

Decision No. 27983

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,

Complainant,

vs.

D. J. JAMES and D. J. JAMES doing business
under the fictitious name and style of In-
dependent Contract Carrier Company, FIRST
DOE, SECOND DOE, THIRD DOE, FOURTH DOE,
FIFTH DOE, FIRST DOE CORPORATION, SECOND
DOE CORPORATION, THIRD DOE CORPORATION,
FOURTH DOE CORPORATION, FIFTH DOE CORPOR-
ATION,

Defendants.

Case No. 3921.

Reginald L. Vaughan, for Complainant.

Edward M. Berolski, for Defendant, D. J. James.

A. S. Groocox, for Board of Public Utilities
and Transportation, an Interested Party.

CARR, Commissioner:

O P I N I O N

By complaint filed on October 24th, 1934, complainant charges D. J. James and D. J. James doing business under the fictitious name and style of Independent Contract Carrier Company, as well as various defendant Does, with unlawful common carrier operations by auto truck between Los Angeles, Huntington Park, Bell, Vernon, Long Beach and Pasadena, on the one hand, and San Francisco, Oakland, Alameda, Berkeley, Emeryville, Richmond and San Leandro and intermediate points, on the other hand. D. J. James was the only defendant served or who appeared.

A public hearing was had on May 8th, when the case was

submitted.

The facts as developed at the hearing may be summarized
(1)
briefly as follows:

On September 4th, 1934, the Commission issued its decision in Regulated Carriers, Inc. v. A. W. Miller, et al, (Decision No. 27331 in Case No. 3560), ordering the defendants to cease and desist certain operations between Los Angeles and vicinity and San Francisco and Oakland, the operations in question being carried on under the fictitious name of Shippers Association. The service here involved seems to be a mere continuation of the service there inhibited.

The defendant, D. J. James, who had some slight connection with the Shippers Association but was not a defendant in the case referred to, following the cease and desist order, conceived the idea and gradually became convinced, according to his testimony, that there was need for a reliable trucking service between Los Angeles and San Francisco. He got his father interested in the idea. After a short interval and about the last week in September, 1934, a new service, under the name of Independent Contract Carriers, came into existence, with a patronage not dissimilar to that enjoyed by the Shippers Agency. At first there

(1) Among the witnesses who testified as to the scope and character of, and responsibility for, the operations complained of were the following:

Paul Smith, Manager, Electric & Carburetor Engineering Company; E. Price, Secretary and Treasurer, Price-Pfister Brass Mfg. Co., Inc; M. W. Morr, Traffic Manager, Wm. Volker & Co., floor coverings, window shade cloth, etc; Wm. F. Holve, Office Manager, Neptune Meter Company; O. A. Caldwell, Credit Manager, General Paper Company; W. S. Calkins, Credit Man and Office Manager, General Paint Corp; W. H. Shaw, Traffic Manager, California Hardware; F. B. Patterson, picking up and delivering for Independent Contract Carriers; D. J. Hollohan, General Clerk, California School Book Depository; C. C. Huffman, Treasurer, Fulghum & Co., manufacturer of paints, etc; R. H. Boynton, Laboratory Manager, Bronchi-Lyptus Laboratory, cough syrup; M. E. Baer, Owner of the Baer Company, bakery supplies; D. Leeper, shipping clerk and Assistant Traffic Manager, Columbia Mills, Mfg. of window shades, etc; C. A. Payne, Manufacturer's Agent of H. B. Squires, electric supplies; Leo L. Corder, Asst. Mgr., Schermerhorn Bros. Co., rope, twine and cordage; and D. J. James, the defendant.

were no written contracts for transportation. Shortly after the complaint herein was filed, "contracts" were negotiated with the following named shippers at the dates specified, the contracts being in the general form set out in the foot note (2) varying only

(2)

"A G R E E M E N T"

THIS AGREEMENT entered into this 13th day of December, 1934, by and between GENERAL PAPER COMPANY, a corporation organized and existing under and by virtue of the laws of the State of California, and doing business therein, hereinafter referred to as FIRST PARTY,

and

INDEPENDENT CONTRACT CARRIERS, with a principal place of business in the City and County of Los Angeles, State of California, hereinafter referred to as SECOND PARTY,

