

Decision No. 27958

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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REGULATED CARRIERS, INC., a corporation,)

Complainant)

vs.)

Case No. 3812

K. J. SACKETT and K. J. SACKETT doing)

business under the fictitious name and)

style of Atlas Shipping Company and/or)

Atlas Shipping Agency, FIRST DOE, SECOND)

DOE, THIRD DOE, FOURTH DOE, FIFTH DOE,)

FIRST DOE CORPORATION, SECOND DOE COR-)

PORATION, THIRD DOE CORPORATION, FOURTH)

DOE CORPORATION, FIFTH DOE CORPORATION,)

Defendants.)

ORIGINAL

BY THE COMMISSION:

OPINION ON PETITIONS FOR REHEARING
OR MODIFICATION

Decision 27846 (March 25, 1935) ordered K. J. Sackett to desist common carrier trucking operations between San Francisco and Los Angeles. Both sides filed petitions for rehearing or modification. Complainant directs attention to the fact that the Commission inadvertently found defendant's operation to be in violation of the Public Utilities Act rather than the Auto Truck Transportation Act, and asks that the desist order be directed against J. P. Sackett and Howard Sackett as well as against K. J. Sackett. Defendant K. J. Sackett contends that the decision is contrary to the evidence; that he did not become owner of the business until about October 2, 1934 (the last hearing was had on December 4, 1934); that the Commission has arbitrarily assumed jurisdiction over a private carrier; and that the "decision as it stands at this time is a taking of property without due process."

The contentions of the parties necessitate a brief review of the facts and the making of more specific findings. The complaint is against K. J. Sackett and certain "Does." K. J. Sackett alone filed answer. Exhibit 15 consists of certain documents served upon Paul Sackett (J. P. Sackett), being order to satisfy or answer in the present case and a copy of the complaint in Regulated Carriers v. Walker, et al., Case 3472.⁽¹⁾ Such service is not sufficient to confer jurisdiction in this proceeding as to J. P. Sackett.

At one time or another several Sackett brothers have been connected with the business, operated under the name of "Atlas Shipping Agency." It is an outgrowth of the old Moye operation. On August 29, 1932 Moye Forwarding Company was ordered to desist operation between San Francisco and Los Angeles.⁽²⁾ Petition for writ of review was denied by the Supreme Court on November 10, 1932.⁽³⁾ One Lee Case was Los Angeles manager for Moye. On February 27, 1933 Moye Forwarding Company, a corporation, and certain of its officers, including Lee Case, were adjudged guilty of contempt,⁽⁴⁾ and petition for certiorari was denied by the Supreme Court on April 13, 1933.⁽⁵⁾ In

(1) Dismissed without prejudice by Decision 27356, September 11, 1934.

(2) M. F. T. Co. v. Moye Forwarding Co., et al., 37 C.R.C. 857. (Decision 25139, Cases 3149 and 3217.)

(3) Moye Forwarding Company v. Railroad Commission, S.F. No. 14801.

(4) M. F. T. Co. v. Moye Forwarding Co. et al., 38 C.R.C. 506. (Decision 25691, Cases 3149 and 3217.)

(5) Moye Forwarding Company v. Railroad Commission, S. F. No. 14870.

the contempt decision the Commission stated in part as follows:

" As to respondent Lee Case, formerly the Los Angeles manager and a director of the corporation, the record suggests the possibility that he may have continued operating a common carrier service after the denial of the petition by the Supreme Court. The present record, however, does not support a finding to that effect." (6)

In the present case John Paul Sackett testified that he acquired an interest in the business from Lee Case but severed all connection therewith on October 3, 1934, having sold it to K. J. Sackett. (7) He further testified that Howard Sackett worked there "for a little while," and that from 150 to 175 customers were served. The object was to get as much business as possible. No trucks were owned, but arrangements were made with truck owners to haul, the latter receiving

(6) In the contempt decision the Commission also stated further as follows:

"As to the continued use of Moye Forwarding Company forms, Mr. Malde testified that during October, 1932, he ordered 5,000 of such printed forms and received them on November 16, 1932. He stated that he then instructed his dispatcher 'to get rid of them,' but that he afterwards learned that the dispatcher had given half of the forms to Lee Case and half to 'Aetna Shipping Agency.' The witness stated that Aetna Shipping Agency now hauls southbound to Los Angeles and that Atlas Shipping Agency hauls northbound to San Francisco. He believes that Lee Case is manager of Atlas Shipping Agency, * * *." (Emphasis supplied.)

