

Decision No. 27242

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

THE RIVER LINES (The California
Transportation Company, Sacramento
Navigation Company, and Fay Transpor-
tation Company), and REGULATED
CARRIERS, INC., a corporation,

Complainants,

vs.

Case No. 3766

BURNELL CAPPS, GEORGE HALL,
BURNELL CAPPS, doing business under
the firm name and style of CAPPS TRUCKING
COMPANY: BURNELL CAPPS and GEORGE HALL,
doing business under the firm name and
style of MOTOR TRUCK TERMINAL SERVICE,
GEORGE HALL, doing business under the
firm name and style of MOTOR TRUCK
TERMINAL SERVICE, JOHN DOE, RICHARD ROE
and JOHN DOE CORPORATION,

Defendants.

ORIGINAL

Mc Cutchen, Olney, Mannon & Green, by
F.W. Mielke, for the River Lines, Complainant.

Reginald L. Vaughan and Scott Elder, for Regulated
Carriers, Inc., Complainant.

Horace T. Beverley and Edward M. Berolski, for
defendants Capps and Hall.

CARR, Commissioner-

O P I N I O N

By complaint filed on January 19, 1934, Burnell Capps
and George Hall were charged with unlawful common carrier
operations by auto truck between San Francisco and Sacramento
and Stockton, including intermediate points.

A public hearing has been had, briefs filed, and the case
is now ready for decision.

The critical issue as developed is whether these defend-
ants, or either of them, were operating as common carriers be-
tween San Francisco and Sacramento and intermediate points.
Regularity of operations between these points was not seriously

questioned. A common carrier cast of the operations, however, was vigorously contested.

The facts as developed may be summarized as follows:

The defendant Hall, in charge of a terminal in San Francisco where space was leased to various truck lines and operators during January and prior to the time when the complaint was filed, interviewed about twenty shippers soliciting contracts for the hauling of freight. He secured a few, and after the filing of the complaint others were completed. He had no trucks. The business he acquired he farmed out to Capps, retaining for himself 10 percent of the freight charges. Hall made the billings and collections. Capps performed this service but a short time, discontinuing it about February 7th. Since that time Hall has farmed out the business which he had thus secured to another truck operator.

Capps occupies a somewhat different position. Originally he did a general hauling business about Sacramento - mostly from farm to warehouse. Gradually he took over hauling for several stores. Except for a few isolated instances he had definite contractual arrangements with his patrons. For some time about 75 percent of his hauling has been confined to one firm and 15 percent to another. Since his business consisted mainly of hauls from Sacramento to Oakland and San Francisco, the back haul involved in his arrangement with Hall was obviously advantageous to him.

The Hall operations cannot be differentiated in principle from those condemned in Motor Freight Terminal Company vs. O. P. Moyer et al. (Case 3149, C.R.C. Decision 25139); Regulated Carriers, Inc. vs. A. W. Henninger, et al. (Case 3403, C.R.C. Decision No. 27105); Regulated Carriers, Inc. vs. Dale C. Ramsey et al. (Case 3590, C.R.C. Decision 27087).

So far as Capps participated in these (the evidence showed he was so participating at the time the complaint was filed but has since desisted), it must be concluded that the allegations of the complaint as to him were established. As to the other operations of Capps, while he may have approached closely the line which separates private and common carrier haulage, the evidence does not sufficiently establish that he has crossed the line.

I recommend the following form of order:

O R D E R

IT IS HEREBY FOUND THAT Burnell Capps and George Hall, to the extent indicated in the opinion which precedes this order, were operating as transportation companies 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 Sacramento 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 Burnell Capps and George Hall shall cease and desist directly or indirectly or by any subterfuge or device from continuing the operations described in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon Burnell Capps and George Hall; that he cause certified copies thereof to be mailed to the District Attorneys of San Francisco, Sacramento and Alameda 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.

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 30th day of July, 1934.

C. J. Harvey
Leon Whitman
W. H. Cunn
M. B. Harvey
COMMISSIONERS.