

Decision No. 27587

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

VIRGILIO ANTONINI, )

Complainant, )

v. )

T. LANDI, FIRST DOE, SECOND DOE,  
THIRD DOE, FOURTH DOE, FIRST DOE  
CORPORATION and SECOND DOE CORPOR-  
ATION. )

Case No. 3877

ORIGINAL

Louttit, Marceau and Louttit, by D. V. Marceau, for  
Complainant,  
Harry A. Encell for Defendant.

WARE, Commissioner -

O P I N I O N

Complainant is authorized by certificate of this Commission to transport fresh fruits and vegetables between Stockton and San Francisco and Oakland. He complains that defendant has engaged in similar operations without having procured a certificate therefor as required by law. No answer was filed by defendant.

Public hearings were held at Stockton, at which time defendant was represented by counsel. The matter was duly submitted and now is ready for decision.

By the testimony of Leo Casazza, Secretary of San Joaquin Marketing Association; Joe Solari, a grower near Stockton, E. R. Selma, John E. Casens, John Barbieri and E. Rivera, complainant proved that defendant Landi transported fresh fruits and vegetables from Stockton to wholesale houses in Oakland and San Francisco; that he had received compensation therefor and that his vehicles were recognized at the terminals, loading and unloading.

At an adjourned hearing defendant, through his counsel, offered a stipulation that defendant would admit the allegations of the complaint and that the Commission might find that the operations had been conducted illegally and, further, that an order to cease and desist should issue, which order defendant agreed to obey. This offer was accepted by complainant and the matter submitted.

In view of the positive affirmative character of the evidence presented by complainant, the action of defendant may be accepted, also, by the Commission.

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 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.

I propose the following form of order.

O R D E R

IT IS HEREBY FOUND THAT T. Landi is operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Act (Chapter 213, Statutes 1917, as amended), with common carrier status between Stockton and San Francisco and Oakland 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 T. Landi 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 T. Landi; that he cause certified copies thereof to be mailed to the District Attorneys of San Joaquin, Alameda and San Francisco counties and to the Department of Public Works, Division of Highways, at Sacramento.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

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

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

Leon Whissey  
M. A. Carr  
M. B. Harris  
Arthur J. Jones  
Frank R. M.  
COMMISSIONERS.