

Decision No. 28255

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CERTIFICATED HIGHWAY CARRIERS, INC.,

Complainant,

vs.

GEORGE RINGWALD,

Defendant.

ORIGINAL

Case No. 3660.

Owen C. Emory, for Complainant.
Russell S. Waite, for Defendant.
Robert Brennan and Leo C. Seibert, for
The Atchison, Topeka & Santa Fe Ry.Co.

BY THE COMMISSION:

OPINION, FINDINGS AND JUDGMENT

By Decision No. 26897, dated March 26, 1934, the Commission found that George Ringwald, the respondent herein and referred to hereinafter as the defendant, was operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Act (Chapter 213, Statutes 1917, as amended) with common carrier status between Blythe and Los Angeles and intermediate points, without a certificate, and it ordered that he cease and desist from continuing such operations. The effective date of the order was 20 days after its personal service upon the defendant. This decision was personally served upon the defendant George Ringwald on May 11, 1934. Ever since its promulgation, said order has remained and still is in full force and effect.

On December 10, 1934, there was filed in this proceeding the application for order to show cause and affidavit of

Thomas B. Potter, an employee of the complainant herein. On February 2, 1935, an order to show cause was issued in this proceeding, vacating a previous order to show cause returnable on May 15, 1935, and directing defendant Ringwald to appear before the Commission on March 6, 1935, at San Bernardino and show cause why he should not be punished for each alleged contempt set forth therein. The affidavit and order to show cause were personally served upon defendant on February 8, 1935, and on the return date he appeared personally and was represented by counsel. Public hearings were had before Commissioner Carr at San Bernardino on March 6 and 7, at Blythe on March 14 and at Los Angeles on April 4, 1935; the matter was submitted and it is now ready for decision.

The affidavit alleges in substance the steps taken in the prior cease and desist proceeding before the Commission; that, notwithstanding the order of the Commission contained in Decision No. 26897, defendant Ringwald, with full knowledge and notice of such order and of the contents thereof, with intent to violate the same, and having the ability to comply therewith, nevertheless continued subsequent to the rendition of the order, and he still is, engaged in the operation of a motor truck service, owned, controlled, operated, managed, directed and conducted by him, for the transportation of property as a common carrier for compensation over the public highways, between fixed termini and over a regular route, viz: between Los Angeles and contiguous territory on the one hand and Blythe and points intermediate between Blythe and Los Angeles on the other hand, without any prior right, and without first having obtained from the Commission a certificate of public convenience and necessity authorizing such operations; that in conducting these operations, defendant has engaged in and practiced various tricks, devices and subterfuge,

and particularly those specified in Decision No. 26897, for the purpose of concealing the true identity and character of his operations and to evade the force and effect of such decision; that defendant has failed and refused to comply with the terms of this order, in that he now holds himself out to the public and is now offering his services to the public as a common carrier of property for compensation over the public highways between said points. It is further alleged that defendant has repeatedly, consistently and on numerous occasions violated and refused to comply with the provisions of said decision and order by continuing the transportation of property as a common carrier by auto truck between said points. There are set forth five distinct offenses or counts of separate alleged contempts, pleading in detail in each count the dates, routes, points served, consignors, consignees and commodities transported. The specific alleged contempts occurred on October 25 and 26, November 5 and 6, 8 and 9, 13 and 14, and 15 and 16, 1934.

No answer was filed by defendant but at the hearing issue was joined upon the allegations of the affidavit.

The complainant called on its behalf various merchants of Blythe, certain wholesale dealers at Los Angeles and one at San Bernardino, its own investigator, (the testimony of another being incorporated in the record by stipulation,) and a representative of the State Board of Equalization. Defendant testified in his own behalf. He also called his wife as a witness, as well as a merchant of Blythe and a wholesale fruit dealer of Los Angeles.⁽¹⁾

(1) Among the witnesses who testified were: Geo. Claude of Dunagan and Claude, grocers at Blythe, S. D. Kamrar of the Blythe Meat Company, Henry Chan of Wah Chan Co. of Blythe, R. H. Prouty of Prouty's Grocery at Blythe, Herman Neipp, a Blythe merchant, Mrs. Lucy Minor, proprietor of a restaurant at Blythe, G. E. Patterson of Blythe, Geo. P. King, shipping clerk of the Los Angeles Plant of Swift & Co., T. N. Keeney, shipping clerk of the Vernon Plant of Swift & Co., George P. Harris, shipping clerk for Wilson & Co., at Los Angeles, George F. Naylor of the Rainbow Fish and Oyster Co., Tom Benson, a clerk at the San Bernardino store of Smart & Kinal, J. E. McHenry, auditor of the State Board of Equalization, Thomas B. Potter, an investigator, Abraham Tarrish, a wholesale fruit dealer, and several other witnesses who testified on minor details.

Well at the close of hearings the defendant testified that about the first of the year he desisted from his Blythe operations.

It would be a work of supererogation to recount in detail the testimony of the various witnesses. Suffice it to say, that the testimony clearly portrayed operations by Ringwald which did not differ in any material respect from those before the Commission in the cease and desist case, which were there held to be common carrier in nature and from which he was ordered to cease and desist. These operations continued from the time of said order until the early part of 1935. Trips were in fact made on the specific dates specified in the affidavit. Ringwald himself, when testifying as a witness in his own behalf, was unable to differentiate his subsequent operations from those ordered to be discontinued. In short, the evidence plainly disclosed that Ringwald paid no attention to the Commission's order. Under these circumstances, the Commission has no alternative but to hold that Ringwald operated in contempt of its order and is guilty of contempt of the Commission. However, inasmuch as Ringwald, according to the testimony, has discontinued his Blythe operations, a nominal fine for such contempt should be sufficient.