(7) Exhibit 14, on a letterhead of Atlas Shipping Agency, and dated October 16, 1934, reads in part as follows:

"To Whom It May Concern-

I J. P. Sackett do hereby sell, transfer, and assign all my rights title and interest of the, Atlas Shipping Agency 814 E. 29th st Los Angeles Calif, to K. J. Sackett.

I K. J. Sackett to hereby agree to assume all debts, liabilities and to pay all checks made out by me or himself, during my operation of the Atlas Shipping Agency up to and including October 15th 1934.

Signed. K. J. Sackett

Signed. J. P. Sackett "

72½ per cent and the "Agency 27½ per cent of the revenue. From 12 to 14 trucks were operated at one time.

Thad. Sackett, a salesman, testified that he now had no connection with the business, but formerly and for a period of about six weeks, drove a truck of one Fred Warner which was "contracted" by the "Agency."

According to K. J. Sackett, about 18 drivers and 175 customers are shown in the ledger. Defendant was a truck driver for Moye Forwarding Company, which stopped operating on September 19, 1933. He then worked for Lee Case until January 15, 1934, when his brother John Paul Sackett became owner. The latter gave him power of attorney to sign checks for "Atlas Shipping Agency." Exhibit 9 is a business card of defendant. (8)

Various shipper witnesses testified. Globe Ticket Company at Los Angeles (Witness P. W. Thompson) first used Moye Forwarding Company and continued with "Atlas Shipping Agency" when the latter took over the Moye operation. Exhibit 5 and a portion of Exhibit 4 consist of numerous shipping documents on "Atlas" forms covering shipments between June 30, 1933 and September 27, 1934. (9) Many of these shipments were collect.

(8) Exhibit 9 reads as follows:

"Los Angeles
814 E. 29th St.
ADams 5196

San Francisco
490 -5th St.
SUTter 9588

ATLAS SHIPPING AGENCY

K. J. SACKETT

Full Insurance
Protection
C. O. D. BOND "

(9) Among the San Francisco consignees are the following:
Market Street Railway Company Paramount Theatre
White Tavern Operating Company Loew's Warfield Theatre
Curran Theatre Samets Dairy Lunch
United Artists Theatre Geary Theatre
R. K. O. Golden Gate Theatre Embassy Theatre
Gene Comptons Corporation Hancock Brothers

Exhibit 3 and a portion of Exhibit 4 consist of shipping documents covering shipments from Los Angeles by Coffee Products Company of America. ⁽¹⁰⁾ Exhibit 1 covers shipments from June 15 to December 31, 1933, and Exhibit 2 shipments from January to August 22 of 1934 by Kip Corporation, Ltd. of Los Angeles. ⁽¹¹⁾ Exhibit 11 consists of copies of several "manifest sheets" showing the loads carried on particular trips. ⁽¹²⁾

Witness Jacobs of J. M. Feldman Co. Inc. testified to some 19 shipments from August 10 to September 10, 1934. Sales Builders, Inc.

(10) San Francisco consignees were H. E. Teller Co. and New Polk Grill.

(11) Among the 1934 San Francisco consignees are the following:

| | |
|----------------------|--------------------------------|
| The Owl Drug Company | E. D. Bullard Co. |
| Coffin Redington Co. | Mutual Drug Co. |
| The Drug Exchange | McKesson, Langley Michaels Co. |
| Weinstein Co., Inc. | Shumate Drug Co. |

(12) Trip No. 1330, April 4, 1934 shows shipments as follows, the number of packages and weight being omitted, consignors being at Los Angeles and consignees at San Francisco:

| From | To | <u>Collect Charges</u> |
|-------------------|-------------------|----------------------------|
| Western Stove | Danford Sales | |
| Raybestos Div. | Same | |
| Kelp Oil Lab. | McKesson-Langley | |
| C. F. L'Hommedieu | Dalmo Mfg. Co. | |
| Leahy Mfg. Co. | E. A. Connelly | |
| J. M. Feldman | Same | |
| do. | Same | |
| Kip Corp. | McKesson-Langley | |
| Sontag | Same | 8.24 |
| San Nap Pak | National \$ Store | 1.35 |
| do. do. | A Pearson. | 1.00 |

The last three of the above shipments are marked "collect charges" as indicated.

