

Decision No. 3572

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,
Complainant,

vs.

W. M. PETTY, S. O. DIMMICK and GEORGE
J. HALL, Jr., doing business under the
fictitious name and style of United
Forwarders, First to Fifth Doe, incl.,
and First to Fifth Doe Corporation,
inclusive,

Defendants.

ORIGINAL

Case No. 3572

Reginald L. Vaughan and Scott Elder,
for Complainants,

Ray E. Untereiner for Defendants.

BY THE COMMISSION:

O P I N I O N

By complaint filed on April 27, 1933, complainant charges the above named defendants with unlawful common carrier operations by auto truck between San Francisco, Oakland, Alameda, Berkeley, Richmond, Emeryville and San Leandro on the one hand, and Los Angeles, Vernon, Huntington Park and Pasadena on the other hand, serving also as intermediate points various cities, towns, communities, and other points en route.

Defendants W. M. Petty, S. O. Dimmick and George J. Hall, Jr., by written answer, deny generally and specifically all the material allegations in said complaint.

Public hearings on said complaint were held before Examiner Satterwhite at San Francisco, the matter was duly submitted and is now ready for decision.

The evidence shows that the defendants S. O. Dimmick and George J. Hall, Jr. are copartners, doing business under the fictitious name of United Forwarders, and have been engaged in the truck transportation business between San Francisco and Los Angeles and way points for three or more years last past.

They maintain freight terminals at Los Angeles and San Francisco. They enjoy at the present time the patronage of about 120 customers who are shippers and business establishments located equally at the two chief terminal cities. The volume of freight traffic transported is quite large and necessitates almost weekly trips in both directions between San Francisco and Los Angeles.

The record shows that the transportation enterprise of defendants is almost identical with the scheme and design put into effect and operation by the Universal Forwarding Company which was recently enjoined by this Commission in Motor Freight Terminal Co. v. Dean, 37 C.R.C. 862.

Defendants own no truck equipment, but have at their beck and call a large number of individual and uncertificated truck owners and operators who transport shipments upon request of defendants. Defendants obtained their trucking business by personal solicitation and by business contacts with shippers. Upon request for transportation services defendants either consolidate shipments or transport individual shipments for their various patrons between Los Angeles and San Francisco and way points. Shipments are

consolidated at their terminals and are brought to the terminals either by a pick up truck engaged for that purposes or by one of the itinerant truck owners. The truck owner when selected and hired by the defendants is required to sign an agreement upon a printed form as follows:

"Contract No. _____

From United Forwarders ----- (San Francisco)
 To United Forwarders ----- (Los Angeles)

Driver _____ Date _____ Time Out _____
 Truck _____ License _____ Motor No. _____

United Forwarders
 771 Towne Avenue
 Los Angeles, California

United Forwarders
 274 Brannan Street
 San Francisco, California

Freight Bill #	Consignee	Consignor	Desti- nation	No. of Parcels	Weight
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Received at _____, California, _____ 193____, from United Forwarders the property described above in good order and condition, except as noted, consigned to United Forwarders at _____, California, which I agree to transport to the place of business of United Forwarders at destination by auto truck. It is understood and agreed that I will deliver said goods at destination within a reasonable time (which is hereby agreed to be 24 hours) and shall deliver same to United Forwarders in like good order and condition as received by me, excepting only damage thereto caused by the act of God, public enemies, the authority of the law or the act or default of the shipper, or owner, or natural shrinkage, for a sum equal to not less than \$5.00 per ton, and it is hereby agreed that such amount shall not be paid before 10 days from the date of this contract except at the option of the Company. It is agreed that the truck operator or driver is not to receive any advance until said property has been delivered, and said party or parties waive all right of lien upon said property.

 Truck Operator.

The shipper or customer, with some exceptions, is called upon to sign in triplicate the following form of agreement, which the defendants also require the driver to sign on delivery of the shipment for transportation:

"UNITED FORWARDERS
Consolidators - Shippers' Agents

Los Angeles
771 Towne Avenue
Vandike 7368

San Francisco
274 Brannan Street
Sutter 1185

Received at _____ Date _____
From _____ Address _____

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which the United Forwarders, agrees and undertakes to have transported via a reliable contract truck carrier to said destination. It is mutually agreed and understood that the United Forwarders, owns, controls, operates or manages no auto trucks used in the business of transportation of property, or as a common carrier, for compensation or otherwise, over any public highway between fixed terminal or over regular routes or otherwise, and that the sole undertaking of the United Forwarders, is to hire on behalf of the consignor herein a reliable contract truck carrier to transport the goods from origin to destination within a reasonable time and at a contract rate not in excess of that set forth below:

