

Decision No. 27725

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,
Complainant,

vs.

Case No. 3784.

E. L. BERTAUD, N. BENEDICT and E. L.
BERTAUD and N. BENEDICT doing business
under the fictitious name and style of
Standard Forwarding Company, 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.

ORIGINAL

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

E. L. Bertaud in propria persona and for
defendant N. Benedict.

BY THE COMMISSION:

O P I N I O N

Complainant charges E. L. Bertaud, N. Benedict, and
E. L. Bertaud and N. Benedict doing business under the fictitious
name and style of Standard Forwarding Company, with unlawful
common carrier truck operations over the public highways of the
State of California between fixed termini and over regular routes
between San Francisco, Oakland, Alameda, Richmond, Emeryville,
Berkeley on the one hand, and Los Angeles and contiguous territory
on the other hand, serving the intermediate points en route.

Defendants were notified by registered letter of the
complaint but failed to make formal answer. On August 8, 1934,
personal service was made on defendants by complainant under the
provisions of the Code of Civil Procedure.

A public hearing was held before Examiner Geary on December 19, 1934, at which time the case was submitted upon briefs to be filed January 15, 1935.

The record shows that since about March, 1933, these defendants have been actively engaged in soliciting freight tonnage originating at San Francisco and adjacent points destined to Los Angeles and communities adjacent thereto. At first the business was transacted under the fictitious name of the Atlas Forwarding Company which name was later changed and now is the Standard Forwarding Company.

Defendants own no trucks but have an arrangement with a local San Francisco trucker to occasionally pick up small tonnage lots. The line haul trucks, those moving from San Francisco to Los Angeles, pick up at consignor's place of business practically all of the shipments. These line haul truckers come north with cargo, much of it consisting of oranges and other citrus fruits, and defendants with a knowledge and list of the San Francisco shippers arrange for the southbound loads. The charges, unless shipments are prepaid, are collected by the truckers at points of destination at a rate of 40 or 50 cents per 100 pounds. The revenue is divided on a basis of 70 per cent to the hauler and 30 per cent to these defendants.

Shipments are accepted in any quantity lots, although preference is given to the heavy consignments. Defendants' practice is to use only trucks which have been licensed by the State Board of Equalization. No common carrier operators having certificates of public convenience and necessity from this Commission are employed. As many as 24 different truck operators have been used but it is a practice to regularly give the tonnage to a selected group of three or four. Services are rendered almost every day in the week except Sunday. No northbound traffic is solicited by these

defendants, neither do they desire intermediate point tonnage nor shipments going to points beyond the Los Angeles district, although occasionally, as an accommodation, the tonnage will be accepted. Defendants do not advertise their services but do solicit for the business. They do not carry surety bonds for the benefit of the shippers but promise personally to protect all legitimate claims. Defendant testified that about 36 San Francisco shippers were regularly served.

There were five shipper witnesses who by their testimony explained the method of handling the business to the effect that all commodities would be accepted at any time, that defendants assessed charges at rate of 40 or 50 cents per 100 pounds, issued standard bills of lading, guaranteed the safety of the commodities, and paid loss and damage claims. The testimony also shows that no contracts were offered or entered into by any of the parties. These facts were stipulated as true and correct by 10 other witnesses representing prominent firms who had been subpoenaed by the complainant.

Exhibits were filed showing that the Standard Forwarding Company has printed freight bills, bills of lading and manifest sheets. These latter documents itemize the loads and are given to the truck drivers for their information in distributing the lading.

In Case No. 3799, decided November 5, 1934, Commissioner Carr said:

"That the line haul, whether the business was handled under one name or the other, was performed by various individual truck owners does not take the operations out from the inhibitions of the statute. (See Motor Freight Terminal Co. v. Moye Forwarding Co., 37 C.R.C. 857, certiorari denied Nov. 10, 1932 in Moye Forwarding Co. v. Railroad Commission, S. F. No. 14801; M.F.T. Co. v. Dean, 37 C.R.C. 862; Regulated Carriers v. Universal Forwarders, Decision 26236, Case 3544, certiorari denied Oct. 23, 1933, Universal Forwarders v. Railroad Commission, L. A. 14467; Regulated Carriers vs. Moye (Nov. 13, 1933), Decision 26553, Case 3466; Regulated Carriers v. May (April 16, 1934), Decision 26949, Case 3690.)"

The determination reached in Case 3799 and in the

proceedings therein referred to are controlling in the instant case.

We have carefully considered all the evidence in this proceeding and are of the opinion and hereby find as a fact that E. L. Bertaud and N. Benedict, doing business under the fictitious name of the Standard Forwarding Company are operating as a common carrier within the meaning of Chapter 213, Statutes 1917, as amended between San Francisco and adjacent points on the one hand and Los Angeles and adjacent points on the other, and intermediate points, without having a certificate of public convenience and necessity therefor.

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 \$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

Public hearings having been had in the above entitled case,
IT IS HEREBY FOUND THAT E. L. Bertaud and N. Benedict,
doing business under the fictitious name of Standard Forwarding
Company, are 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 San Francisco and adjacent points on the one hand, and Los
Angeles and adjacent points 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 E. L. Bertaud and N. Benedict,
doing business under the fictitious name of Standard Forwarding
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 per-
sonally served upon each of the defendants, that he cause certified
copies thereof to be mailed to the District Attorneys of San Fran-
cisco, Alameda, San Joaquin, Stanislaus, Merced, Madera, Fresno,
Tulare, Kern and Los Angeles Counties, to the Board of Public Util-
ities and Transportation of the City of Los Angeles 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 4th day
of February, 1935.

Leon Whittell
W. B. Lanning
W. B. Lanning
W. B. Lanning
W. B. Lanning
COMMISSIONERS