

Decision No. 3779

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,

Complainant,

vs.

Case No. 3779.

RINALDO ROSAIA, ERNEST MAGNATELLIA,
EUREKA TRUCK SERVICE, a co-partnership,
and RINALDO ROSAIA and ERNEST MAGNATELLIA
doing business under the fictitious name
and style of Eureka Truck Service,
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.

Reginald L. Vaughan and Scott Elder, by Reginald
L. Vaughan, for complainant.

Rinaldo Rosaia, in propria persona, for defendants.

BY THE COMMISSION:

O P I N I O N

Regulated Carriers, Inc., alleges that Rinaldo Rosaia (erroneously spelled Rosia), Ernest Magnatellia, Eureka Truck Service, a co-partnership, Rinaldo Rosaia and Ernest Magnatellia doing business under the fictitious name and style of Eureka Truck Service, are conducting a common carrier automobile service for the transportation of property for compensation between San Francisco and Eureka and intermediate points without the authority of a certificate of public convenience and necessity therefor as required by Chapter 213, Statutes of 1917 as amended.

Defendant in his answer denies each and all of the allegations contained in the complaint.

A public hearing was held before Examiner Geary at

Eureka August 30, 1934, at which time the matter was duly submitted and is now ready for a decision.

The record shows that Defendant Rosaia commenced sending his trucks to San Francisco in 1932. Defendant Magnatellia was a partner but has since retired. Rosaia, at the present time, as an individual operates the Eureka Truck Service, making regular round trips of about one or two per week to San Francisco. Only one truck is used in the San Francisco service and defendant's drivers have positive instructions not to handle intermediate points. For some years defendant has been conducting a local truck business in and around Eureka and was engaged in a garage and the sale of gasoline. He also offers his services as a contractor.

It appears from the record in this proceeding that the defendant initiated the San Francisco service to accommodate shipments of evergreens gathered in the forests around Eureka and destined to Los Angeles. These perishables require special attention for they must be kept moist and cool. At San Francisco they are transferred to connecting trucks of other operators and given an expedited service into Los Angeles.

It is further of record that so-called contracts have been executed by the shippers and that because of the frailty of the greens it is impossible to use the railroad or steamer facilities. Northbound shipments, according to this record, consist mainly of fresh fruits and vegetables which are either purchased from G. J. Ferrari, a San Francisco produce merchant, or are assembled by him as an accommodation without charge to the consignees and are forwarded to Eureka on his orders. Ferrari also has a contract with defendant, as have most of the consignees. Nine contracts were entered as exhibits and these covered much of the tonnage now being handled. These contracts are executed on

defendant's typewritten forms, were not organized for the use of any particular shipper, and apparently are being offered to shippers as a desired protection against the requirements of the statute. They are but little more than rate quotations. The shipper assumes no binding obligation as to the amount of the tonnage to be furnished, and this defendant no responsibility of failure to give a service. The shippers and receivers using defendant's trucks also have their tonnage moved by other transportation companies.

The total tonnage hauled by this defendant when compared with the total tonnage moved between Eureka and San Francisco is inconsequential. However, the record shows that the defendant is in fact "operating as a transportation company for compensation over public highways between fixed termini in violation of Section 1(c), (d) and (e), and Section 5 of the Auto Truck Transportation Act."

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 (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 (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 Rinaldo Rosaia is operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Transportation Act (Chapter 213, Statutes 1917, as amended), with common carrier status between Eureka on the one hand, and San Francisco on the other 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 Rinaldo Rosaia 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 Rinaldo Rosaia, 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 22^d day of
October, 1934.

Leon Whitely

W. A. Carr

W. B. Lewis

W. H. [unclear]

W. R. [unclear]

Commissioners.