Consigned to _____		State _____
Destination _____		
No. Packages	Description of articles Special marks and exceptions.	Weight Rate Charges
		If Charges to be pre- paid, write or stamp "TO BE PREPAID."
		Shipper's C.O.D. Charge \$
		Shipper's Advance Charge \$

TOTAL		

By _____ Shipper		UNITED FORWARDERS
Address _____		By _____ "

It appears that in several instances where the shipper has preferred to use his own Bill of Lading he has been permitted to do so. In nearly all instances where transportation business is secured by defendants the shipper is at least aware of or his attention is called to the language of the defendants' Bill of Lading (Exhibit No. 1) wherein it is recited that the defendants "own, control, operate or manage no auto trucks" and "that the sole undertaking of defendants is to hire on behalf of the consignors a reliable contract truck carrier to transport his goods."

The evidence shows, however, that the truck owners or operators have no contractual relations of any kind with the shippers nor any contact at all with them save and except when shipments are called for, and they rely wholly upon the favor of defendants for the employment of their trucks. The shippers have no control over the selection or management of drivers. Collections are uniformly made from the shippers by defendants, and not by the truck drivers. The record indicates that shippers, in spite of their knowledge of the above quoted provisions of the Bill of Lading (Exhibit No. 1), look to the defendants as the sole contracting party and wholly responsible for the safe transportation of their goods from the time they leave the shippers' door to the time of delivery. This is clearly shown by the fact that the shippers insist upon cargo insurance being carried by the defendants to insure direct responsibility from the defendants for damages to merchandise en route. The defendants in soliciting business assert and take direct responsibility for the safe and satisfactory transportation of all shipments and take full liability in employment, control and management of every truck driver and operator used in their transportation business. There is no testimony in the record indicating that any shipper in the slightest degree interprets the above quoted portion of Exhibit 1 as making a truck driver or owner responsible at all to him for the safe hauling of his merchandise. On the contrary, the evidence shows that many shippers interpret the defendants' Bill of Lading as nothing more than a receipt. This interpretation arises no doubt from representations made the shippers by the defendants to

the effect that they are made directly liable by full cargo insurance and by giving high references as to their financial responsibility. The testimony shows that the truck driver is a mere incidental factor and only an instrumentality under control of defendants in the execution of an agreement to transport merchandise.

Defendants, with few exceptions, have shown their willingness to accept any proffered transportation business when the rate was satisfactory; and refusals have been made only when the tendered shipments were of light, bulky, perishable or fragile commodities.

We are of the opinion that the truck services of defendants are common carrier operations and their plan of operation is designed to circumvent the law. A cease and desist order should issue.

An order of this Commission finding an operation to be unlawful and directing it to 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. 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; Wernath v. Stamper, 56 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should also be noted that under Sec. 8 of the Auto Truck Transp. Act (Stats. 1917, Chap. 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. 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 S. O. Dimmick and George J. Hall, Jr., doing business under the fictitious name and style of United Forwarders, are operating as a transportation company as defined by Sec. 1. Subdivision (c) of the Auto Truck Transp. Act., Chap. 213, as amended, with common carrier status between San Francisco and Los Angeles and intermediate points without first having obtained a certificate of public convenience and necessity for such operations herein.

Based upon the finding herein and the Opinion,

IT IS HEREBY ORDERED that S. O. Dimmick and George J. Hall, Jr., doing business under the fictitious name and style of United Forwarders, shall cease and desist directly or indirectly or by any subterfuge or device from continuing such operation.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause certified copies of this decision to be personally served upon S. O. Dimmick and George J. Hall, Jr., and that he cause certified copies to be mailed to the district attorney of the City and County of San Francisco, and to the district attorneys of Los Angeles, Kern, Kings, Fresno, Madera,

Merced, Stanislaus, Contra Costa, Ventura, Santa Barbara, San Luis Obispo, Monterey, San Benito, Santa Clara and Alameda counties, and to the Department of Public Works, Division of Highways at Sacramento, California.

IT IS HEREBY FURTHER ORDERED that said complaint, in so far as it refers to W. M. Petty, be and the same is hereby dismissed.

Dated at San Francisco, California, this 24th day of September, 1934.

Leon Whalley
M. J. Linn
M. B. Linn
M. B. Linn
J.
Commissioners.