

Decision No. 27272

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC.,)
a corporation,)

Complainant,)

vs.)

) Case No. 3651

CHARLES KUPPINGER, W. A. CHAPMAN,)
M. S. DODD, 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

R. L. Vaughan for Complainant,

Harry A. Encell for Charles Kuppinger
and W. A. Chapman.

BY THE COMMISSION:

O P I N I O N

By complaint filed on August 7, 1933, complainant charges Charles Kuppinger, W. A. Chapman and M. S. Dodd with unlawful common carrier operations by auto truck between San Francisco, Oakland, Alameda, Berkeley, Emeryville, Richmond and Albany, on the one hand, and Lakeport, Upper Lake, Lucerne, Lower Lake, Kelseyville and Ukiah, on the other hand.

Defendants, and each of them, by written answer herein deny all the allegations contained in said complaint.

Public hearings on said complaint were held before Examiner Satterwhite at Lakeport 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:

No evidence was introduced in support of the complaint against the above named defendants Charles Kuppinger and M. S. Dodd and an order of dismissal should be granted as to these two defendants.

W. A. Chapman, defendant above named, has been engaged for the past three years in operating regularly an auto truck service between San Francisco, on the one hand, and Lakeport, Upper Lake, Lucerne, Lower Lake, Finley, Nice and Witter Springs, on the other hand. He has been making regularly two trips each week on Tuesdays and Fridays. His customers consist of about 25 wholesale business establishments at San Francisco and about 40 other patrons consisting of merchants and business men doing business at Lakeport and the other communities adjacent to the shores of Clear Lake in Lake County.

The record shows that when the defendant Charles Kuppinger discontinued his trucking services in 1931 between the points involved in this proceeding W. A. Chapman purchased a truck from Kuppinger and immediately solicited and obtained as patrons for himself practically all the former customers of Kuppinger. Chapman has conducted his truck operations under both written and verbal arrangements. It appears that during the early period of his truck operations Mr. Chapman entered into a written contract with about 22 of Kuppinger's former customers, which form of contract was as

follows:

TRANSPORTATION CONTRACT

This is to confirm our understanding that Chapman Truck Service agrees to transport commodities consigned by you between San Francisco and following Lakeport towns for a period beginning _____, to and including _____.

Charges to be paid by you or by your instructions to Chapman Truck Service for truck transportation between above mentioned points at the following rates:

Lakeport	\$.....	per 100 lbs.
Upper Lake	\$.....	per 100 lbs.
Lucerne	\$.....	per 100 lbs.
Kelseyville	\$.....	per 100 lbs.
Finley	\$.....	per 100 lbs.
Nice	\$.....	per 100 lbs.

It is further understood that if the service rendered under this agreement is not satisfactory to you, then upon five days' notice to us, you may terminate this agreement.

Signed

Per

We hereby approve the terms of the foregoing agreement.

Signed

Per

These written contracts expired in one year and it is apparent by their terms that they are nothing more or less than the usual form of rate quotations from the carrier to a shipper without any obligation by the shipper to furnish any definite volume of freight including the privilege of cancellation upon the usual notice of five days. The evidence shows that nearly all these written contracts have expired without any renewals but defendant has continued his services to most of these shippers without written or verbal agreements, save and except that in many cases new or modified rates have been orally agreed upon and the service continued without any written contract.

All of the patrons of Mr. Chapman in the Clear Lake area purchase a considerable volume of mixed merchandise from San Francisco and about eight to ten tons weekly are transported by the defendant to this territory. Defendant testified that he would transport on request freight of any kind for anybody to any point that he serves in Clear Lake under the terms of the above form of contract. The record shows further without contradiction that defendant has consistently and in fact has made it a practice to transport merchandise between the points named merely upon the oral or written request of a shipper without any previous or definite written or verbal contract, save and except a stipulation as to the rate charges.

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. 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 & Hayes, 37 C.R.C..407; Wernuth v. Stanper, 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, Chap. 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. 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. A. Chapman is operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Transportation Act, Chap. 213, as amended, with common carrier status between San Francisco, on the one hand, and Lakeport, Upper Lake, Lucerne, Lower Lake, Kelseyville, Finley, Nice and Witter Springs, 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. A. Chapman, said defendant, 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. A. Chapman; that he cause certified copies to be mailed to the District Attorney of the City and County of San Francisco, the District Attorney of Lake County and to the Department of Public Works, Division of Highways, Sacramento, California.

IT IS HEREBY FURTHER ORDERED that the complaint against Charles Kuppinger and M. S. Dodd be and the same is hereby dismissed.

The effective date of this order shall be twenty (20) days after the date of service upon defendant W. A. Chapman.

Dated at San Francisco, California, this 13th day of August, 1934.

Leon Whitall

W. A. Carr

W. B. Lewis

W. H. ...
Commissioners.