

Decision No. 28061

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC.,
a corporation,

Complainant,

vs.

Case No. 3886.

SAFETY FIRST TRANSFER, INC.,
a corporation, 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.

Edward G. Bernard for defendant.

BY THE COMMISSION:

O P I N I O N

This complaint was filed August 17, 1934, and charges defendant Safety First Transfer, Inc., a corporation, with unlawfully operating auto trucks as a common carrier for the transportation of property for compensation over the public highways of the State of California between (a) San Francisco, South San Francisco, Oakland, Alameda, Emeryville, Berkeley, Richmond, Vallejo on the one hand, and Modesto, Merced, Fresno, Los Angeles, Huntington Park, Anaheim, Santa Ana and intermediate points on the other; (b) San Francisco and Los Angeles and contiguous points on one hand and points intermediate thereto on the other.

It is alleged that the said operations are unauthorized, illegal and in violation of Section 213 of the Statutes of 1917. An order is sought from this Commission requiring defendant to cease

and desist in the aforesaid violations of the law.

A public hearing was held before Examiner Geary at Turlock February 15, 1935, and the matter duly submitted. Briefs were filed, the last one on April 18, 1935, and the proceeding is now ready for our opinion and order.

Defendant by its answer denied the material allegations of the complaint.

This proceeding actually originated with Case No. 3689, a complaint action filed under date of September 19, 1933, by the same complainant against a Sam Rhinehart, doing business under the fictitious name of Sam's Transfer. Decision No. 27476 in Case No. 3689 was rendered October 29, 1934, and Sam Rhinehart was ordered to cease and desist the operations complained of.

A petition for rehearing filed November 26, 1934, on behalf of Rhinehart was granted December 18, 1934, and these two cases (Nos. 3689 and 3886) were called for hearing February 15, 1935, at Turlock.

Defendant in Case No. 3689 (rehearing) elected not to present further testimony and the proceeding was submitted upon the record as made at the hearings in 1934, with the stipulation that briefs would be filed. Decision No. 27476 (Case No. 3689) outlined the history of the Rhinehart operations which originated those of the Safety First Transfer, Inc., the defendants in the instant Case No. 3886, and that record proved by the testimony of some 36 witnesses and 18 exhibits that Rhinehart's operations were, in fact, those of a common carrier. The record also showed that Rhinehart retired from the trucking business in October, 1933, when the Safety First Transfer, Inc. took over his trucking services.

The foregoing digest of our Decision No. 27476 makes unnecessary any further explanation of the origin of defendant Safety First Transfer, Inc., except to state that when Rhinehart retired he sold his trucks to certain individual truck drivers.

Referring now to the record in the instant proceeding, which consists of exhibits made from the files of consignors and consignees of shipments actually made and the testimony of some 14 witnesses, this record shows conclusively that defendant is the successor to the Rhinehart operations originally inaugurated in 1933. The shipper witnesses, together with defendant's own witness, demonstrated without contradiction that the corporation was and is regularly hauling all tonnage offered, consisting largely of grains, beans, raisins, canned goods and other farm products from Turlock and adjacent points to San Francisco and Bay territory on the north and to Los Angeles and surrounding territory on the south; and that in the opposite directions defendant hauls groceries, plumbing supplies and other commodities. Defendant is the owner of six trucks regularly used in the services and during 1934 its Manager testified that as many as 39 different trucks hired from the operating owners on a share the profit basis were employed. The trips averaged from three to four per week from Turlock and the other valley points to the San Francisco district and about the same number into Los Angeles. All charges assessed were on a uniform basis and applied to all shippers alike. There were no written contracts and defendant assumed and paid loss and damage claims. A total of between 20 and 24 shippers used the services with regularity although part of the tonnage moved was seasonal in character. Defendant engages in no advertising campaign and apparently depends upon telephone calls almost entirely for orders from customers. It is not shown that any shipper was ever denied services except in a few instances when defendant was unable to furnish trucks promptly and the shipper could not wait for the arrival of the proper equipment.

Defendant introduced the testimony of one witness, that of its Manager, whose testimony, to a greater or less degree, substantiated that given by the shipper witness.

The brief of defendant urged upon technical legal and other grounds that the Commission was without jurisdiction to pass upon the questions here in issue. After careful consideration we find that the objections raised and the cases cited are not controlling.

Case No. 3629, supra, Regulated Carriers, Inc. vs. Sam Rhinehart, et al, conclusively proved the common carrier status of that defendant and this proceeding again decisively establishes the fact that the present operations are but a continuation of the Rhinehart common carrier offering to the public. By a decision of even date upon rehearing in Case No. 3629 the previous findings were affirmed and the application was dismissed.

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 Safety First Transfer, Inc., 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 (a) San Francisco, South San Francisco, Oakland, Alameda, Emeryville, Berkeley, Richmond, Vallejo on the one hand, and Modesto, Turlock, Merced, Fresno, Los Angeles, Huntington Park, Anaheim, Santa Ana and intermediate points on the other; (b) San Francisco and Los Angeles and contiguous points on one hand and points intermediate thereto on the other hand, and certain intermediate points between or in the vicinity of the 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 Safety First Transfer, Inc. 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:

(a) San Francisco, South San Francisco, Oakland, Alameda, Emeryville, Berkeley, Richmond, Vallejo on the one hand, and Modesto, Turlock, Merced, Fresno, Los Angeles, Huntington Park, Anaheim, Santa Ana and intermediate points on the other; (b) San Francisco and Los Angeles and contiguous points on one hand and points intermediate thereto on the other hand, and certain intermediate points between or in the vicinity of the 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 Safety First Transfer, Inc. is 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 Safety First Transfer, Inc.

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

Dated at San Francisco, California, this 24th day of June, 1935.

Leon W. Allen

W. P. Carr

M. B. Hanna

W. J. McNamee

Commissioners.