

Decision No. 37357

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,  
Complainants,

vs.

Case No. 3796.

J. E. SMITH, J. S. WALTON, J. E. SMITH  
and J. S. WALTON, doing business under  
the fictitious name and style of Golden  
West Truck Agency and/or Golden West  
Truck Line, J. E. SMITH doing business  
under the fictitious name and style of  
Golden West Truck Dispatch, 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 and Scott Elder for complainant.

Edw. M. Berolsky for defendant Smith.

BY THE COMMISSION:

O P I N I O N

This complaint as originally filed and amended charges J. E. Smith, J. S. Walton, J. E. Smith and J. S. Walton doing business under the various fictitious names and styles of Golden West Truck Agency, Golden West Truck Line and Golden West Truck Dispatch, with common carrier operations by auto trucks for compensation over the public highways of the State of California between fixed termini and over regular routes, to wit: usually and ordinarily between San Francisco, Oakland, Alameda, Berkeley, Richmond, Emeryville, San Leandro, and Hayward on the one hand, and (a) Los Angeles and contiguous territory and intermediate points on the other hand, (b) Sacramento, Stockton and intermediate points on the other hand;

also between Calipatria, Westmorland, Brawley, Imperial, Holtville, El Centro and Calexico on the one hand, and Los Angeles, Oakland and San Francisco on the other hand, and that the said operations are unauthorized, illegal and in violation of Chapter 213 of the Statutes of 1917 of the State of California. An order is sought from this Commission requiring defendants to cease and desist from the aforementioned violations of the law.

Public hearings were held before Examiner Geary at San Francisco January 11 and 15, 1935. The matter was submitted, and briefs having been filed April 18, 1935, is now ready for decision.

J. E. Smith was the one defendant filing an answer and complainant offered no evidence in support of its allegations against any of the other defendants. Testimony was given by fifteen shipper witnesses, subpoenaed by complainant. Defendant introduced the testimony of J. E. Smith.

Traffic witnesses appeared on behalf of the Signal Oil Company, Certain-Teed Products Corporation, Paraffine Company, Atlas Powder Company, Trojan Powder Company, John DeMartini Company, Hercules Powder Company, Manasse Black Tanning Company, Pacific Well Pipe Works, Pure Carbonic, Inc., Buffum and Company, Golden West Brewing Company, Levi & Zentner Company and Hunt Hatch Company. These shipping organizations and some others showed that they were or had been forwarding commodities by the trucks operated by this defendant, principally between San Francisco and Los Angeles, although some shipments of produce moved during the season from the Imperial Valley points to San Francisco Bay region.

Defendant specified a large number of uncertificated truck operators employed at different times but now claims to be accepting only the services of some 15 reliable haulers. Compensation paid to the truckers is practically 90 per cent of the total revenue collected. Defendant now claims to serve regularly but five shippers

who furnish 94 per cent of the tonnage, and 80 per cent of this is secured from two concerns, the Golden West Brewery and the Paraffine Company, Inc.

The trucking operations of J. E. Smith (the only defendant proceeded against) were commenced in April, 1933, in partnership with a Mr. Couch, under the name of the Golden West Truck Line. This arrangement terminated in August, 1933, since which date defendant has been furnishing the trucks under the names of the Golden West Agency and Golden West Dispatch under a permit secured from the State Board of Equalization. Offices are maintained in Los Angeles and in Oakland. The only employee is Mr. Smith's daughter who takes care of the Los Angeles office. The tonnage in the first instance consisted entirely of shipments of beer and commenced to move in April, 1933, following the repeal of the Prohibition Act. The original intention apparently was to handle only movements of beer from Oakland to Los Angeles and the return of the empties. Defendant Smith disposed of his one truck early in 1934 and since has been handling the tonnage on a percentage basis, with the truckers owning the equipment. For a time a tonnage was accepted from numerous consignors, the principal shippers being those named at the beginning of this opinion. This tonnage, however, was of small volume and infrequent whereas, at the time this record was submitted, an effort was being made to practically serve only two large concerns, the Golden West Brewing Company and the Paraffine Companies, Inc., whose tonnage now represents the greater part of the total volume of business. The movement of fruits and vegetables out of the Imperial Valley, Stockton and Sacramento territories was seasonal and represents occasional truck loads during the shipping periods. Powder has been moved for the three powder companies named but the shipments have been sporadic, much of the tonnage going to points not reached by railroads or to destinations outside the State of California.

