

ORIGINAL

Decision No. 27621.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

JOE GARCIA,

Complainant,

vs.

JAMES BIHLER & E. T. BIHLER, as
individuals doing business under
the fictitious firm name and
style of Bihler Brothers,

Defendants.

Case No. 3847.

H. E. Lindersmith, for Complainant.

Robert Brennan, Wm. Brooks and H. K. Lock-
wood, for The Atchison, Topeka and Santa
Fe Railway Company.

Reginald L. Vaughan, for Regulated Carriers,
Inc., Intervener on behalf of Complainant.

Knight and Reynolds, by Sidney A. Cherniss
and L. M. Phillips, for Defendant, E. T.
Bihler.

BY THE COMMISSION:

O P I N I O N

By complaint filed on May 31st, 1934, complainant charges defendants, E. T. Bihler and James Bihler, doing business under the fictitious name and style of Bihler Brothers, with unlawful common carrier operations by auto truck of livestock between ranches, packing houses, feed yards and stock yards within the area bounded by the terminal points of Santa Maria, Fresno, Bishop, Imperial Valley, including Calexico and San Diego, on the

one hand, and stock yards, packing houses and feed yards in and about the Cities of Los Angeles and Vernon, on the other hand.

Public hearings were had before Examiner Corman on September 26th, 27th and 28th and October 4th, 1934, on which latter date the matter was duly submitted.

The facts, as developed at the hearings, may be summarized as follows:

E. T. Bihler alleged that James Bihler, his brother, was at one time associated with him in the livestock transportation business, operating under the fictitious name of Bihler Brothers; however, on March 3rd, 1934, he purchased from James Bihler all of his interest in said business and that James Bihler was no longer associated with Bihler Brothers. It appears that E. T. Bihler maintains an office at 4401 Downey Road, Vernon; that James Bihler also maintains a truck at said address; and that James Bihler and truck are frequently employed by E. T. Bihler to transport livestock, particularly when E. T. Bihler's trucks are all engaged in other transportation work. Counsel for defendant, E. T. Bihler, requested that the complaint be amended by deleting the name James Bihler therefrom.

In view of the fact that James Bihler is no longer associated with Bihler Brothers, it appears that the complaint, in so far as it relates to James Bihler, should be dismissed. Hereafter in this opinion, when reference is made to defendant, it should be understood to mean E. T. Bihler. The record shows that defendant has been, for the past two and one-half years, and is now operating over the public highways between Los Angeles and Vernon and points which may be generally described as Calexico, in the Imperial Valley, Fresno, in the San Joaquin Valley, Bishop, in the Owens Valley, San Diego to the south and Santa Barbara on

the Coast Route. The points enumerated above are the extremes and defendant accepts livestock for transportation at many of the intermediate shipping points. Exhibit No. 8, prepared by defendant, sets forth all of the shipments of livestock transported by his trucks during the period of approximately December 1st, 1933, to October 1st, 1934, and shows a fairly constant movement of livestock to Los Angeles and Vernon from the following points - Calexico, El Centro, Brawley, Calipatria, Westmorland, Imperial, El Monte, Puente, Pomona, Bassett, San Gabriel, Bishop, Independence, Big Pine, Bakersfield, Fresno, Oceanside and San Diego. The service rendered on the Coast Route was not as frequent as to many other points but the evidence does show a fairly large number of trips made to points intermediate between Los Angeles and Santa Barbara.

Witnesses representing consignees at Los Angeles and Vernon testified in detail and presented exhibits showing the date of shipment, volume, origin, destination and charges paid. This evidence clearly shows that defendant has been serving many of the livestock dealers in Los Angeles and Vernon with a fair degree of regularity; that no written contracts were entered into; and that the service was performed as a result of oral agreements which principally concerned rates for shipment. Defendant testified that he had not refused to haul for anyone, provided his price was agreed to. The evidence shows that only two witnesses testified that they had been solicited by E. T. Bihler and that no advertisements were carried in newspapers or trade journals; however, many witnesses testified that they had learned of Bihler Brothers through a sign carried on the trucks which read "Bihler Brothers, Livestock Hauling, Kimball 1552."

Defendant has accepted practically all livestock offered for transportation between the points within the territory described above and his operations, while not on fixed schedules, are performed with regularity in response to any and all shippers or receivers and most of the transportation is destined to either Los Angeles or Vernon from regular designated points. The limited amount of services performed to off-route points is not great in volume and does not alter the character of operations between fixed termini.

Defendant does not possess a certificate of public convenience and necessity as a common carrier and has no legal rights to perform a common carrier service as is now rendered to the public. An order should be issued requiring defendant to cease and desist until such time as the operations performed have been authorized according to statute.

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 days or both. C. C. P., Sec. 1218; Motor Freight Terminal Co. vs. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wormuth vs. Stamper, 36 C.R.C. 458; Pioneer Express Company vs. Keller, 33 C.R.C. 571.

It should also be noted that under Section 8 of the Auto Stage and Truck Transportation Act (Statutes of 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 \$1,000.00, 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 E. T. Bihler is operating as a transportation company, under the fictitious name of Bihler Brothers, as defined in Section 1, Subdivision (c) of the Auto Truck Transportation Act (Chapter 213, Statutes of 1917, as amended), with common carrier status between Los Angeles and Vernon, on the one hand, and Fresno, Santa Barbara, Bishop, San Diego and all points in the Imperial Valley and intermediate points on each route, on the other hand, and without a certificate of public convenience and necessity or prior right authorizing such operations.

Based upon the findings herein and the Opinion;

IT IS HEREBY ORDERED that E. T. Bihler 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 E. T. Bihler, and that he cause certified copies thereof to be mailed to the District Attorneys of Los Angeles, Inyo, Kern, Santa Barbara, Ventura, San Bernardino,

Orange, Riverside, San Diego and Imperial Counties, to the Board of Public Utilities and Transportation of the City of Los Angeles and to the Department of Public Works, Division of Highways, at Sacramento.

IT IS HEREBY FURTHER ORDERED that the above entitled complaint, in so far as it relates to James Bihler, is hereby dismissed.

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

Dated at San Francisco, California, this 22nd day of December, 1934.

Leon C. Whedell

W. H. C.

W. B. Harris

W. H. C.

Frank R. Kelly

Commissioners.