

Decision No. 27585

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CITIZENS TRUCK COMPANY, LTD.,
COAST TRUCK LINE, a corporation,
LOS ANGELES-NEWPORT FREIGHT LINE,
MOTOR FREIGHT TERMINAL COMPANY,
PACIFIC MOTOR TRANSPORT COMPANY,
REX TRANSFER INTERURBAN EXPRESS
AND FREIGHT LINE,
RICE TRANSPORTATION COMPANY, a
corporation,
RICHARDS TRUCKING & WAREHOUSE
COMPANY, a corporation,

Complainants,

vs.

L. R. KAGARISE, doing business as
KEYSTONE EXPRESS SYSTEM and
J. NELSON KAGARISE, doing business
as KEYSTONE EXPRESS COMPANY,

Defendants.

ORIGINAL

Case No. 3686.

Wallace K. Downey for Motor Freight Terminal Company.
Phil Jacobson for Rex Transfer.
Robert Brennan and Wm. F. Brooks for The Atchison,
Topeka & Santa Fe Railway Company.
Libby and Sherwin, by Warren E. Libby and Harry N.
Blair for J. Nelson Kagarise.
Libby and Sherwin, by Warren E. Libby for L. R.
Kagarise.
H. J. Bischoff for Southern California Freight Lines.

BY THE COMMISSION:

OPINION, FINDINGS, AND JUDGMENT.

By Decision No. 26786 (Exhibit 2), as modified by Decision No. 26893 (Exhibit 4) it was ordered that J. Nelson Kagarise (Keystone Express Company) cease operating as an "express corporation" or "freight forwarder" over the lines of L. R. Kagarise (Keystone Express System) "between points located on the latter's routes numbered 10 to 50, inclusive, on the one hand, and Los Angeles and points between Los Angeles and San Gabriel Boulevard on

the other hand; or to or from any points located on said routes 10 to 50, inclusive, unless in accordance with the existing operative rights of L. R. Kagarise as construed herein." (1) It was also found as a fact that L. R. Kagarise was operating as a common carrier between Los Angeles and points on Routes 10 to 50, inclusive (such routes being described in Decision No. 19410, Application No. 13087) without a certificate or prior right authorizing such operations, and that he was so operating in violation of a specific restriction contained in his operative rights theretofore granted. L. R. Kagarise was ordered to cease and desist from continuing such operations. (2)

L. R. Kagarise, on June 26, 1934, filed in the California Supreme Court a petition for a writ to review the above decisions. Writ was denied on July 19, 1934. (L. R. Kagarise v. Railroad Commission, L. A. No. 14838.) J. Nelson Kagarise filed a like petition on June 30, 1934. Writ was denied on July 19, 1934, and petition for rehearing was denied on August 16, 1934. (J. Nelson Kagarise v. Railroad Commission, L. A. No. 14845.) On September 14, 1934 J. Nelson Kagarise filed a petition for writ of mandamus, which was denied on September 24, 1934. (J. Nelson Kagarise v. Railroad Commission, L. A. No. 14971.) L. R. Kagarise filed an appeal from L. A. No. 14838 in the Supreme Court of the United States. Motion to dismiss was granted and the appeal was dismissed on November 5, 1934. (L. R. Kagarise v. Railroad Commission, Oct. Term 1934, No. 468.) Thus the validity of the desist order has been sustained and that order has now become final.

(1) Decision No. 26786 was personally served upon J. Nelson Kagarise on February 9, 1934 (Exhibit 3) and Decision No. 26393 on March 28, 1934 (Exhibit 5). The effective date of these decisions was extended first to April 2, 1934 (Exhibit 6) and later to May 31, 1934 (Exhibit 7), on which date the desist order became effective.

(2) Decision No. 26786 was personally served on L. R. Kagarise on February 13, 1934. (Exhibit 3.)

On August 23, 1934 the application for order to show cause and affidavit of J. R. Walsh was filed with the Commission. It was alleged therein that J. Nelson Kagarise has been operating as a common carrier, transporting property on the lines of various common carriers, and more particularly over the common carrier truck lines of L. R. Kagarise, among other places, between Los Angeles and San Bernardino; that L. R. Kagarise has no operative right between those points; that notwithstanding the above mentioned desist order, with knowledge thereof, and subsequent to its effective date, J. Nelson Kagarise has refused and failed to comply therewith, and has continued to operate as a common carrier over the common carrier truck lines of L. R. Kagarise between the points mentioned. The affidavit also sets forth two separate counts of specific violations alleged to have occurred on July 6 and 7, 1934.