W I T N E S S E T H:

WHEREAS, FIRST PARTY in the usual and ordinary conduct of its business, has from time to time certain commodities, as specified in the schedule hereto attached(a), marked Exhibit "A," to transport to and from various parts of the State of California, and

WHEREAS, FIRST PARTY is desirous that said commodities be transported on its behalf by SECOND PARTY, and

WHEREAS, SECOND PARTY is willing and desirous of transporting said commodities on behalf of FIRST PARTY by means of auto truck,

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES HEREIN CONTAINED, AND THE PROMISES FROM ONE TO THE OTHER, IT IS HEREBY AGREED AS FOLLOWS:

FIRST: SECOND PARTY will transport commodities of FIRST PARTY from time to time, and to and from such places as FIRST PARTY may designate, which transportation service should be performed by means of auto trucks.

SECOND: FIRST PARTY agrees to place with SECOND PARTY for transportation during the life of this agreement, not less than fifty (50) tons per year of the commodities hereinbefore mentioned.

THIRD: FIRST PARTY agrees to compensate SECOND PARTY for said transportation service at and in accordance with charges specified in the schedule hereto attached, marked Exhibit "A," and by this reference made a part hereof. If, in the event FIRST PARTY shall require SECOND PARTY to transport commodities to and from places not mentioned in Exhibit "A" herein, then and in that event the charge shall be mutually agreed upon between the parties.

FOURTH: SECOND PARTY shall at all times in the conduct of the transportation service herein provided for, have available for the requirements of the FIRST PARTY, good and sufficient equipment and capable and well trained drivers.

FIFTH: SECOND PARTY agrees to carry Cargo Insurance, Fire Insurance, Public Liability Insurance, Sprinkler Insurance of the

(a) Annexed schedule of rates omitted.

as to name, date and volume of guaranteed tonnage:

November 20,	1934	U.S. Rubber Company
December 7,	"	Repcal Brass Mfg. Company
December 7,	"	William Volker & Company
December 10,	"	Columbia Mills
December 10,	"	California Brass Mfg. Company
December 10,	"	Andrews Heater Company
December 13,	"	General Paper Company
December 21,	"	A. C. Abbott Products Company
December 28,	"	California School Book Depository
December 28,	"	John E. Davis Company
December 28,	"	Ferry Morse Seed Company
December 28,	"	Sunset Line & Twine Company
December 31,	"	Schloss Mfg. Company
December 31,	"	Fruit Industries, Ltd.
December 31,	"	Noptune Meter Company
December 31,	"	Electric & Carburetor Engineering Co.
December 31,	"	Woolwine Metal Products Company
January 8,	1935	Blake Moffitt & Towne
January 22,	"	Garnett Young & Company
January 25,	"	Scriven & Quinn, Inc.
February 1,	"	Benjamin Electric Mfg. Company
February 13,	"	Stromberg Carlson Telephone Mfg. Co.
February 25,	"	Griffin Pipe & Supply
February 28,	"	Cambridge Wheatley Company
February -,	"	W. & J. Sloane, as selling agents
April 18,	"	American Meter Company, Inc. and Pacific Meter Works

Even after these written contracts were negotiated, service was not confined exclusively to the parties to such contracts but other shippers were served under circumstances hardly consistent

(2) -(Continued)

usual and customary kind; Cargo Insurance ten thousand (\$10,000.00) dollars to fifteen thousand (\$15,000.00) dollars; Public Liability, fifty thousand (\$50,000.00) dollars to one hundred thousand (\$100,000.00) dollars. The above mentioned insurance is of the usual and customary kind protecting the FIRST PARTY against any and all loss, damage or breakage to said shipments transported in accordance with the terms of this agreement, while in the custody of SECOND PARTY, its agents or employees, said insurance to protect FIRST PARTY from such losses on any one shipment.

