

Decision No. 27984.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,

Complainant,

vs.

J. L. CAHILL and J. L. CAHILL doing business under the fictitious name and style of Tri-City Freight Forwarders and/or Tri-City Freight Association, 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

Case No. 3985.

Reginald L. Vaughan, for Complainant.

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

CARR, Commissioner:

O P I N I O N

By complaint filed on March 12th, 1935, complainant charges J. L. Cahill and J. L. Cahill doing business under the fictitious name and style of Tri-Cities Freight Forwarders and/or Tri-Cities Freight Association, as well as various defendant Does, with unlawful common carrier operations by auto truck between San Francisco, Oakland, Emeryville, Richmond, Berkeley, Alameda and San Leandro, on the one hand, and Los Angeles, Vernon and points in the vicinity and intermediate points, on the other hand.

The defendant, J. L. Cahill, filed a verified answer admitting and alleging that he was the sole owner of the business conducted under the fictitious name of Tri-Cities Freight Association

and that he has no certificate of public convenience and necessity or operative right authorizing him to operate as a transportation company. Issue was joined upon the regularity and common carrier status of the defendant's business.

The case was set for hearing on May 10th. Shortly before the hour at which the hearing was set, the presiding Commissioner received a telegram from San Diego, stating that J. L. Cahill was under the care of a physician and unable to attend the hearing.
(1)

The case was called on May 10th at the place and hour at which notice had been given but no appearance was made for the defendant. Evidence was taken at that time and the case was submitted. Fourteen witnesses appeared and testified. Most of these were shipper witnesses entirely disinterested and an unusually complete showing was made in respect to the nature of the operations complained of.
(2)

(1) It was testified by A. S. Groocox, Motor Vehicle Inspector for the Board of Public Utilities and Transportation, that Cahill, on May 7th and again on May 9th, had been in attendance at hearings on cases of a character similar to the present one and that on May 9th had said that he would attend the hearing on his case on the 10th.

(2) Among the witnesses testifying were the following:

Lloyd D. Zimmerman, McPherson Leather Company;
L. R. Hanlon, Branch Manager, Anaconda Wire and Cable Company of California;
P. E. Martinet, Traffic Manager, U. S. Electrical Manufacturing Company;
J. J. Scalla, Order Clerk and Traffic Manager, Kimball-Krogh Pump Company;
E. W. Morehead, Salesman, Walworth Company;
L. M. Reid, Traffic Manager, Petroleum Equipment Company;
H. D. Bauman, Traffic Manager, McKesson Western Wholesale Drug Company;
S. M. Goldstein, Salesman, L. Demartini Supply Company;
C. W. Ferguson, Salesman, L. A. Leather Corporation;
Sam H. Yocum, Merchant, Sam Yocum & Company;
Lowell Hambric, Purchasing Agent and Assistant Treasurer, California-Oregon Paper Mills;
A. R. Hubbard, Police Officer, Board of Public Utilities and Transportation;
A. S. Groocox, Motor Vehicle Inspector, Board of Public Utilities and Transportation.

The facts, as developed, may be summarized as follows:

On September 4th, 1934, the Commission issued its decision No. 27330, on Case No. 3552, Regulated Carriers, Inc. vs. E. W. Hunsaker, et al, by which certain named defendants, doing business under the fictitious name of Western Shippers Association, were ordered to cease and desist from operations between Los Angeles and San Francisco and East Bay cities. Nearly all of the establishments, whose representatives testified, had been customers of the service thus ordered to be discontinued. Almost immediately following the cessation of such service under the name of Western Shippers Association, a new service came into existence under the name of Tri-Cities Freight Association, being the name under which the defendant Cahill operated.

The testimony of the various shipper witnesses established with unusual conclusiveness that Cahill, under this name, beginning shortly after the cessation of operations by Western Shippers Association and continuing until the present time, operated a regular transportation service by truck between Los Angeles and San Francisco and that his operations were common carrier in nature. Indeed, practically all of the shipper witnesses testified with great particularity that there was no contract, verbal or written, respecting the service.

Freight bills offered in evidence showed that the Tri-Cities Freight Association had an office at 440 Seaton Street in Los Angeles and at 136 Townsend Street in San Francisco. Many of the shipments were carried under uniform bills of lading. Aside from charges for very small shipments, rates varying from forty-five to sixty cents per one hundred pounds were charged customers of the service. So far as the evidence presented is concerned, the service was between Los Angeles and San Francisco, with the exception of a few shipments to San Jose.

On February 18th, A. R. Hubbard, a police officer connected with the Board of Public Utilities and Transportation of the City of Los Angeles, interviewed the defendant Cahill who, at that time, told Mr. Hubbard that he, Cahill, had taken over the business formerly conducted under the name of Western Shippers Association and that he was operating four trucks between Los Angeles and San Francisco.

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 vs. 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.

I recommend the following form of Order.

O R D E R

It is Hereby Found that J. L. Cahill is operating as a transportation company, as defined by 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 and San Francisco, serving San Jose as an intermediate point, 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 findings herein,

IT IS HEREBY ORDERED that J. L. Cahill shall cease and desist, directly or indirectly, under the name of Tri-Cities Freight Association, or under any other name or description, or by any subterfuge or device, from continuing any or all of such operations, hereinabove in the finding preceding this Order set forth, and more specifically shall so cease and desist from continuing such common carrier operations between any or all of the following points, to-wit: Los Angeles, San Jose and San Francisco, or between said points or any of them, unless and until a certificate of public convenience and necessity shall have been obtained from the Commission.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Commission is directed to cause personal service of a certified copy of this decision to be made upon J. L. Cahill; and that the

the complaint as against defendants other than J. I. Cahill be dismissed.

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

The foregoing Opinion and Order are hereby adopted as the Opinion and Order of the Commission.

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

Leon Whitney

W. A. Carr

M. B. Lewis

Walter H. ...

James R. ...

Commissioners.