On September 4, 1934 J. Nelson Kagarise was ordered to show cause on September 21, 1934 why he should not be punished for contempt. (3) On the return date respondent appeared in person and was represented by counsel. Public hearing was had before Commissioner Ware on September 21 and 27, 1934, and the matter submitted on briefs.

At the opening of the hearing respondent moved for a continuance on the ground that L. R. Kagarise was prosecuting an appeal to the United States Supreme Court from the denial of his separate petition for writ of review, filed a notice of supersedeas, and took the position that such filing compelled the granting of the motion for continuance. In such appeal, notice of admission of severance was filed by respondent, permitting L. R. Kagarise to appeal alone. The motion for continuance was properly denied. Respondent also filed a demurrer and a motion to purge and dismiss. The demurrer is overruled and the motion denied.

(3) The order to show cause, together with the affidavit, was personally served upon respondent on September 7, 1934. (Exhibit 1.)

Respondent's answer admits that he has been doing business as an "express corporation" and as a "freight forwarder," and has transported shipments between Los Angeles and San Bernardino over the lines of L. R. Kagarise, but alleges that L. R. Kagarise has the right to operate between such points "when such shipments are not transported through the entire distance upon the same truck or equipment." This claim was decided contrary to respondent's contention in the desist order he is alleged to have violated, and the validity of that order has been sustained by the Supreme Courts of California and of the United States.

Respondent advances several special defenses wherein it is claimed that he has operated over and in accordance with the operative rights of L. R. Kagarise and that the latter has the right to operate in the manner described. The desist order also decided such matters contrary to respondent's contentions.

The question involved in this proceeding is whether respondent, subsequent to the desist order, operated as an "express corporation" or "freight forwarder" over the lines of L. R. Kagarise and between Los Angeles and San Bernardino.

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

Elmer Ahl, traffic manager of "Keystone Express Company" since September 1, 1933, testified that respondent is operating as a common carrier express company under that name, and between September 1, 1933 and the date of hearing, so operated between Los Angeles and San Bernardino daily except Sundays and holidays. Places of business are maintained at 1128 East Fifth Street, Los Angeles, and at San Bernardino. Respondent operates over the lines of "Keystone Express System" from Los Angeles to Pomona, and then over the lines of "Keystone Express System" from Pomona to San Bernardino. "Keystone Express System" is a fictitious name under which L. R. Kagarise does business. Witness has also been employed

by L. R. Kagarise ("Keystone Express System") since September 1, 1933. As traffic manager for respondent, witness does not solicit freight, but supervises traffic and handles rates. He has no one under his supervision, does not know if respondent employs any truck drivers, nor if respondent employs anyone other than himself. Respondent has rate sheets which are given to any "interested shippers or consignees of freight and express." (Tr. p. 65) These are distributed at Los Angeles and at other offices, and some of them show respondent's rates between Los Angeles and San Bernardino.

After being served with a subpoena, Mr. Ahl checked shipping documents to ascertain if two certain shipments were transported on July 6 and 7, 1934. He found one but did not find the other. He did not go through all of the freight bills for those particular dates, but "just a portion", "a couple of hundred." (Tr. p. 72) Shipments from Los Angeles to San Bernardino are accepted by respondent from all shippers. Respondent has an agent in San Bernardino, whom the witness furnishes with such rate information as the agent needs. This agent furnishes shippers with information and takes pick-ups. Mr. Ahl also handles traffic matters for "Keystone Express System" (L. R. Kagarise).

Jack Payne, for six weeks prior to the hearing, has been "dispatcher" for "Keystone Express System" (L. R. Kagarise) at Los Angeles. Prior thereto, and between July 5 and 10, 1934 he was employed as dispatcher at Pomona. At Pomona he had seven men under his supervision. The "System" (L. R. Kagarise) handled freight for "Company" (respondent) during that time. Such freight was transferred from one truck to another at Pomona. At Pomona Mr. Payne daily saw freight that had its point of origin in Los Angeles and its point of destination in San Bernardino. These shipments moved from Los Angeles to Pomona by a truck of "Keystone Express System" (L. R. Kagarise), and moved from Pomona to San Bernardino on a truck of "Keystone Express System" (L. R. Kagarise). All shipments moving from Los Angeles to San Bernardino, or vice versa, were

transferred at Pomona to another truck. Mr. Payne's salary was paid by "Keystone Express System" (L. R. Kagarise).

