

Decision No. 28122.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a Corporation,
Complainant,

vs.

FRANK E. DEVINE, JACK BIELY, RAY HERRIE
and FRANK E. DEVINE, JACK BIELY and RAY
HERRIE doing business under the ficti-
tious name and style of Northern Ship-
pers, FIRST DOE, SECOND DOE, THIRD DOE,
FOURTH DOE, FIFTH DOE, FIRST DOE CORPORA-
TION, SECOND DOE CORPORATION, THIRD DOE
CORPORATION, FOURTH DOE CORPORATION, FIFTH
DOE CORPORATION,

Defendants.

ORIGINAL

Case No. 3961.

Reginald L. Vaughan, for Complainant.
L. M. Phillips, for Defendants, Frank E.
Devine, Jack Biely and Ray Herrie.
A. S. Groocox, for Board of Public Utili-
ties and Transportation, Interested Party.

CARR, COMMISSIONER:

O P I N I O N

By complaint filed on January 18th, 1935, complainant charges Frank E. Devine, Jack Biely and Ray Herrie, doing business under the fictitious name of Northern Shippers, as well as defendant Does, with unlawful common carrier operations by auto truck between Los Angeles, Vernon, Southgate and Long Beach, on the one hand, and San Francisco, Oakland, Berkeley, Emeryville, Richmond, San Leandro, Stockton, Sacramento and intermediate points, on the other hand.

The case was called for public hearing on May 9th but, as all of the defendants had not been served with process, adjournment was taken until June 7th, at which time all of the

defendants had been served and appeared by counsel. The hearing was concluded on that date. Briefs were subsequently filed and the case was submitted for decision.

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

The trucking business operated under the name of Northern Shippers came into existence about the middle of November, 1934, being launched by the defendants Devine, Biely and Herrie, each of said defendants participating to the extent of one-third of the net profits realized from the business. It appeared from the evidence that Jack Biely and Frank E. Devine had been connected with the organization known as Commercial Shippers and referred to and described in Decision No. 27959, dated May 13th, 1935, in Case No. 3874. About November 12th there was circulated, among a few at least of the shippers who had patronized Commercial Shippers, a card stating that "Jack Biely and Frank E. Devine, who had been operating Commercial Shippers at 1201 East Fifth Street, will be associated with the Northern Shippers, located at 442 Colyton Street, Los Angeles, Mutual 8523," signed, Northern Shippers.

G. C. Scribner, who is the owner of Commercial Shippers, objected to the circulation of these cards and apparently brought suit in Superior Court against Biely and his associates. At any rate, so far as the evidence goes, only a comparatively few of these cards were circulated. In the division of business between the

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

W. A. McBride, Auditor of Clover Leaf Products Company; W.M. Stigers, Head Clerk of Union Hardware and Metal Company; Paul Atwood, Shipping Clerk of Jergen's Woodbury Sales Corporation; R.J. Williams, Office Manager of Frank W. Dillin Organization; F. H. Miller, Shipping Clerk of Germain Seed and Plant Company; C. H. Robinson, General Manager of United Battery Manufacturing Company, Ltd; E. R. Dennler, Shipping Clerk of Pacific Chemical Company; and Jack Biely and John R. (Ray) Herrie, defendants.

defendants, Herrie put up the money, claiming that he was the sole owner of the business, Devine was to solicit the business and Biely acted as General Office Manager and bookkeeper and did some soliciting. Devine, a few weeks prior to the hearing, left the business, after which Herrie received two-thirds of the net profits, Biely continuing with his one-third of the net profits.

An extensive northbound business, from Los Angeles, Burbank and San Gabriel destined to San Francisco, Oakland, ^{Sacramento,} and various intermediate points, was developed. Trucks left almost daily and some days several trucks left. Mixed loads were carried. The prevailing quotation was 40 and 50 cents per 100 pounds, depending upon the distance, with a minimum charge of from 75 cents to \$1.00. Northern Shippers and the defendants, operating under that name, owned no trucks. Herrie did lease a truck which performed a pick-up service, bringing freight to the dock maintained at Colyton Street in Los Angeles. The line haul movement was performed by various truck owners, their compensation running, as a rule, about \$5.00 a ton. A cargo insurance policy was carried in the name of Northern Shippers. Northern Shippers made reports to the Board of Equalization, paying 3% of the difference between gross receipts and the amount paid the various line haul truckers for performing that movement.

There can be no reasonable doubt that the defendants, Herrie, Biely and Devine, on the date the complaint was filed, were engaged in a common carrier trucking service between the principal points charged in the complaint or that Herrie and Biely are at present conducting this business. A cease and desist order clearly should issue as against these three defendants.

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.

I recommend the following form of order.

O R D E R

IT IS HEREBY FOUND that the defendants, Ray Herrie (John R. Herrie), Jack Biely and Frank E. Devine are and each of them 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, Burbank and San Gabriel, on the one hand, and San Francisco, Oakland and Sacramento, on the other hand, and points intermediate, 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 Ray Herrie (John R. Herrie),

Jack Biely and Frank E. Devine shall cease and desist, jointly or severally, directly or indirectly, under the name of Northern Shippers, or under any other name or description, or by any subterfuge or device, from continuing any or all of such operations, hereinabove in 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, Burbank, and San Gabriel, on the one hand, and San Francisco, Oakland and Sacramento, on the other hand, and between said points or any of them, and points intermediate, 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 Ray Herrie (John R. Herrie), Jack Biely and Frank E. Devine; and that the complaint as against defendants other than those last named 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 16th day of July, 1935.

Simon A. Cum

M. B. Harris

Frank R. Derby

Commissioners.