Decision No. 27030.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

REGULATED CARRIERS, INC., a corporation,
Complainant.

vs.

CONTRACT CARRIER CORPORATION, a corporation, J.O.BRAY, an individual, 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. 3556.

Reginald L. Vaughan and Scott Elder, for Complainant.
B. W. Gearhart and Harry A. Encell, for Defendants.
Edward Stern, for Railway Express Agency, Inc., intervener on behalf of Complainant.
H. W. Hobbs, for Southern Pacific Company and Pacific Motor Transport Company, Interveners in behalf of Complainant.

HARRIS, Commissioner:

O P I N I O N

On April 4, 1933, complainant filed its complaint charging Contract Carrier Corporation, a corporation, and J.O. Bray, an individual, and certain fictitious defendants with unlawful common carrier truck operations between San Francisco, Oakland, Alameda, Berkeley, Emeryville, Richmond and San Leandro on the one hand; and Fresno, Hanford, Visalia, Porterville, Bakersfield and intermediate points on the other hand; between Los Angeles, Vernon, Huntington Park on the one hand and Fresno, Stockton, Sacramento and intermediate points on the other hand; and between Gilroy on the one hand and Fresno, Visalia and intermediate points on the other hand.

Contract Carrier Corporation, answered on April 26, 1933, the defense being that it was operating as a private or "contract" carrier and was not operating between fixed termini

or over a regular route. J.O. Bray filed a demurrer and answer on October 5, 1933, his defense being the same made by Contract Carrier Corporation.

These defendants have been before this Commission in earlier proceedings. On February 16, 1931, J.O.Bray, doing business as Bray Motor Drayage Company was ordered to cease and desist operating as a "transportation company" between Los Angeles and Fresno and intermediate points. (Motor Freight Terminal Company vs. J.O.Bray, 35 C.R.C. 842.) Rehearing was denied and the California Supreme Court denied petition for Writ of Review. (Bray vs. Railroad Commission, S.F. 14289). On February 23, 1932, J.O.Bray was found guilty of violating the above order and held in contempt. (Motor Freight Terminal vs. J.O.Bray, 37 C.R.C. 224)[1]

Cases Nos. 3409 and 3425 were started by the Commission in November, 1932 to investigate the operations, rates, etc., of J.O.Bray and Contract Carrier Corporation, operating between substantially the same points as are named in the instant case.

In the course of the hearings in those cases the point was raised as to the sufficiency of the service of notice on the corporation respondent. As a result the instant proceeding was instituted.

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(1) Writ of habeas corpus was discharged in the District Court of Appeal. (Re Bray on Habeas Corpus, 125 Cal.App.363.) Petition for rehearing was denied by the Supreme Court on September 8, 1932. On March 15, 1933, writ of habeas corpus was denied by the Supreme Court (Crim. 3645.)

Contract Carrier Corporation was organized as a Nevada corporation on May 24, 1932. J.O.Bray transferred to it all the property he "possessed in the name of the Bray Motor Drayage Company", and all his"contracts" in exchange for all of the stock issued by the company, except qualifying shares issued to his wife and B.W.Gearhart, who with J.O.Bray were chosen as the three directors of the corporation. The latter was made President.

The directors, including J.O.Bray, held a meeting in Fresno about the 1st of June, 1932. Mr. B.W. Gearhart was authorized by Bray either at this meeting or informally to select a Manager for the corporation. Shortly after this meeting J.O.Bray left California and remained away until about June, 1933, when he returned and took over the management of the defendant corporation. During his absence, J. H. A. Jorgenson was manager under an appointment by Mr. Gearhart.

At the time of the appointment of Mr. Jorgenson as manager, Mr. Gearhart told him that Contract Carrier Corporation "was organized for the purpose of carrying on a private contract business and I told him that it was the business that Mr.J.O. Bray had theretofore conducted under the name of Bray Motor Drayage Company, and that it had taken over all its contracts."

