

Decision No. 27923

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC.,
a corporation,

Complainant,

vs.

Case No. 3926.

BURKE & HUGHES, INC., A. L. HUGHES,
W. A. BURKE, MRS. ALICE TAPLEY,
STEWART TAPLEY, JACK SULLIVAN,
GEORGE HALL, 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

R. L. Vaughan & Scott Elder for complainants.

Edward M. Berolski for defendants.

BY THE COMMISSION:

O P I N I O N

Regulated Carriers, Inc., in this proceeding filed November 2, 1934, seeks an order requiring defendants Burke & Hughes, Inc., A. L. Hughes, W. A. Burke, Mrs. Alice Tapley, Stewart Tapley, Jack Sullivan and George Hall, to cease and desist common carrier operations for the transportation of property over the public highways for compensation, particularly between San Francisco, Oakland, Alameda, Berkeley, Emeryville, Richmond and San Leandro on the one hand, and Stockton, Sacramento, Los Angeles, Vernon, Huntington Park, Riverside and vicinity and intermediate points on the other. Defendants in answer deny that they are operating or maintaining auto trucks used in the transportation of property as a common carrier over the highways of the State of California between fixed termini or over regular routes.

Public hearings herein were held before Examiner Geary at San Francisco January 14 and 29, 1935, and the cases duly submitted to be briefed. Complainant's opening brief was received February 21, 1935, defendants filed no brief, and under date of April 8, 1935, their attorney advised that none would be submitted upon the warrant that the defendant "corporation is no longer engaged in the business of which the complainant complains."

It appears from the instant record that defendants Burke & Hughes were at one time partners and that the corporation of Burke & Hughes, Inc. was organized in August, 1934. At all times both the partnership and the corporation have maintained offices at No. 7 Front Street, San Francisco. The trucking services to the public have been continuous. Burke, Hughes and Mrs. Alice Tapley at first owned all of the corporation stock. In September, 1934, Burke withdrew and the other two associates now own and operate the business. Testimony was heard from 18 witnesses, 16 of these represented shippers in San Francisco and in the East Bay communities, and defendants Burke and Hughes also gave testimony, Mr. Hughes under a subpoena from complainant.

There were 14 exhibits. The exhibits and the testimony clearly show that these defendants have been accepting property of all kinds for transportation principally in truck load lots. The movements have been mainly from San Francisco to the south, covering practically all points of importance in the San Joaquin Valley and to and including Los Angeles, with a very heavy tonnage between San Francisco and Stockton, also to Marysville and Sacramento. A number of trucks were dispatched daily, except Sunday, to these destinations and the commodities consisted principally of grains and grain products. Defendant Hughes was formerly in the grain business and when transferring his activities to trucking operations secured much grain tonnage from his former business associates and this tonnage was the nucleus of the activities. Defendants own no vehicles or other

operating facilities but use independent truckers and claim to be acting merely as their agents or brokers when as a matter of fact and record the actual execution is in the reverse order. The shipping public have no dealings with the truck owners or truck drivers but rely entirely upon these defendants for the transportation, security of the property, payment of charges and the settlement of loss and damage claims. Copies of the originals of 12 signed contracts, practically identical in arrangement, were presented but they are not controlling and by no means comprise a majority of the shippers served by these defendants.

Further detailed analysis of the record and exhibits would serve no purpose. We find as a fact that these defendants for a number of years have been operating and at the time of submission were operating and were transporting property as a common carrier over the public highways of this state between fixed termini and over a regular route in violation of the provisions of the Auto Truck Transportation Act, Chapter 213, Statutes 1917, and as amended, without having obtained from this Commission a certificate of public convenience and necessity.

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 \$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.

ORDER

IT IS HEREBY FOUND THAT Burke & Hughes, Inc., A. L. Hughes, W. A. Burke, Mrs. Alice Tapley, Stewart Tapley, Jack Sullivan and George Hall 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, Oakland, Alameda, Berkeley, Emeryville, Richmond and San Leandro and certain intermediate points between or in the vicinity of San Francisco, Oakland, Alameda, Berkeley, Emeryville, Richmond and San Leandro on the one hand, and Stockton, Sacramento, Los Angeles, Vernon, Huntington Park, Riverside and vicinity, and intermediate points, and certain intermediate points between or in the vicinity of Stockton, Sacramento, Los Angeles, Vernon, Huntington Park, Riverside and vicinity, and intermediate points on the other hand, without having obtained a certificate or certificates of public convenience and necessity or without having any prior operative right for any or all of such operations.

Based upon the findings herein and the opinion,

IT IS HEREBY ORDERED that each and all of the following designated transportation companies, to wit: Burke & Hughes, Inc., A. L. Hughes, W. A. Burke, Mrs. Alice Tapley, Stewart Tapley, Jack Sullivan and George Hall 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: between San Francisco, Oakland, Alameda, Berkeley, Emeryville, Richmond and San Leandro, and certain intermediate points between or in the vicinity of San Francisco, Oakland, Alameda, Berkeley, Emeryville, Richmond and San Leandro on the one hand, and any or all of the following points, to wit: Stockton, Sacramento, Los Angeles, Vernon, Huntington Park, Riverside and vicinity, and intermediate points, and certain intermediate points between or in the vicinity of Stockton, Sacramento, Los Angeles, Vernon, Huntington Park, Riverside and vicinity, and intermediate points 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 Burke & Hughes, Inc., A. L. Hughes, W. A. Burke, Mrs. Alice Tapley, Stewart Tapley, Jack Sullivan and George Hall 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 A. L. Hughes, W. A. Burke, Mrs. Alice Tapley, Stewart Tapley, Jack Sullivan and George Hall.

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

Dated at San Francisco, California, this 20th day of April, 1935.

John C. Sullivan
M. A. Carr
W. B. Harris
W. H. ...
W. H. ...
 COMMISSIONERS.