

Decision No. 26878

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,  
Complainant,

vs.

W. J. FORTIER and C. J. FORTIER, doing  
business under the fictitious name and  
style of Fortier Transportation Company,  
G. L. FORTIER and C. E. FORTIER, doing  
business under the fictitious name and  
style of Fortier Brothers, FIRST DOE,  
SECOND DOE, THIRD DOE, FOURTH DOE,  
FIFTE DOE, FIRST DOE CORPORATION,  
SECOND DOE CORPORATION, THIRD DOE  
CORPORATION, FOURTH DOE CORPORATION,  
FIFTE DOE CORPORATION,

Defendants.

ORIGINAL

Case No. 3402

R. E. Vaughan and Scott Elder, by Scott Elder,  
for Complainant.

Lindsay and Gearhart for W. J. and C. J. Fortier,  
Defendants.

G. L. Aynesworth for G. L. Fortier and C. E. Fortier,  
Defendants.

BY THE COMMISSION -

O P I N I O N

By complaint filed on November 1, 1932, complainant charges W. J. Fortier and C. J. Fortier, co-partners, under the name of Fortier Transportation Company, and G. L. Fortier and C. E. Fortier, doing business under the name of Fortier Brothers, with unlawful common carrier operations by auto truck between San Francisco, Oakland, Alameda, Berkeley, Emeryville, Richmond, San Leandro, San Mateo and Alvarado, on the one hand, and Fresno, Reedley, Visalia, Hanford and points intermediate to Fresno and San Francisco, on the other hand.

Defendants, and each of them, by written answer herein, deny all the allegations contained in said complaint. Defendants W. J. Fortier and C. J. Fortier further allege that they and each of them are operating as private carriers under contract.

During the course of this proceeding complainant moved the dismissal of the complaint against G. L. Fortier and C. E. Fortier for lack of any evidence against either of them. An order for dismissal should be granted to these two defendants.

Public hearings on said complaint were held before Examiner Satterwhite at Fresno and San Francisco, the matter was duly submitted and is now ready for decision.

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

W. J. Fortier and C. J. Fortier, co-partners under the name of Fortier Transportation Company, have ever since February 12, 1932, been engaged in the operation of motor trucks for compensation between Fresno and various other points in the State of California and more particularly between San Francisco and other bay points and vicinity, on the one hand, and Fresno, Reedley, Visalia and Hanford, on the other hand.

Defendants maintain their chief business headquarters at Fresno with a branch headquarters at San Francisco in charge of L. Parsons, Manager and solicitor for all northern California north of Modesto.

An extensive truck transportation business has been secured and built up by defendants solely by personal solicitation. No advertising of any kind for trucking business has ever been resorted to. Defendants own about twenty five (25) trucks and several trailers and the majority of these trucks are kept in constant service in order to meet the demands of their various patrons for transportation service. The following brief excerpt from the testimony of W. J. Fortier outlines the method of

obtaining transportation business:

"Q. By what methods do you obtain business or contracts?

A. By personal solicitation.

Q. And by 'personal solicitation' just what do you mean? Describe the contract.

A. Well, my business is to obtain business. We have these trucks and necessary to keep them working, or naturally there won't be a profit. I keep looking around and finally see where there is a volume of tonnage being moved and I drop in and make myself acquainted with the proper parties, and see if I can be of some service to them in the way of arranging for movement of some particular tonnage they may have to move between any particular points in the State of California, regardless of where it is. If I can make an arrangement satisfactory to ourselves, satisfactory to them, we enter into an agreement; most of the time it is verbal, 90 percent of the time, \*\*\*\*.

Q. Did you ever haul for any person without an understanding as to rates and place of pickup and place of distribution and all other details being understood for the first operation?

A. Never have."

The record shows that ever since the organization of the co-partnership of defendants in February, 1932, a very large tonnage of freight, both southbound and northbound, has been transported between the points named in the complaint. Several trips weekly have been maintained regularly between Fresno and San Francisco bay points and several trips monthly have been maintained south of Fresno to Reedley, Visalia and Hanford.

Transportation services have been performed for the following business concerns and patrons of the defendant during the past two years and have been based almost wholly upon verbal arrangements whereby the defendants had indicated their willingness upon request or call to haul particular commodities for a rate named and agreed upon by previous personal conference:

Justesen's Food Stores  
The Standard Oil Company  
Western States Grocery  
United Grocers  
Kellner Lumber Co.  
Phillips Milling Co.  
Reedley Grape Growers  
Calif. Peach & Fig Growers Assn.  
Calif. Prune & Apricot Growers Assn.  
American Cyanide Gas Co.  
G. Emory Davis  
Calif. Wirecloth Co.  
Gordon Allen, Ltd.  
Haslett Warehouse Co.  
Koligan Bros.

Longview Fibre Co.  
Valley Feed & Fuel Co.  
Stanley Kirkman Co.  
Wellman Peck Co.  
Mid-state Horticultural Co.  
Wendling & Nathan Lumber Co.  
Pacific Coast Paper Co.  
Valley Motor Lines  
Valley Express Co.  
Armour & Company.  
Dale Brothers  
Wm. Volker & Co.  
Pacific Coast Canneries  
Gilmore Oil Company  
Western Sulphur Co.

Defendants have sought and almost entirely confined their services to large tonnage and truckload lots with a minimum of five tons and seldom below ten tons. It has been the practice of defendants to refuse small shipments of any kind and they have frequently refused shipments when the rates proffered or the credit of the shipper was unsatisfactory and have also declined from time to time to give any reason to a prospective shipper for refusing to transport a shipment. The evidence shows, with one or two exceptions, that the oral agreements for transportation service were such that the defendants were not bound to haul for any given period of time any definite tonnage and the shipper was at liberty to discontinue patronage at any time.

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 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 of 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 W. J. Fortier and C. J. Fortier, co-partners, under the fictitious name of Fortier Transportation Company, are operating as a transportation company, as defined in Section 1, Subdivision (c) of the Auto Truck Transportation Act, Chapter 213, as amended, with common carrier status between San Francisco, Oakland, Alameda, Berkeley, Emeryville, Richmond, San Leandro, San Mateo, and Alvarado, on the one hand, and Fresno, Reedley, Visalia and Hanford, on the other hand, 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 W. J. Fortier and C. J. Fortier, co-partners, under the fictitious name of Fortier Transportation Company, and each of them, 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 W. J. Fortier and C. J. Fortier; that he cause certified copies to be mailed to the District Attorney of the City and County of San Francisco, the District Attorneys of Alameda, San Mateo, Contra Costa, Fresno, Tulare and Kings counties, and to the Department of Public Works, Division of Highways, Sacramento.

IT IS HEREBY FURTHER ORDERED that the complaint against G. L. Fortier and C. E. Fortier, co-partners, under the name of Fortier Brothers, be and the same is hereby dismissed.

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

Dated at San Francisco, California, this ~~24~~<sup>25</sup> day of March, 1934.

CC Seavey  
Leon Whidley  
W. H. Pen  
M. B. ...  
Walter ...  
COMMISSIONERS.