

Decision No. 27143

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC.,)
(A corporation),)
Complainant,)
vs.)
S. W. CORLETT, T. R. DAVIS, and)
S. W. CORLETT and T. R. DAVIS,)
doing business under the fic-)
titious name and style of)
MOTOR TRUCK SERVICE COMPANY,)
First Doe, Second Doe, etc.,)
Defendants.)

Case No., 3688

Reginald L. Vaughan and Scott Elder
for Complainants

Edward M. Berolski for Corlett and
Davis, Defendants

BY THE COMMISSION:

O P I N I O N

By complaint filed on September 19, 1933, complainant charges S. W. Corlett and T. R. Davis, doing business under the fictitious name of Motor Truck Service Company, with unlawful common carrier operation by auto truck between (a) San Francisco and East Bay cities on the one hand and Los Angeles and contiguous territory on the other hand, serving also as intermediate points various cities, towns, communities and other points en route; (b) San Francisco and East Bay cities on the one hand and Petaluma, Santa Rosa and Sebastopol on the other hand, serving also as intermediate points various cities, towns, communities and other points en route; (c) San Francisco and East Bay cities

on the one hand and Sacramento on the other, serving also as intermediate points various cities, towns, communities and other points en route.

Defendants, by written answer herein, deny all the material allegations contained in said complaint.

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

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

From January, 1933, to December 13, 1933, S.W. Corlett and T.R. Davis, co-partners, operated a trucking business under the name of Motor Truck Service Company. On December 15, 1933, the partnership was dissolved and since its dissolution S.W. Corlett individually has continued the business to the present time, also using an additional fictitious name of the Motor Traffic Service Company.

The defendants have adopted in their trucking business a scheme and design of operation wherein they claim that they are acting merely as a traffic agent for the shipper in recommending and securing a reliable truck owner to transport a particular or itemized shipment. The evidence shows, however, that the defendants are not agents at all and while as a matter of fact they own no truck equipment they completely control, manage and select all auto trucks in the conduct of their trucking business.

Defendants have actively solicited trucking business by the usual methods of personal contacts, by letters and business cards. Business headquarters are maintained at both San Francisco and Los Angeles and among their numerous customers

are listed many of the largest business concerns in California as follows:

California Packing Corpn.	Kraft-Phenix Cheese Corpn.
Borden Sales Co.	Pet Milk Co.
Cal. Fruit Growers Exchange	J. George & Co.
Jacobs Malcolm & Burt	Standard Brands, Inc.
Sun Garden Canning Co.	Pratt-Low Preserving Co.
Drew Canning Co.	Tri Valley Packing Co.
General Chemical Co.	Consolidated Oyster Co.
Wesson Oil Co.	Lehman-Watchman Co.
Jacobson-Shealy & Co.	Mission Orange Co.
Dwight Edward Coffee Co.	The Consolidated Beverages, Inc.
Swift & Co.	Cudahy Packing Co.
L. J. Hopkins Co.	Pacific Box Co.
C. R. Cheny Co.	Levy Zentner Co.
Pac. Commonwealth Corpn.	California Poultry Co.
So. California Poultry Co.	Sunset Produce Co.
Barron Gray Canning Co.	DeBack & Co.
J. C. Ainsley Packing Co.	Henry Cowell Lime & Cement Co.
Yosemite Portland Cement Co.	Rosenberg Brothers
American Smelting & Refining Co.	

Defendants, with a few exceptions, enter into no written contracts with their patrons and have made no effort to enter into a continuous arrangement with shippers looking to a course of business for a definite or specified period of time. Defendants will accept and transport only truck load lots and refusals of transportation service have been made in most instances where truck men were unavailable or the shipments were too small. Defendants have an available list of about 40 or 50 truck owners who are not allowed to solicit defendants' patrons on their own behalf. All details of shipments as to commodities, weight, place of pick up and delivery and destination are handled by defendants. Printed instructions on a printed form in triplicate (Ex.6) are given to the truck owner by the defendants as his authority to transport a given shipment as follows:

MOTOR TRUCK SERVICE CO.

_____, 193____

MOTOR TRUCK SERVICE CO., Traffic Agent, for _____, the Shipper, Recommends and Authorizes _____, the Contractor, to transport, according to this Transportation Contract, Articles, Merchandise, and Commodities listed below.
Cargo insured under MOTOR TRUCK SERVICE CO.'s Cargo Policy No.

