

Decision No. 27378

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA  
REGULATED CARRIERS, INC., a corporation,  
Complainant,

vs.

E. O. WALSH, 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. 3629

REGINALD L. VAUGHAN, for complainant.  
Harry A. Encell, for defendant.

BY THE COMMISSION -

O P I N I O N

By complaint filed on July 11, 1933, complainant charges defendant with unlawful common carrier operations by auto truck between San Francisco and Eureka and intermediate points.

Public hearing was had before Examiner Handford on November 27, 1933, on which date the case was submitted.

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

Defendant testified that he has five contracts for transportation between San Francisco and Eureka and certain intermediates. Three contracts are with Swift & Co., Western Condensing Co. and Levi & Zentner Co. of San Francisco. Two are with Fortuna Hardware Co. and L. L. Byron, both at Fortuna. Trips between termini were made two or three times each month, according to defendant. Freight also was transported for Reinier Brewing Co., Eureka Woolen Mills, Roma Manufacturing Co. and Sloss & Brittain, with whom no contracts were made. Defendant's operations covered a period of a year prior to the hearing.

Though defendant fixes his trips at "two or three a month", E. F. Laumer, a witness testifying for Western Condensing Company, stated that a gross of 130 tons had been transported during one period with a frequency of twice a week. Similar testimony was given by L. L. Foley, Traffic Manager of Swift & Company.

The record is satisfying that defendant acquired all that he could in the way of commodities, ~~whether~~ under written contract or otherwise, and that his business had ceased to be private. The contracts were of the usual type, the term of which was terminable by either party on fifteen days' notice. Rates were not specified except by agreement on each load. Neither party was under penalty for refusing to furnish or to refuse to haul cargoes.

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 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. O. Walsh 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 San Francisco and Eureka, and intermediate points 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. O. Walsh 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.O. Walsh; that he cause certified copies thereof to be mailed to the District Attorneys of San Francisco, Marin, Sonoma, Mendocino and Humboldt 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 17<sup>th</sup> day of September, 1934.

Leon O'Connell

M. A. Linn

M. B. Linn