Mr. Gearhart further testified that the defendant corporation was made a Nevada corporation and given its name for the purpose of keeping it out of the common carrier class and that J.O.Bray left California and had a new manager appointed for the same purpose. He further testified to instruction given by him with reference to the manner of conducting the business, such as not to advertise, not to adopt a rate schedule or a regular operating schedule, and to handle nothing unless prior contracts had been entered into before the haul.

The operations of defendants as disclosed by the evidence may be briefly summarized as follows: 34 trucks and 28 trailers were owned and used by the defendant corporation, and in addition it leased at times as many as 15 trucks. Customers number from 75 to 100. It carries all kinds of commodities and fixed a minimum tonnage of five tons for regular customers and 15 tons from others. It has no time schedules and no published rates. Several shippers testified that Jorgenson solicited their business. It entered into about 25 written agreements with shippers.(2) It had oral arrangements with 50 shippers and hauled for about 25 more, arrangements with whom, if any, were not explained. All business was accepted when tendered,

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(2) The form of agreement is as follows:

"HAULING CONTRACT.

CONTRACT CARRIER CORPORATION, a contract hauler, and _____ owner, hereby agree as follows:

Hauler agrees to haul and deliver by motor trucks and trailers, and Owner agrees to furnish the Hauler for such hauling and delivery, freight of the following description only, to-wit:

_____

_____

_____

_____

Hauler agrees to haul such freight from such designated points, and to deliver same to consignees designated by Owner, and at such time or times as may be fixed by Owner, and agrees to accept as compensation for said hauling, and Owner agrees to pay therefor, as follows:

_____ per one hundred (100) pounds of _____ such shipment.

Hauler agrees to hold itself in readiness, and to provide trucks, trailers and drivers, for such hauling at any time as may be designated by Owner, and to transport and deliver said goods to their destination within a reasonable time after the same have been delivered to it.

This contract shall be in full force and effect for a period of one year from the date hereof, provided that either party may terminate the same by giving five days' notice in writing to the other, or may mutually agree, upon not less than five (5) days' notice from one to the other, to modify or change the terms hereof.

Payment shall be made by the owner to the hauler each week for all money earned by Hauler under this contract during the preceding calendar week.

Hauler shall at all times during the life of this contract carry full coverage of insurance on all equipment used by it under this contract, and all cargoes of Owner transported herein, and said insurance shall fully protect and

the only refusals being on the ground that the tender did not meet minimum weight restrictions or was bulky and light so it could not be handled or that the shipper was slow pay. One shipment was refused because the shipper was troublesome. A number of shippers testified that all shipments were accepted unless there was no equipment available or payment was not made. Thirty-eight shipper witnesses testified, seven of whom were shippers to consignees who bore the charges; 13 were shippers to consignees who paid the charges and billed consignor or deducted from remittances; and 18 did business direct with defendant corporation, of whom six had and 12 had no written hauling agreements. (See Note(2).)

Defendants haul anywhere in California at any time but a large preponderance of their business is between Fresno and Los Angeles, San Francisco, Oakland, Alameda, Berkeley and intermediate points, and between Los Angeles and San Francisco, Oakland, Alameda and Berkeley and intermediate points. Between these points there is practically a daily service. Defendants maintain garages in Fresno, Tulare,

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(2) continued:

"indemnify the Owner against any loss or damage of any character occurring while said goods are being transported by Hauler.

The parties agree that this contract does not obligate Hauler to transport any of said goods over any fixed or regular route or between any fixed places other than from time to time may be designated by Owner, or on any fixed schedule, and that in performing this contract the Hauler does not assume any duty or obligation of a common carrier.

Executed this _____ day of _____, 1932.

CONTRACT CARRIER CORPORATION,
By_____
President.
HAULER
By_____
Owner."

San Francisco and Los Angeles. At times shippers are given an invoice for each consignment.(3)

At times they use the form of uniform straight bill of lading prescribed by the Interstate Commerce Commission.

The evidence of regular operations between Fresno and Los Angeles, San Francisco, Oakland, Alameda, Berkeley and intermediate points, and between Los Angeles and San Francisco, Oakland, Alameda and Berkeley and intermediate points is convincing. The fact, if it is a fact, that defendants conduct other operations radial in nature, does not change the character of the operations between the fixed termini. (Regulated Carriers vs. Triolo, Dec.25959, Case 3335.) Writ of review was denied by the Supreme Court on Aug.10,1933. (Triolo v. Railroad Commission, S.F.14955.)