As dispatcher in Los Angeles Mr. Payne dispatches "pick-up" trucks but not "line" trucks. The office of "Keystone Express System" (L. R. Kagarise) is at 1128 East Fifth Street, Los Angeles, which is the address and location of "Keystone Express Company" (respondent). Mr. P. C. Woodruff dispatches "line" trucks. When calls come in for pick-up service the telephone operator writes them down for the witness, who dispatches a truck to make the pick-up. When he does this he does not know whether the merchandise is to be picked up for the "System" (L. R. Kagarise) or the "Company" (respondent). The pick-up drivers are handed the piece of paper upon which the telephone operator has written the address, and such papers do not designate whether the pick-up is for the "System" or the "Company". The telephone is generally answered "Keystone."

Freight is line hauled to Pomona, unloaded, and the truck returns to Los Angeles. The truck which hauls to San Bernardino originates in Pomona. All of the trucks used are those of "Keystone Express System" (L. R. Kagarise).

Affiant J. R. Walsh, on July 6, 1934, about 5:30 p.m., went to "Keystone Express Company" at 1128 East Fifth Street in Los Angeles, and asked if it took shipments to San Bernardino. Being advised that it did, he left a shipment on the Company's platform. He asked which truck it would go out on, one of the men indicated a particular truck, and witness paid him 66 cents for the shipment. He saw the shipment wheeled into the truck, and then he parked across the street until the truck left about 8:30 p.m. He followed the truck to Pomona, where he inquired when the "truck went to San Bernardino", and was informed that it left about 6 a.m. He asked what sort of a truck it would be, and was told that it would be an International truck and trailer. The next morning he followed such truck to San Bernardino. In an

alley in back of Third Street in that city the witness asked the driver if he had a shipment for J. R. Walsh, and by way of response he immediately received the shipment. Exhibit 8A is a yellow shipping document on a form of "Keystone Express" covering the shipment of one crated auto radiator, weight 165 pounds, from Los Angeles to San Bernardino, and was given to the witness when he left the shipment at the Los Angeles office. Exhibit 8B is a blue duplicate of the above document and was handed to the witness in San Bernardino by the truck driver at the time the shipment was delivered to the witness.

On July 7, 1934 affiant took a second shipment for San Bernardino to the Los Angeles office of "Keystone Express Company" (respondent). This was a box of automobile parts. He asked if deliveries were made on Sunday and was told "no", but that the shipment would be accepted, the truck would go out on Sunday, and delivery would be made Monday morning in San Bernardino. He left the box and received Exhibit 9, which is a yellow shipping document (same form as Exhibit 8A) covering the shipment of one box, weight 55 pounds, from Los Angeles to San Bernardino. Affiant then watched the truck being placed in the back of the lot, on the next afternoon followed the truck to Pomona, and later followed a smaller truck to San Bernardino. Affiant did not receive that shipment at San Bernardino (although he saw the shipment at that city), but returned to Los Angeles and asked the "Company" if such shipment could be sent back to Los Angeles, where affiant received it a few days later. Freight charges both ways were paid by affiant. Exhibit 10 is a blue duplicate of Exhibit 9 and was received by affiant when he received the box at Los Angeles and paid for the return movement. All of the trucks followed by affiant bore the sign "Keystone Express System."

Such are the facts of record. Respondent offered no testimony. Exhibit 11 by reference is Decision No. 19410 in Application No. 13087, decided in 1928 and which granted certain

additional operative rights to L. R. Kagarise, subject to the restriction involved in the desist order alleged to have been violated. Decision No. 19410 has long since become final and its validity, as well as the validity of the later desist order, is no longer open to question. It is clear from Decision No. 19410 that San Bernardino is a point located upon Routes 10 to 50, inclusive, of L. R. Kagarise, and is one of the points as to which the restriction is applicable.

Respondent's briefs refer at length to the rights of L. R. Kagarise and contain arguments to the effect that the Commission was in error in construing such rights and in issuing the desist order. The desist order, however, has been sustained by the courts, and the question presented is whether respondent has been guilty of contempt in violating that order. It is urged that respondent should not be adjudged guilty of contempt because at the time of the filing of the affidavit the appeal of L. R. Kagarise was pending in the United States Supreme Court. It has already been mentioned that respondent was not a party to such appeal, and that motion to dismiss was granted therein. Furthermore, as was held in M. F. T. Co. v. Moyer Forwarding Company (Feb. 27, 1933), Decision No. 25691, Case No. 3149, one may be adjudged guilty of contempt for acts committed during the pendency of a petition for writ of review which attacks the validity of a desist order, and is not relieved from compliance with such desist order merely because of the pendency of such petition. The validity of the contempt judgment in the Moyer case, supra, was sustained by the Supreme Court through denial of petition for a writ. (Moyer Forwarding Co. v. Railroad Commission, S.F. No. 14870.)