The testimony showed that defendant is now offering a service to the public, that no contracts had been signed, that the service is promptly given, that charges are uniform as between the same points for moving the same commodity and quantity, that loss and damage claims are paid by this defendant, and that practically all of the charges are collected by the defendant. Refusals to transport freight have been made when the shipments were too small or the commodity and rates not satisfactory. The record shows that defendant particularly desires commodities that run to heavy weight and not to bulk. The trucking operations of the defendant have been carried on under verbal arrangement and while no advertising has been done except the distribution of business cards, the record does indicate that tonnage is secured either by direct personal solicitation or by use of the telephone.

It is clear from this record that the defendant at the time this complaint was filed was transporting all property offered, when in quantity lots and adapted to the trucks in use, but that recently he has consolidated his activities and is now claiming to make no particular effort to secure tonnage from other than the two large shippers (beer from the Golden West Brewery and building materials from the Paraffine Company) and a group of five or six smaller concerns. The kind and number of shippers are limited at points of origin in the north, but the consignors and consignees in the south are without number. There is a daily, except Sunday, schedule of 3 trucks per day in each direction between Los Angeles and the San Francisco Bay points. Defendant desires and solicits only 10-ton lots but will accept small commodities as an accommodation. That he in fact was in the past and now is operating a common carrier transportation company between Los Angeles and the San Francisco Bay points is proven, and he having no certificate authorizing such operations, it follows that under the law he must be ordered to cease and desist.

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.

#### O R D E R

IT IS HEREBY FOUND THAT J. E. Smith, doing business under the fictitious names and styles of the Golden West Truck Agency, Golden West Truck Line, and Golden West Truck Dispatch, is 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, Richmond, Emeryville, San Leandro, and Hayward on the one hand, and (a) Los Angeles and contiguous territory and intermediate points on the other hand, (b) Sacramento, Stockton and intermediate points on the other hand; also between Calipatria, Westmorland, Brawley, Imperial, Holtville, El Centro and Calexico on the one hand, and Los Angeles, Oakland and San Francisco on the other hand, and

certain intermediate points between, or in the vicinity of all points named, 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 and the Opinion herein,

IT IS HEREBY ORDERED that each and all of the following designated transportation companies, to wit: J. E. Smith, doing business under the fictitious names and styles of the Golden West Truck Agency, Golden West Truck Line, and Golden West Truck Dispatch, shall cease and desist, 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, 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, Oakland, Alameda, Berkeley, Richmond, Emeryville, San Leandro, and Hayward on the one hand, and (a) Los Angeles and contiguous territory and intermediate points on the other hand, (b) Sacramento, Stockton and intermediate points on the other hand; also between Calipatria, Westmoreland, Brawley, Imperial, Holtville, El Centro and Calexico on the one hand, and Los Angeles, Oakland and San Francisco on the other hand, and certain intermediate points between or in the vicinity of all points named, and shall similarly cease and desist 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 J. E. Smith, doing business under the fictitious names and styles of the Golden West Truck Agency, Golden West Truck Line, and Golden West Truck Dispatch, is now operating, unless and until a certificate of public convenience and necessity shall have been obtained from this Commission.

The Secretary of this Commission is directed to cause personal service of a certified copy of this decision to be made upon J. E. Smith.

IT IS HEREBY FURTHER ORDERED that this case be and the same is hereby dismissed as to defendant J. S. Walton.

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

Dated at San Francisco, California, this 13<sup>th</sup> day of May, 1935.

Iron

M. A. Carr

M. Blevins

Walter

Frank

Commissioners.