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(3) (Ex.2 Witness Perke.)

"INVOICE

CONTRACT CARRIER CORPORATION

Home Office: Cheney Building 139 No.Virginia Reno, Nevada. Telephone Reno 3195

Day and Night Service Telephone 27174 327 G Street -P.O.Box 932 Fresno, California

Los Angeles Telephone Prospect 3506

San Francisco Telephone Sutter 7386

Tulare Telephone 895

Date 4-15-33

Shipper's No.___ 11418

Delivered to WESTERN STATES GROCERY CO. #28_____ Truck

Address FRESNO CALIF

From JOHNSON LOCKE MERCANTILE CO. Freight Prepaid___ Amt._____

Address San Francisco Calif. Freight Collect___ Amt._____

No.Pkgs.	Articles, Marks or Instructions	Weight Subject to Correction	Class or Rate	Amount	Ck.
50	CS BICARB SODA	1350#	.15	203	

_____Shipper

Per_____ Agent_____

It is also clear that defendants are operating a common carrier service. (People vs.Lang, 85 Cal. Dec.47; Haynes vs. McFarlane, 207 Cal. 529.)

Regulated Carriers v. Preston, Dec. 25864; Case 3415; writ of review denied, July 25, 1933. (Preston v. Railroad Commission, S.F. 14946.)

Regulated Carriers v. Smith, Dec.25816, Case 3338; writ of review denied June 19, 1933. (Smith v. Railroad Commission, S.F.14918.)

Regulated Carriers v. Universal Forwarders,Ltd., Dec.26236, Case 3544;) writ of review denied Oct. 29, 1933. (Universal Forwarders,Ltd. v. Railroad Commission, L.A.14467.)

River Lines v. George, Dec.25553, Case 3388, affirmed George v. Railroad Commission, 85 Cal. Dec.621 (November 29, 1933.)

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 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.

The following form of order is recommended:

O R D E R

A public hearing having been held in the above entitled matter and the case having been submitted for decision, the Railroad Commission of the State of California, concludes and finds as follows, to-wit:

1. That the demurrer of defendant J. O. Bray is overruled.

2. That the case is dismissed as to the fictitious defendants.

3. That Contract Carrier Corporation, a corporation, and J.O.Bray are operating as a "transportation company" as defined in Section 1, Subdivision (c) of the Auto Truck Transportation Act (Statutes 1917, Chapter 213, as amended), and are engaged in the transportation of property by auto truck, for compensation and as a common carrier, between fixed termini and over a regular route on the public highways of this state, viz: between Fresno on the one hand and Los Angeles, San Francisco, Oakland, Alameda, Berkeley and intermediate points on the other hand; and also between Los Angeles, on the one hand, and San Francisco, Oakland, Alameda and Berkeley and intermediate points, on the other hand.

Based on the findings herein and in the opinion,

IT IS HEREBY ORDERED that Contract Carrier Corporation, a corporation, shall immediately cease and desist directly or indirectly from such operation between the termini specified in the foregoing findings and that J.O.Bray shall also immediately cease and desist directly or indirectly from such operation unless and until there shall have been obtained a certificate of public convenience and necessity authorizing such common carrier service.

IT IS HEREBY FURTHER ORDERED that the Secretary of the

Commission cause personal service of a certified copy of this order to be made upon Contract Carrier Corporation, a corporation, and J.O.Bray, and that copies of this order be mailed to the District Attorneys of the City and County of San Francisco and the counties of Fresno, Alameda, Tulare, Kern, Los Angeles, Madera, Merced, Stanislaus, San Joaquin and Contra Costa.

This order, as to each defendant, shall become effective twenty (20) days after personal service upon said defendant.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of May, 1934.

C. L. Seavey

Leon O. Whitsell

Wm. J. Carr

Wm. B. Rams

Commissioners.