SIXTH: This agreement shall remain in full force and effect for a period of one year from the date thereof and shall continue thereafter until cancelled upon three days' written notice; either party may cancel this agreement for the breach of any of the provisions herein contained.

IN WITNESS WHEREOF, we have hereunto affixed our hand and seal the day and year in this agreement first above written.

<u>GENERAL PAPER COMPANY</u>	D.B.A. <u>Anthony James</u> INDEPENDENT CONTRACT CARRIERS
By <u>J. ARTHUR KELLY, Mgr.</u> FIRST PARTY	By <u>ANTHONY JAMES</u> SECOND PARTY

with the idea of a bona fide private operation.

The operations here involved were of considerable magnitude, grossing, according to the testimony, some \$5,000 monthly. Trucks plied between Los Angeles and San Francisco almost daily. Sometimes several trucks were necessary. Customers were billed usually each month. Statements furnished had attached shipping bills or invoices on regular forms prepared by the service, giving full data as to each shipment and the charge therefor. Sometimes shipments were made on uniform bills of lading. Cargo and other insurance was carried. The actual line haul was made by various truck owners, these owners getting 70% (less the cost of insurance), of the gross receipts from the freight carried. The operation in this respect was similar to those referred to in Asbury Truck Company v. Ball, Decision No. 27515, dated November 5th, 1934, in Cases Nos. 3799 and 3881, and the cases there cited.

In view of the fact that the service here under attack seems to have been a continuation of that formerly conducted under the name of Shippers Association, that it was carried on for a considerable period without definite contracts and was not confined to the transportation of freight for contractees, as well as the very considerable number of contracts and the circumstances under which they were negotiated, the conclusion follows that the service was common carrier in nature.

So far as the evidence is concerned, it must be concluded that the service was owned by Anthony James, the father of the defendant. The various contracts in evidence declare him to be the owner of the business. Without objection there was introduced in evidence a statement from the Manager of the Pico and Normandie Branch of the Security-First National Bank, declaring that "on September 27th, 1934, we opened an account in the name of Independent Contract Carriers, with Anthony James as sole owner." The

account was declared to have been an active one since that date and with no change in ownership. The defendant, D. J. James, testified positively that he had no interest in the business but was employed by his father as manager at a salary of \$35.00 a week. While the testimony, as a whole, does not leave the mind entirely free from suspicion as to the ownership of this business, a mere suspicion does not justify an affirmative finding that the defendant had an interest in the business other than as an employee.

May a salaried manager of such a business as this be subjected to a cease and desist order, the owner of the business not being before the Commission? A negative answer to this query seems to be required by Regulated Carriers, Inc. v. Carlett, Decision No. 27443, dated October 15th, 1934, in Case No. 3688; Motor Freight Terminal Company v. Morris Trucking Company, 37 C.R.C. 475; and Certificated Highway Carriers, Inc. v. Willie Block, Decision No. 27939, dated May 6th, 1935, in Case No. 3940. It is true that in Asbury Truck Company v. Ball, supra, the Commission did direct a carefully limited order against certain truckers performing the line haul service. This order, however, was confined to "assisting, aiding or abetting" the operations there inhibited as against the responsible owners of the business who were before the Commission as defendants.

Counsel for the defendant stated, without contradiction, that he had advised counsel for complainant some ten days before the hearing that D. J. James was not the owner of the business complained of but a mere employee and that the business was owned by the father, Anthony James. Counsel for the complainant thus had an opportunity to bring Anthony James before

the Commission as a party defendant. Under the circumstances here present, the Commission should not go further than was done in Asbury Truck Company v. Ball, supra. This conclusion calls for the dismissal of the complaint which, however, should be without prejudice to another case with the proper and necessary parties.

I recommend the following form of order.

O R D E R

This case having been heard and submitted,
IT IS HEREBY ORDERED that the complaint be dismissed without prejudice.

The effective date of this order shall be twenty (20) days after the date hereof.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

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

Leon C. Wherry

W. A. Lewis

W. B. Lewis

Walter J. ...

Frank R. ...

Commissioners.