

Decision No. 27333

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,  
Complainant,

vs.

C. B. HORTON, ALBERT ROSSI, J.S. ROBINSON,  
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.

Case No. 3573

Reginald L. Vaughan and Scott Elder, for Complainants.  
O'Brien, Dibert and Acton and A. S. Hutchinson, for  
Defendants.

BY THE COMMISSION -

O P I N I O N

By complaint filed on April 27, 1933, complainant charges defendants with unlawful common carrier operations by auto truck between Santa Cruz, San Francisco, Oakland and San Jose and Los Angeles and Los Angeles harbor.

Public hearings were held before Examiner Handford on October 23rd and November 13, 1933, on which latter date the case was submitted.

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

Defendant Horton owns three trucks which he operates from Santa Cruz in the exclusive transportation of fish,- fresh or frozen,- between Santa Cruz and San Francisco and Oakland and between Santa Cruz, San Francisco and Oakland and San Jose and Los Angeles, including Los Angeles harbor at San Pedro. The service is available for capacity loads whenever required by shippers. It was established by solicitation of fish wholesalers

by defendant Horton in March, 1931, and was maintained since that time. In all, defendant Horton serves 27 shippers at Los Angeles and its harbor, 4 in San Jose, 1 in Santa Cruz, 4 in Oakland (branches), 6 in San Francisco,- a total of 42. The business was established and conducted under alleged verbal contracts with all until October 20, 1933, when the contracts were reduced to writing. These writings were admitted in evidence (Exhibit No.6), although their execution was six months after the filing of the complaint herein (April 27, 1933). The writings are of interest only as they purport to reduce the terms of employment as originally entered into. Attempts by defendant to show that there are additional features, such as penalties for late delivery at markets, agreement with the 42 shippers to not enlarge the business etc., by parole testimony do not alter defendant's legal status in our judgment. The contracts are mere rate quotations and contain no references to penalties nor exclusive service. Had they been executed prior to the date of complaint, their existence would merely have provided subterfuge.

The record shows that on April 23rd defendant Horton was transporting fish caught at San Pedro and Santa Cruz between such points and the other points previously named. The only refusal to transport shown were quantities that defendant did not deem profitable to haul. He testified that he reserved the right to determine the quantity he would move and, in some instances, delivered it himself to Railway Express Agency for transportation, although express rates are much higher than defendant's charges.

The record shows that defendant established and maintained a common carrier service dedicated to the transportation of fish and fish products exclusively between the termini and points alleged, serving at Los Angeles all of the wholesalers there. He possessed no certificate of public convenience and necessity therefor nor other authority.

The record does not show that defendants Albert Rossi nor J. S. Robinson had proprietary interest in the operation and as to them the complaint will be dismissed.

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 \$500.00, 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 C. E. Horton is 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 Santa Cruz, San Francisco and Oakland and San Jose and Los Angeles and Los Angeles harbor 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 C. B. Horton 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 C. B. Horton; that he cause certified copies thereof to be mailed to the District Attorneys of San Francisco, San Mateo, Santa Cruz, Santa Clara, Monterey, Salinas, Kings, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Kern, Fresno, Madera, Stanislaus, San Joaquin and Alameda 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.

IT IS HEREBY FURTHER ORDERED that the complaint, as to Albert Rossi and J. S. Robinson, be and the same hereby is dismissed.

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. White

M. A. Carr

M. B. Harris

Robert H. [unclear]

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COMMISSIONERS.