F I N D I N G S

1. By Decision No. 26786 (February 6, 1934), as modified by Decision No. 26893 (March 21, 1934), the Railroad Commission ordered that J. Nelson Kagarise operating as "Keystone Express

Company," cease and desist operating as an "express corporation" or "freight forwarder" over the lines of L. R. Kagarise, operating as "Keystone Express System," between points located on the latter's routes numbered 10 to 50, inclusive, on the one hand, and Los Angeles and points between Los Angeles and San Gabriel Boulevard on the other hand, or to or from any points located on said routes 10 to 50, inclusive, unless in accordance with the existing operative rights of L. R. Kagarise as construed therein. By said Decision No. 26786 L. R. Kagarise was ordered to cease and desist common carrier truck operations between Los Angeles and points on said Routes 10 to 50, inclusive. Said orders have never been revoked, annulled, or stayed, but on the contrary have been sustained by the Supreme Court, and at all times since May 31, 1934 have been and now are in full force and effect.

2. A certified copy of said Decision No. 26786 was personally served upon J. Nelson Kagarise on February 9, 1934, a certified copy of said Decision No. 26893 was personally served upon J. Nelson Kagarise on March 28, 1934, said desist order became effective on May 31, 1934, and said J. Nelson Kagarise had personal knowledge and notice of said decisions and the contents thereof on and prior to the effective date thereof, and was able at all times thereafter to comply with said order.

3. The affidavit of J. R. Walsh was filed on August 23, 1934, wherein it was alleged in substance that said J. Nelson Kagarise, notwithstanding the desist order referred to above, with full knowledge of its contents, and subsequent to its effective date, has failed and refused to comply with said order in that he has continued to operate as a common carrier over the lines of L. R. Kagarise between Los Angeles and San Bernardino, California, and more specifically on July 6 and 7, and on July 7 to 9, 1934.

4. Upon said affidavit being filed the Railroad Commission, on September 4, 1934, issued its order directing said J. Nelson Kagarise to appear on September 21, 1934 and show cause

why he should not be punished for the alleged contempt set forth in said affidavit. Said order to show cause, together with the affidavit upon which based, was personally served upon J. Nelson Kagarise, on September 7, 1934. Upon the return date J. Nelson Kagarise appeared in person and was represented by counsel, hearings were had and the matter submitted.

5. Notwithstanding the order of the Railroad Commission contained in its decision above mentioned, the said J. Nelson Kagarise failed and refused to comply with the terms thereof, and continued to and did operate as a common carrier "express corporation" or "freight forwarder" over the lines of L. R. Kagarise between points located on the latter's routes numbered 10 to 50, inclusive, on the one hand, and Los Angeles, on the other hand, particularly between Los Angeles and San Bernardino, the latter of which is a point on said routes numbered 10 to 50, inclusive, and more specifically on July 6 and 7, and July 7 to 9, 1934.

6. The above failure of the said J. Nelson Kagarise to comply with the said order of the Railroad Commission, as set forth in Finding No. 5 above, was and is in contempt of the Railroad Commission of the State of California and its order.

J U D G M E N T

IT IS HEREBY ORDERED AND ADJUDGED that J. Nelson Kagarise has been and is guilty of contempt of the Railroad Commission in disobeying its order contained in Decision No. 26786, as modified by Decision No. 26893, all as more specifically found in Finding No. 5 above.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that for said contempt of the Railroad Commission and its order, said J. Nelson Kagarise be punished by a fine of Five Hundred Dollars (\$500.00); said fine to be paid to the Secretary of the Railroad Commission within ten (10) days after the effective date of this

opinion, findings, and judgment; and that in default of payment of the aforesaid fine, said J. Nelson Kagarise be committed to the County Jail of the County of Los Angeles, State of California, until such fine be paid or satisfied in the proportion of one day's imprisonment for each five dollars (\$5.00) thereof that shall so remain unpaid.

IT IS FURTHER ORDERED that the Secretary of the Railroad Commission, if said fine is not paid within the time specified above, prepare, sign, and issue appropriate order or orders of arrest and commitment in the name of the Railroad Commission of the State of California, to which shall be attached a certified copy of this opinion, findings, and judgment.

IT IS FURTHER ORDERED that this opinion, findings, and judgment shall become effective twenty (20) days after personal service of a certified copy thereof upon J. Nelson Kagarise.

Dated at San Francisco, California, this 10th day of December, 1934.

Leon C. Whelan
W. B. Loring
W. B. Loring
Frank R. Kelly
Commissioners.