

Decision No. 27287

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CERTIFICATED HIGHWAY CARRIERS, INC., )  
Complainant, )  
vs. )  
W. R. SWOAPE, )  
Defendant. )

ORIGINAL

Case No. 3661

Lewis A. Clark for Complainant,  
W. R. Swoape in propria persona

BY THE COMMISSION:

O P I N I O N

By complaint filed on August 16, 1933, complainant charges W. R. Swoape with unlawful common carrier operations by auto truck between Los Angeles and Blythe, California, and intermediate points serving El Monte, Pomona, Ontario, Riverside, San Bernardino, Colton, Redlands, Beaumont, Banning, Whitwater, Palm Springs, Indio, Coachella, Thermal, and Mecca.

Defendant denied all the allegations contained in said complaint and alleged that he is operating as a private carrier under contract.

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

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

The defendant has been engaged in the truck transportation business for over a year last past between Los Angeles and Blythe and certain intermediate points. He has owned and operated two semi-trailer trucks adapted to long distance hauling. Defendant has been making at least one round trip weekly between Los Angeles and Riverside and Riverside and Blythe. His eastbound tonnage has consisted almost wholly of groceries and merchandise sold by the Riverside Wholesale Grocery Company to about ten merchants at Blythe. This eastbound transportation service has been rendered under a written agreement with the Riverside Grocery Company who have paid all freight charges.

The defendant has also solicited and obtained from various shippers at Blythe a considerable back-haul or west-bound tonnage consisting of wheat, hay, copper, honey, cotton seed, alfalfa seed and cattle. Defendant has refused to transport anything except in truck-load lots and the above commodities have from time to time during the past year been hauled for various shippers in truck-load lots from Blythe to different consignees along his route at Hemet, Colton, Riverside and Los Angeles. A rate of \$4.00 per ton has been as a rule charged for all back-hauls and the defendant testified that he would accept any back-haul shipment for any one who would give him the business.

We are of the opinion that the back-haul or west bound truck service of defendant is a common carrier operation and a cease and desist order should issue to that effect. The record is not sufficient to justify a cease and desist order as to the east bound movement.

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. or he may be imprisoned for five (5) days, or both. C.C.P. Sec. 1218; Motor Freight Terminal Co. v. Bray,<sup>37</sup> C.R.C. 224; re Ball and Hayes., 37 C.R.C. 407; Wernuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 35 C.R.C. 571.

It should also be noted that under Section 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 W. R. Swoape, said defendant, is operating as a transportation company as defined in Sec. 1, Subdivision (c) of the Auto Truck Transp. Act., Chap. 213, as amended, with common carrier status as to his back-haul or west bound service between Los Angeles and Blythe, serving

Riverside, Colton and Hemet as intermediate points 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. R. Swoape 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. R. Swoape, that he cause certified copies to be mailed to the district attorneys of Los Angeles, Riverside and San Bernardino counties, and to the Board of Public Utilities and Transportation of Los Angeles and the Department of Public Works, Division of Highways, Sacramento, California.

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

Dated at San Francisco, California, this 24<sup>th</sup> day of September, 1934.

Leon Oswald

M. J. Cunn

M. B. Hays

W. H. Hays

Commissioners.