

Decision No. 27922

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,  
Complainant,

-vs-

H. G. SPOTSWOOD, W. C. FRITH and  
H. G. SPOTSWOOD and W. C. FRITH, doing  
business under the fictitious name and  
style of Santa Cruz Express, WILLIAM BURNS,  
LEW BURNS and WILLIAM BURNS and LEW BURNS,  
doing business under the fictitious name  
and style of Burns Drayage Company, First  
to Fifth Doe, inclusive, and First to  
Fifth Doe Corporation, inclusive,

Defendants.

ORIGINAL

Case No. 3778

R. L. Vaughan & Scott Elder, for Complainant,  
H. T. Beverly and Edward W. Berolski  
for Defendants, William Burns and  
Lew Burns.

BY THE COMMISSION:

O P I N I O N

By complaint filed on February 2, 1934, complainant charges H. G. Spotswood, W. C. Frith, and H. G. Spotswood and W. C. Frith, doing business under the fictitious name and style of Santa Cruz Express, William Burns, Lew Burns, and William Burns and Lew Burns, doing business under the fictitious name and style of Burns Drayage Company, with unlawful common carrier operations between San Francisco and East Bay cities on the one hand and Santa Cruz, Davenport, Swanton, Capitola, Aptos and intermediate points on the other.

Public hearings were had before Examiner Johnson at Santa Cruz and San Francisco and the matter was submitted on briefs, the last one being filed on February 26, 1935.

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

The Santa Cruz Express was operated by Spotswood and Frith, who were proven successors of the Thornewill Truck Service, which service in its various ramifications has been before this Commission for many years. The Burns Brothers took over this business in January, 1934, and were previously operating locally in Santa Cruz in conjunction with the various outfits that succeeded to the Thornewill business. In fact William Burns entered the trucking business as a driver for Thornewill in 1927. There have been orders to cease and desist against the various operators of the Thornewill Truck Service and the last one was issued against Larry Parsons, for whom William Burns ran the Santa Cruz office, doing the local pick-up work. Burns also worked for Spotswood and Frith. Spotswood and Frith did not appear in this action and it was shown that the Burns brothers succeeded to their business in January, 1934.

The defendants, William Burns and Lew Burns, contended that their operations as long distance haulers were as contract carriers and for experimental purposes during the short period- January 21, 1934, and February 2, 1934, the admitted date of starting operations and the date of filing this complaint. They also asked that all testimony as to operations, subsequent to February 2, 1934, should be stricken out and disregarded, because at the time of the filing of the complaint, they were not proven common carriers.

This contention is made notwithstanding the proof from numerous public witnesses and from the defendants themselves that the operations started on January 21, 1934, were common carrier operations and directly successive to the illegal operations of Thornewill, Mrs. Thornewill, Larry Parsons, Spotswood, Frith, et al.

In fact the operations of the Burns Drayage Company as well as the operations of the Santa Cruz Express were coolly calculated common carrier operations which were designed for the purpose of continuing in existence that illegal operation, the Thornewill Truck Service, first branded as such by this Commission in 1929, (Decision 27413, 33 C.R.C. 45) and last charged as illegal Feb. 24, 1934, (Dec. No. 26828).

A cease and desist order should issue against all the named defendants.

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. or he may be imprisoned for five (5) days, or both. C.C.P. Sec. 1218; Motor Freight Terminal Co. v. Bray,<sup>37</sup> 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, Chap. 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. 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.

ORDER

IT IS HEREBY FOUND THAT H. G. Spotswood, W. C. Frith and H. G. Spotswood and W. C. Frith, doing business under the fictitious name and style of Santa Cruz Express, William Burns, Lew Burns, and Williams Burns and Lew Burns, doing business under the fictitious name and style of Burns Drayage Company, are operating as transportation companies, as defined in Section 1(c) of the Auto Truck Transportation Act, Statutes 1917, Chapter 213, as amended, with common carrier status, between fixed termini and over regular routes and public highways, between San Francisco and Oakland on the one hand, and Santa Cruz, Davenport, Capitola, Aptos and certain intermediate points ~~xxxxxxxxxx~~ in the vicinity of Santa Cruz on the other hand, without having obtained a certificate or certificates of public convenience and necessity or without having any prior right for any or all of such operations.

Based upon the Opinion and the findings herein,

IT IS HEREBY ORDERED that each and all of the following designated transportation companies, to wit: H. G. Spotswood, W. C. Frith and H. G. Spotswood and W. C. Frith, doing business under the fictitious name and style of Santa Cruz Express, William Burns, Lew Burns, and Williams Burns and Lew Burns, doing business under the fictitious name and style of Burns Drayage Company shall cease and desist jointly and severally, directly or indirectly, or by any subterfuge or device from continuing any or all of such operations, hereinabove set forth, and more specifically shall cease and desist, jointly and severally, directly or indirectly, or by any subterfuge or

device from operating as a common carrier between any or all of the following points, to wit: San Francisco and Oakland, on the one hand, and any or all of the following points, to wit: Santa Cruz, Davenport, Capitola, Aptos and certain intermediate points between or in the vicinity of Santa Cruz on the other hand, and shall similarly cease and desist, jointly and severally, from operating as a common carrier between any two or more of the points hereinabove specified and found as being places between which the said H. G. Spotswood, W. C. Frith and H. G. Spotswood and W. C. Frith, doing business under the fictitious name and style of Santa Cruz Express, William Burns, Lew Burns, and William Burns and Lew Burns, doing business under the fictitious name and style of Burns Drayage Company are now operating, unless and until a certificate of public convenience and necessity shall have been obtained from this Commission.

The Secretary of the Commission is directed to cause personal service of a certified copy of this decision to be made upon H. G. Spotswood, W. C. Frith, Lew Burns and William Burns.

This order shall become effective twenty (20) days after the date of personal service.

Dated at San Francisco, California, this 29th day of April, 1935.

John A. Kelly  
W. A. Burns  
W. B. Harris  
John A. Kelly  
FRANK R. KELLY  
 COMMISSIONERS.