

Decision No. 97928

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC.,
a corporation,

Complainant,

vs.

CARL SIRVAIN and CARL SIRVAIN doing
business under the fictitious name
and style of Servain Trucking Company,
FIRST DOE, SECOND DOE, THIRD DOE,
FOURTH DOE, FIFTE DOE, FIRST DOE
CORPORATION, SECOND DOE CORPORATION,
THIRD DOE CORPORATION, FOURTH DOE
CORPORATION, FIFTE DOE CORPORATION,

Defendants.

ORIGINAL

Case No. 3878

R. L. Vaughan & Scott Elder, for complainants.

E. L. Maxwell, for defendant.

BY THE COMMISSION:

O P I N I O N

By a complaint filed July 31, 1934, Regulated Carriers, Inc. seeks a cease and desist order against Carl Sirvain and Carl Sirvain doing business under the fictitious name and style of Sirvain Trucking Company, in the territory between Mountain View, Sunnyvale, Santa Clara, Los Altos and vicinity on the one hand, and San Francisco, Oakland and intermediate points on the other.

At the hearing C. E. Sirvain was substituted for the First Doe. A public hearing was held at San Francisco January 9, 1935, before Examiner Geary and an adjournment taken to February 8 at Mountain View but before the date arrived, attorneys agreed by stipulation that the proceeding be submitted upon the record made at San Francisco January 9, 1935, and that all testimony and evidence

at said hearing for and against Defendant C. E. Sirvain be considered in all respects as fully and completely as if Defendant C. E. Sirvain had been duly served with process and his answer had been filed with the Railroad Commission.

The parties have filed briefs and the matter having been finally submitted is now ready for an opinion and order.

The complainant introduced the testimony of eight witnesses, one of them being Defendant Carl Sirvain, all having been subpoenaed by the complainant; they also presented eight exhibits.

It appears from the record that Carl Sirvain commenced trucking operations in Sacramento some 25 years ago and at different periods did a trucking business at Sacramento, Oakland, San Jose and Mountain View under various names, viz: Mountain View Truck & Transfer Company, Sirvain & Lawrence, Sirvain & Frith, and Sirvain Trucking Company.

In 1929 Carl Sirvain moved to Oroville and for many months was entirely out of the transportation business. Upon his return to Mountain View in 1932, he re-entered the trucking field in partnership with a Mr. Frith, under the name of Sirvain & Frith. After a few months this arrangement was discontinued and a new partnership created with his son C. E. Sirvain, under the name of Sirvain Trucking Company. The latter organization is functioning at the present time with headquarters at Mountain View.

Defendants contended that a certificate is not required, claiming that the trucking operations commenced prior to May 1, 1917, thus creating a prescriptive right. This franchise claim, however, has not been affirmatively proven as required by the statute.

The testimony of the witnesses showed, in the main, that defendants are regularly hauling farm produce consisting of vegetables and fruits collected at the ranches in the territory covered by

the complaint, and also have regularly handled shipments of growers from San Francisco to Mountain View.

The exhibits covering monthly statements of the charges for services rendered indicate a daily regularity of tonnage moved from a large number of consignors to many produce houses in San Francisco, and a few to Oakland firms.

Defendant Carl Sirvain testified to the effect that his trucks haul daily, except Sundays, to practically all of the produce merchants in the two communities and that there were between 300 and 400 growers who use the services during the shipping season. Defendants also filed a written contract executed September 1, 1934, with the Sunnyvale Pea Growers Association of San Jose, whereby they agreed to do the season's hauling of peas into San Jose at a fixed price and furnish cargo insurance to protect the commodity. This is the only written contract placed into the record although testimony of defendants indicated that, in his opinion, oral contracts had been entered into with the shippers. There was, in addition, presented a petition signed by 28 shippers signifying that they had used defendants' trucks at different times since 1916 for the transportation of farm and garden produce and urged that defendants be permitted to continue the work. Defendants' equipment consists of two $1\frac{1}{2}$ -ton Reo trucks, one Packard pick-up truck, and several 5-ton trailers.

Complainant has affirmatively shown that the public patronage has been sought and there is no evidence that any member of the public has been denied defendants' services. The record clearly proves that all of the essential elements of a transportation company are present in defendants' operations and that the business is that of a common carrier for compensation to fixed termini and over the public highways.

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

Public hearings having been had in the above entitled matter,

IT IS HEREBY FOUND THAT Carl Sirvain and C. E. Sirvain, doing business under the fictitious name and style of Sirvain Trucking 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 Mountain View, Sunnyvale, Santa Clara, Los Altos, and certain intermediate points, between or in the vicinity of Mountain View, Sunnyvale, Santa Clara, ^{and} Los Altos on the one hand, and San Francisco, Oakland, and

certain intermediate points between or in the vicinity of San Francisco and Oakland 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 Opinion and the findings herein,

IT IS HEREBY ORDERED that each and all of the following designated transportation companies, to-wit: Carl Sirvain and C. E. Sirvain, doing business under the fictitious name and style of Sirvain Trucking 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: Mountain View, Sunnyvale, Santa Clara, Los Altos, and certain intermediate points between or in the vicinity of Mountain View, Sunnyvale, Santa Clara and Los Altos on the one hand, and any or all of the following points, to-wit: San Francisco and Oakland, and certain intermediate points between or in the vicinity of San Francisco and Oakland 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 Carl Sirvain and C. E. Sirvain, doing business under the fictitious name and style of Sirvain Trucking 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

Carl Sirvain and C. E. Sirvain.

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

Dated at San Francisco, California, this 6th day of May, 1935.

Leon Sirvain
M. A. Lee
M. B. Harris
W. H. Harrison
Frank R. Linn
Commissioners.