

Decision No. 27340

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,
Complainant,

vs.

BERT HANNAH, 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

) Case No. 3522

R. L. Vaughan and Scott Elder, for Complainant.
F. M. Ostrander and Hugh H. Griswold, for Defendants.

BY THE COMMISSION -

O P I N I O N

By complaint filed on February 23, 1933, complainant charges E. L. Hannah, also known as Bert Hannah, with unlawful common carrier operations by auto truck between Merced and Stockton and intermediate points.

Public hearing was had before Examiner Handford on October 19, 1933, at Merced, on which date the case was submitted.

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

Defendant owns and operates a 7-ton truck and 5-ton trailer between Merced and Stockton in the business of transporting freight for compensation from Stockton to Merced and points intermediate to Modesto and Merced and also to El Nido, Irwin and Winton, which are not intermediate on the State highway. Only returned shipments are transported from southern points to Stockton and for this movement no charge is made. The service is practically regular three days each week. It has been

conducted for at least two years before the complaint was filed. The compensation in part is paid defendant by Stockton shippers and in part by consignees at destination.

Defendant asserts that these movements are all made under contracts with either consignor or consignee and that this fact, coupled with his refusal to haul for others, stamps his operations as those of a private carrier and not in violation of the Auto Truck Transportation Act, which requires a certificate for common carriage.

The record, as presented, shows that defendant has established an operation between fixed termini and over a regular route with all the attributes of common carriage. His rates are uniform and his service regular and apparently he has built up a traffic adequate for the equipment he provides.

Defendant contends that, as his movements are based on contracts, he has retained the status of a private carrier. Twelve contracts were placed in evidence (Exhibit No. 2). Of these three are with consignors at Stockton - United Grocers, Inc., Sperry Flour Company and Hedges & Buck Co. The others are with consignees at Merced, Atwater, Turlock, Livingston and Hilmar. Not all of the consignees have contracts and it is contended that they are served under the Stockton consignor contracts.

Examination of these contracts shows them lacking in mutuality of obligations of either party, terminable at will, without definiteness, the enforceable portion of each being only the payment of rates set forth and applicable if and when transportation is made. They are, in fact, little more than rate quotations and a disguise for common carrier operations. Defendant charges a uniform rate of 15 cents to all points except to El Nido, Winton and Irwin, for which 20 cents is charged, on each 100 pounds.

The contracts appear to be devices to excuse defendant, who testified that he procured them because he would become a common carrier without them.

A cease and desist order should issued.

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 E. L. Hannah, also known as Bert Hannah, 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 Stockton, Turlock, Atwater, Livingston, Irwin, Hilmar, El Nido, Winton and Merced 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 E. L. Hannah, also known as Bert Hannah, 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 E. L. Hannah, also known as Bert Hannah; that he cause certified copies thereof to be mailed to the District Attorneys of San Joaquin, Stanislaus and Merced 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 defendant.

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

Leon C. ...

M. A. ...

M. B. ...

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COMMISSIONERS.