

Decision No. 26869

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,  
Complainant,

v.

MUTUAL DRAYAGE SERVICE COMPANY, a corporation, J. H. TRUITT, 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.

Case No. 3545

ORIGINAL

Reginald L. Vaughan and Scott Elder, for Complainant.

Fred A. Watkins, for Defendant, Mutual Drayage Service Company.

BY THE COMMISSION -

O P I N I O N

By complaint filed on March 13, 1933, complainant charges defendants with unlawful common carrier operations by auto truck between San Jose and San Francisco and certain intermediate points.

Public hearings were had before Examiner Johnson at San Jose, the case was duly submitted, and now is ready for decision.

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

Mutual Drayage Service Company was incorporated by J. H. Truitt (defendant herein), H. D. Acher and E. B. Hinman on May 18, 1927, under Title 22, part 4, Division No. 1 of the Civil Code governing the incorporation of mutual non-profit organizations. No stock issue was provided for, the interest of all members being equal. No by-laws have been adopted nor have the directors or the members met since incorporation.

Defendant Truitt operated the transportation business, which was the only corporate activity shown by the record, with trucks leased from his wife. There is nothing in the record showing that any such lease was ever authorized by the corporation or any other act, except, as Truitt testified, by "taking it up" with the directors or members. No reports were made during the six years and no minutes or corporate records kept - at least none was produced. Truitt did produce a record which his wife kept of revenues and expenses, but no accounting to anyone was made.

At the time of hearing there were 34 members. Some were accepted after payment of \$10.00 membership fee and a certificate of membership, unassignable, was issued. Some paid nothing and had no certificates, - particularly C. F. Ermin, a grocer of San Jose. When the service was extended from Palo Alto to San Jose, according to J. Schoultz, a meeting of eight or ten San Jose shippers was held, at which Truitt said the extension would be made if enough members could be obtained, and offered a rate of 25 cents per 100 pounds. Membership was increased in 1929 and again in 1950.

The rate was reduced in 1930 to 20 cents and later to 15 cents per 100 pounds. Both consignors and consignees paid these charges. There were variations from these rates for certain commodities, but the base rate was usually on general merchandise, farm implements, hardware, fruit, produce and meats.

The member witnesses examined knew nothing of the affairs of the corporation, what salary Truitt received for operating the transportation service, if any, or whether the business was profitable, or not.

Truitt is the sole operator of the service; his testimony and that of members discloses he makes and alters rates. His wife owns the vehicles used and leased them (unwritten) to the corporation at a flat rate of \$71.00 per month, not including maintenance. She has loaned money to the corporation on

Truitt's unsecured note. Until 1932 Truitt received \$160.00 a month salary. This he later reduced to \$140.00 and, during 1933, he testified he was not able to collect more than \$25.00 a month because of a decrease in revenues. Nor was the \$71.00 a month paid on the trucks. The accounts placed in the record indicate that the operations as therein set up made a profit in 1932 of approximately \$2000.00, but these accounts did not include "salary" of Truitt.

The record discloses that Truitt and not the corporation is conducting the operation. What excess of revenue over operation has been earned has gone to Truitt or to pay his wife for trucks. Under such a record, we must disregard the corporate form and deal with the individual substance revealed by requiring cessation of service as a common carrier until proper certificate therefor is obtained. Otherwise, a palpable subterfuge will be condoned.

The instant case is wholly analogous to Motor Freight Terminal Company v. Burke, (37 C.R.C. 59), where a similar organization of Business Men's Mutual Exchange and similar operations, more carefully set up, were held to be those of a common carrier and were ordered to cease and desist, and in which an appeal to the Supreme court for a writ of certiorari was 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 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.

#### O R D E R

IT IS HEREBY FOUND that Mutual Drayage Service Company, a corporation, and J. E. Truitt 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 San Francisco and San Jose and intermediate points 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 Mutual Drayage Service Company and J. E. Truitt 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 Mutual Drayage Service Company, a corporation, J. E. Truitt, director, and upon J. E. Truitt, an

individual; that he cause certified copies thereof to be mailed to the District Attorneys of San Francisco, San Mateo and Santa Clara counties 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 12<sup>th</sup> day of March, 1934.

J. L. Sweeney  
Leon O'Whidley

W. J. Cunn  
M. B. Harris

\_\_\_\_\_  
COMMISSIONERS.