FINDINGS OF FACT

1. By Decision No. 26897, dated March 26, 1934, the Railroad Commission found as a fact that George Ringwald, the defendant herein, was operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Act (Chapter 213, Statutes 1917, as amended) with common carrier status between Blythe and Los Angeles and intermediate points and without a certificate of public convenience and necessity or prior right authorizing such operations. By said Decision No. 26897, said

defendant George Ringwald was ordered to cease and desist, directly or indirectly, or by any subterfuge or device, from continuing such operations. Said order has never been revoked, annulled or stayed, and was during all times herein mentioned and still is in full force and effect.

2. A certified copy of said Decision No. 26897 was personally served upon said defendant George Ringwald in the County of Riverside, State of California, on May 11, 1934; said desist order became effective on May 31, 1934; and said defendant George Ringwald had personal knowledge and notice of said decision and the contents thereof on and prior to the effective date thereof, and was able at all times thereafter to comply with said order.

3. On December 10, 1934 there was filed herein the affidavit of Thomas B. Potter wherein it was alleged in substance that said defendant George Ringwald, notwithstanding the desist order contained in said Decision No. 26897, with full knowledge of its contents, and subsequent to its effective date, has failed and refused to comply with said order in that he has continued to own, control, operate and manage an automobile truck as a common carrier of property for compensation over the public highways between Los Angeles and contiguous territory on the one hand and Blythe and points intermediate between Blythe and Los Angeles on the other hand, without owning a prior right, or without first having obtained from the Railroad Commission a certificate of public convenience and necessity authorizing such operations. More specifically, said affidavit and application for order to show cause alleged said operations as having taken place on October 25 and 26, 1934, November 5 and 6, 1934, November 8 and 9, 1934, November 13 and 14, 1934, and November 15 and 16, 1934.

4. Upon said affidavit being received and filed the Railroad Commission on January 21, 1935, issued its order directing said George Ringwald to appear on May 15, 1935, and show cause why he should not be punished for the alleged contempt set forth in said affidavit. Said order to show cause, together with the affidavit upon which it was based, was personally served upon said George Ringwald on January 25, 1935. Thereafter and on February 2, 1935, the Commission made and issued its order vacating and setting aside without prejudice the order theretofore issued as aforesaid on January 21, 1935, and directing said George Ringwald to appear on March 6, 1935, and then and there show cause, if any he has, why he should not be punished for the alleged contempt set forth in said affidavit. Said order to show cause and order vacating prior order to show cause without prejudice, together with the affidavit on which the same was based, was personally served upon said defendant George Ringwald on February 8, 1935, in the County of Riverside, State of California. Upon the return date, to wit: March 6, 1935, said defendant George Ringwald appeared in person and was represented by counsel, hearings were had on said date and upon the dates to which said matter was regularly continued, to wit: March 6, 7 and 14, 1934, and April 4, 1934, and on said last named date the matter was submitted to the Commission for its consideration and decision.

5. Notwithstanding the order of the Railroad Commission contained in its said Decision No. 26897, the said defendant George Ringwald failed and refused to comply with the terms thereof and continued to and did own, control, operate and manage an automobile truck as a common carrier of property for compensation over the public highways of this State within the meaning of Statutes 1917, Chapter 213, as amended, between Los Angeles and contiguous territory on the one hand and Blythe and

points intermediate between Blythe and Los Angeles on the other hand, and more specifically on October 25 and 26, 1934, November 5 and 6, 1934, November 13 and 14, 1934, and November 15 and 16, 1934, without owning a prior right, or without first having obtained from the Railroad Commission a certificate of public convenience and necessity authorizing such operations.

6. That the failure of said defendant George Ringwald, as hereinabove in paragraph 5 of these findings alleged, to comply with the said order of the Railroad Commission was and is in contempt of the Railroad Commission of the State of California and its said order.

JUDGMENT

IT IS HEREBY ORDERED AND ADJUDGED that the defendant George Ringwald has been and is guilty of contempt of the Railroad Commission of the State of California in disobeying its order contained in Decision No. 26897, all as more specifically found in paragraph 5 of the Findings of Fact hereinabove set forth.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that for said contempt of the Railroad Commission and its order, said defendant George Ringwald be punished by a fine of one hundred (100) dollars, said fine to be paid to the Secretary of the Railroad Commission within ten (10) days after the effective date of this opinion, findings and judgment; and that in default of payment of the aforesaid fine, said defendant George Ringwald be committed to the County Jail of the County of Riverside, State of California, until such fine be paid or satisfied in the proportion of one day's imprisonment for each five (5) dollars thereof that shall so remain unpaid.

IT IS FURTHER ORDERED that the Secretary of the Railroad Commission, if said fine is not paid within the time specified

above, prepare, sign and issue appropriate order or orders of arrest and commitment in the name of the Railroad Commission of the State of California, to which shall be attached and made a part thereof a certified copy of this opinion, findings and judgment.

IT IS FURTHER ORDERED that this opinion, findings and judgment shall become effective twenty (20) days after personal service of a certified copy thereof upon said defendant George Ringwald.

Dated at San Francisco, California, this 30th day of September, 1935.

Leon A. White

M. J. C.

M. B. Harris

W. H. ...

David R. ...

Commissioners.