

Decision No. 27320

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,

Complainant,

vs.

Case No. 3521

H. W. HUNSAKER, D. A. HUGHES, and H. W. HUNSAKER and D. A. HUGHES, doing business under the fictitious name and style of Western Shippers Association, 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.

Reginald L. Vaughan, for Complainant.
Toland C. Mc Gettigan, for Defendants.

BY THE COMMISSION -

OPINION

By complaint filed on February 23, 1933, complainant charges H. W. Hunsaker and D. A. Hughes, doing business under the name Western Shippers Association, with unlawful common carrier operations by auto truck between San Francisco, Oakland, Emeryville, Berkeley, Richmond, Alameda and San Leandro and Los Angeles and Vernon.

Public hearings were had before Examiner Handford on September 19, 1933, on which date the case was submitted.

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

The facts as to the operations involved are not disputed. Western Shippers Association is the fictitious name used by H. W. Hunsaker in the business of assembling and transporting freight between San Francisco and Los Angeles, and adjacent

points, as alleged, in both directions. Terminals are maintained and trucks are despatched daily. The cargoes are shipped by what Hunsaker terms "independent" truckmen who receive 72 percent of the gross rates per cargo, less such pickup or delivery charge as may accrue. Insurance on cargo is provided by Hunsaker and is a part of the 28 percent retained by him. The business is aided by the solicitation and management of defendant D. A. Hughes, who has a contingent interest in the profits, though no capital interest. No contracts in writing exist with either shippers or truckmen. In all essentials it is a transportation company operating between fixed termini and over a regular route, under the complete control of defendants through written shipping instructions and control of rates and compensation.

Defendants offered no testimony in defense, frankly admitting the facts and admitting that defendants had no certificate or other authority to conduct transportation by truck. The contention of defense is that the truckmen may be amenable but not the defendants; also that there is no proof that the truckmen are not certificated carriers, and hence defendants were not operating in violation of the Public Utilities Act (Section 2, paragraph K). The record shows, however, that defendants sought to present proof that each of the truckmen operated under a private license and paid 3 percent of gross earnings to the Board of Equalization, but the testimony was ruled irrelevant.

The record justifies finding that defendants' operations are in violation of Section 5 of the Auto Truck Transportation Act and they should be ordered to cease and desist.

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 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 H. W. Hunsaker and D. A. Hughes are operating as a transportation company, under the fictitious name of Western Shippers Association, 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, Oakland, Emeryville, Berkeley, Richmond, Alameda and San Leandro and Los Angeles and Vernon 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 H. W. Hunsaker and D. A. Hughes 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 said H. W. Hunsaker and D. A. Hughes;

that he cause certified copies thereof to be mailed to the District Attorneys of San Francisco, San Mateo, Santa Clara, Santa Cruz, Monterey, ~~Salt Lake~~ Kings, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Kern, Fresno, Madera, Merced, Stanislaus, San Joaquin, Alameda and Contra Costa counties, to the Board of Public Utilities and Transportation of the City of Los Angeles 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 defendant.

Dated at San Francisco, California, this 4th day of September, 1934.

Leon A. Wiley

M. J. Cunn

M. B. Hanna

Walter H. Brown

COMMISSIONERS.