

Decision No. 27381

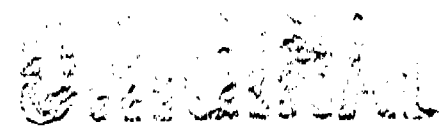
BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,
Complainant,

vs.

A. W. MILLER, W. J. AHERN, A. W. MILLER
and W. J. AHERN, doing business as
Shippers Association and/or Shippers
Agency, First Doe, Second Doe, Third Doe,
Fourth Doe, Fifth Doe, Sixth Doe, Seventh
Doe, Eighth Doe, Ninth Doe, Tenth Doe,
First Doe Corporation, Second Doe Corpor-
ation, Third Doe Corporation, Fourth Doe
Corporation, Fifth Doe Corporation,

Defendants.



Case No. 3560

R. L. Vaughan and Scott Elder, for Complainant.

BY THE COMMISSION -

O P I N I O N

By complaint filed on April 12, 1933, complainant charges defendants with unlawful common carrier operations by auto truck between San Francisco and East Bay cities and Los Angeles and contiguous points.

Public hearing was had before Examiner Handford on November 6, 1933, on which date the case was submitted.

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

Defendants W. T. Miller (amended at the hearing in lieu of A. W. Miller), and John Doe Petersen operate a transportation forwarding business by truck operation between San Francisco and East Bay cities on one hand and Los Angeles, Euntington Park, Bell and Pasadena on the other. Movements were conducted in both directions (Exhibits 2 to 11). The record contains no evidence of service to intermediate points. Defendants did not appear

personally nor by counsel at the hearing though due service was made on Miller and W. J. Ahern. No written answer was filed by either.

W. J. Ahern, salaried manager of the business at San Francisco, was the only witness representing defendants. His testimony shows that the business was originally established at Los Angeles under the name "Shippers' Agency" at 2120 East 37th Street. The branch at San Francisco was at 60 Federal Street. The "Agency" was established by Verne Kerr and W. Wilde, who were substituted for Doe defendants by permission. The testimony, however, shows that they retired from the business in January, 1933, and left for South America. The business was taken over by Miller and Peterson, who, according to Ahern, owned the business at the time of hearing.

Ahern testified that rates were quoted to shippers whose business was solicited and trucks were hired on a division of the gross rates, usually 25 percent, with insurance cost of 3 percent added, to the "Association" and the remainder to the truckmen. The insurance was payable to the "Association" and covered cargo only. Cargoes were forwarded every day except Sunday and holidays, except in a few instances. Pickup in San Francisco was made by H. Kehoe, who also was substituted as a Doe defendant.

In the transportation between termini the same truckmen were used, each making six to eight round trips per month. They contract to transport the assembled loads at either terminus. The directions for delivery are given on cargo manifests issued by the "Association" which documents control the transportation.

Other witnesses testified as to particular shipments in both directions. Some were solicited by Ahern. The rates were based on Western Classification though they varied considerably among shippers.

The record shows a thinly disguised truck operation for the transportation of property between fixed termini without first having obtained the proper certificate therefor. It also shows that W.T. Miller is the chief owner, with Peterson having a proprietary interest.

The record justifies a finding that Miller and Peterson have conducted truck transportation, as alleged, and an order to cease and desist should issue against them operating either as the "Shippers Agency" or the "Shippers Association."

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 W. T. Miller, also known as A.W. Miller, and John Doe Peterson are operating as a transportation company 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 Oakland and Los Angeles, Huntington Park, Bell and Pasadena 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 W. T. Miller and John Doe Peterson 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. T. Miller and John Doe Peterson; that he cause certified copies thereof to be mailed to the District Attorneys of Alameda, San Francisco, San Mateo, Santa Clara, Santa Cruz, Monterey, Salinas, Kings, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Kern, Fresno, San Benito, Madera, Stanislaus, Merced and San Joaquin counties; to the Board of Public Utilities and Transportation of the City of Los Angeles and the Department of Public Works, Division of Highways, at Sacramento.

IT IS HEREBY FURTHER ORDERED that the complaint be dismissed as to Verne Kerr, W. Wilde and H. Kehoe.

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

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

Leon Whitney
W. A. C.
M. B. L.
W. H. K.