prepaid." Delivery is made accordingly. If there is a return load at the driver's destination, this is generally assigned to him at the time he leaves San Francisco but is occasionally made after he reaches the destination. There are no written contracts between defendant and the drivers. Each driver is engaged on a trip basis. The driver receives 80% of the gross proceeds of his load as compensation. If the freight is "collect", as indicated by the "waybill" above referred to, he makes collection, otherwise freight is prepaid to defendant. Accounts between defendant and the driver are settled sometimes daily, but usually weekly. Loss and damage claims are made by shippers against defendant, who settles with them and makes his own claim against the driver.

The conclusions to be drawn from these facts must be the same as in Motor Freight Terminal Company, a corporation, v. Moye Forwarding Company, a corporation, et al., Dec. 25139, C.R.C. 857. The following quotation is from that case:

abandon such facilities, and by filing with the Commission a statement setting forth the nature and extent of such changes to be made or facilities to be abandoned. The Commission, upon complaint or upon its own motion, shall have power, at once and without notice, to suspend the effect of any such notice of intention by a railroad corporation and, upon reasonable notice thereof, to enter upon a hearing concerning the propriety of such change or abandonment of any facility and to refuse to permit such change or abandonment of any such facility. This Order is not to be construed as denying to a railroad corporation the right to change, alter, remove or discontinue the use of sidings, spurs or other facilities originally constructed under special contracts wherein time limits or other conditions affecting the permanency of such facilities are specified.

General Order No. 36-A is hereby cancelled.

By Order of the Commission.

H. G. MATHEWSON, Secretary.