List of Cargo:

 MOTOR TRUCK SERVICE CO.

By _____

TRANSPORTATION CONTRACT

Remarks:

App. Weight _____
 Scale Weight _____
 Agreed Rate per cwt. _____
 Total Charges _____

INSTRUCTIONS

Load at _____

Deliver to _____

Charges prepaid _____
 Charges collect _____
 Truck Type _____
 License _____

COD for

Merchandise: Amt. \$ _____

Driver _____

Delivery Date _____

I accept the above cargo in good condition, except as noted, and agree to transport it to destination shown, in like condition, at the rate stated above in accordance with terms of this contract and authorize the MOTOR TRUCK SERVICE CO. to collect, for my account, the amount of transportation charges due. The Contractor hereby agrees that the transportation charges shall not constitute a lien on above cargo.

Received in good order

Contractor _____

Consignee _____

By _____

By _____

Shipper _____

By _____

S No. 934 Make all checks payable to MOTOR TRUCK SERVICE CO.

Although the foregoing form recites and purports to show that the defendants are traffic agents for the shipper, the evidence shows that none of the various shippers served by defendants looked to any of the truck owners or held them responsible for the safe or proper transportation of shipments. In fact the shippers were made to understand that the defendants were the chief contracting parties in transporting their shipments from point of origin to place of

destination and cargo insurance was always carried by the defendants for reimbursement of shippers in case of loss or damage. Defendants collected all charges from shippers, maintained a banking account and paid the truck owners for their hauling service by apportioning the charge of each haul between themselves and the driver, ten per cent being retained by defendants and the balance, less two per cent for cargo insurance, going to the truck driver.

During the existence of the partnership, as indicated above, and ever since its dissolution a very large volume of freight has been transported by the defendants as co-partners and by S. W. Corlett as an individual between San Francisco and Los Angeles and way points along the coast and valley highways; between San Francisco and Sacramento and way points, and between San Francisco and Sebastopol.

In order to meet the demands of customers, defendants have been obliged to maintain almost daily trips between San Francisco and Los Angeles and to operate from one to three trucks. Weekly trips have been made quite regularly between San Francisco and Sacramento, in order to serve their patrons between those points. Sebastopol is an apple growing center and during the apple season shipments were moved about 15 or 20 times a week. The record shows that defendants are ready and willing at all times to transport freight for any patron or prospective patron if rates and other hauling terms were satisfactory.

The record shows that the defendant, A. T. Ferguson, was only an employe of the Motor Truck Service Company and the complaint will be dismissed as to him.

After a careful consideration of all the evidence in this proceeding, we are of the opinion that the trucking business of the defendants S. W. Corlett and T. R. Davis is a common carrier service and a cease and desist order should issue against them.

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 and 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; 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 Transportation 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. W. Corlett and T. R. Davis, doing business under the fictitious name and style of Motor Truck Service Company, are operating as a Transportation

Company as defined in Section 1, Subdivision (c) of the Auto Truck Transportation Act, Chapter 213, as amended, with common carrier status between San Francisco and Los Angeles and intermediate points along the coast and valley highways, also between San Francisco and Sebastopol and way points and also between San Francisco and Sacramento and way points without first having obtained a certificate of public convenience and necessity for such operations herein.

Based upon the findings herein and the opinion,

IT IS HEREBY ORDERED that S. W. Corlett and T. R. Davis, doing business under the name and style of Motor Truck Service Company and S. W. Corlett, doing business under the name of Motor Traffic Service Company, 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 S. W. Corlett and T. R. Davis, 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, Modesto, Kings, Fresno, Madera, Merced, Contra Costa, Ventura, San Luis Obispo, Monterey, San Benito, Santa Clara, Alameda and Sacramento counties, and to the Department of Public Works, Division of Highways, Sacramento, California.

IT IS HEREBY FURTHER ORDERED that the complaint, in so far as it refers to A. T. Ferguson, be and the same

is hereby dismissed.

Dated at San Francisco, California, this 15th day
of October, 1934.

Leon C. Kelly
W. H. A. Lee
M. B. Davis
W. H. A. Lee
Frank R. Kelly
Commissioners.