Los Angeles (Witness T. A. Loretz), cosmetics and toilet articles, made 114 shipments from September of 1933 to February of 1934. Easterson Radio Co. (Witness M. Burton) of Los Angeles has made a few shipments to San Francisco. Talbot Manufacturing Co. (Witness Campbell), household and garden insect supplies, made 193 shipments during 1934. The service has also been used by Merchants Supply Co. (Witness Prine), bird cages and general pet supplies; Jaffee Candy Co. (Witness J. Jaffe); Nassour Bros. (Witness West), hosiery, and by various other shippers. On its letterhead and forms of shipping documents "Atlas Shipping Agency" describes itself as "Freight Forwarding Agents."

It is well established that direct ownership of the trucks used in performing a common carrier service is not essential to bring one within the scope of the regulatory statute, which prohibits common carrier operation in the absence of a certificate of public convenience and necessity or a so-called "prior operative right."⁽¹³⁾

- (13) M. F. T. Co. v. Moye Forwarding Co. (1932), 37 C.R.C. 857. Certiorari denied Nov. 10, 1932, Moye Forwarding Co. v. Railroad Commission, S.F. No. 14801. (Shipments transported "by using the facilities of truck owners or operators under so-called verbal contracts.")

Regulated Carriers, Inc. v. Universal Forwarders, Ltd. (Aug. 14, 1933), Decision 26230, Case 3544, Certiorari denied Oct. 23, 1933, Universal Forwarders, Ltd. v. Railroad Commission, L. A. No. 14467. (Individual truck drivers paid 65% of the load revenue.)

Regulated Carriers, Inc. v. Hunsacker (Sept. 4, 1934), Decision 27330, Case 3521. Certiorari denied January 7, 1935, Hunsacker v. Railroad Commission, S.F. No. 15306. (72% of revenue paid to truck drivers, 25% retained as "commission" and 3% for insurance.)

M. F. T. Co. v. Dean (1932), 37 C.R.C. 862. (Individual truck operators "bid" on loads.)

S. D. Forwarding Co. v. Kent Consolidators (April 3, 1933), Decision 25794, Case 3353. (Business usually furnished to lowest bidder for line haul.)

Regulated Carriers, Inc. v. Imp. Mchts. Ass'n. Ltd. (Nov. 10, 1933), Decision 26579, Case 3582, (Truck hired as needed at charge including driver.)

Regulated Carriers, Inc. v. May (April 16, 1934), Decision 26949, Case 3690. (Defendant received 10% of charge plus additional amount for insurance and truck owner received balance.)

From a review of the facts, it is clear that 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 (Stats. 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.

(13) Cont'd.

Regulated Carriers, Inc. v. Ransey (May 21, 1934), Decision 27087, Case 3590. (Defendant collected 2 $\frac{1}{2}$ % for insurance plus 10% for services as "agent.")

Regulated Carriers, Inc. v. Corlett (Oct. 15, 1934), Decision 27443 Case 3688. (Defendant retained 10% and paid balance, less 2% for insurance, to truck drivers.)

Regulated Carriers, Inc. v. Thorkildsen (Oct. 29, 1934), Decision 27477, Case 3805. (Truck owners received 75%, defendant retained 25%.)

ORDER ON PETITIONS FOR REHEARING OR MODIFICATION.

Petitions for rehearing or modification of Decision 27846 having been filed by complainant Regulated Carriers, Inc. and by defendant K. J. Sackett, the Commission having considered said petitions, and good cause appearing,

IT IS ORDERED that the order contained in Decision 27846 is hereby modified to read as follows:

" O R D E R

IT IS HEREBY FOUND that K. J. SACKETT, doing business under the fictitious name and style of ATLAS SHIPPING AGENCY, is operating as a transportation company, 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 LOS ANGELES on the one hand, and SAN FRANCISCO on the other hand, without having obtained a certificate of public convenience and necessity or without having any prior operative right for any of such operation.

Based upon the opinion on petitions for rehearing or modification and the findings herein,

IT IS HEREBY ORDERED that the following designated transportation company, to wit: K. J. SACKETT, doing business under the fictitious name and style of ATLAS SHIPPING AGENCY, shall cease and desist, directly or indirectly, under the name of ATLAS SHIPPING AGENCY or otherwise, or by any subterfuge or device from operating as a common carrier between any or all of the following points, to wit: LOS ANGELES on the one hand, and any or all of the following points, to wit: SAN FRANCISCO on the other hand, 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 opinion and order on petitions for rehearing or modification to be made upon K. J. SACKETT and upon K. J. SACKETT, doing business under the fictitious name and style of ATLAS SHIPPING AGENCY.

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

Dated at San Francisco, California, this 13th day of May 1935.

Leon Curran
M. A. Curran
M. B. Curran
G. W. Curran
W. R. Curran
Commissioners.