

ORIGINAL

Decision No. 28295

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC.,
a corporation,

Complainant,

vs.

T. A. MINARDI and T. A. MINARDI,
doing business under the fictitious
name and style of Garden
City Transfer Company, First
Doe, Second Doe, Third Doe, Fourth
Doe, Fifth Doe, First Doe Corpor-
ation, Second Doe Corporation,
Third Doe Corporation, Fourth Doe
Corporation, Fifth Doe Corporation,

Defendants.

Case No. 3965.

Reginald L. Vaughan for Complainant.

Eugene E. O'Donnell and Hugh Center,
for Defendants.

BY THE COMMISSION:

O P I N I O N

Complainant alleges that defendants T. A. Minardi, E. D. Paranimo and B. L. Schuttere, operating under the fictitious name of Garden City Transfer Company, are conducting a highway common carrier operation for the transportation of property between (a) San Francisco and East Bay Cities, on one hand and San Jose, Los Angeles, Stockton, Sacramento, Marysville and Redding, and intermediate points on the other hand; (b) between Los Angeles on one hand and San Jose and

Sacramento on the other hand; and (c) between San Jose, on one hand, and Stockton, Sacramento, Marysville and Redding on the other hand, without having obtained a certificate of public convenience and necessity from this Commission or without possessing a prior right so to do.

Defendants, by answer, deny the allegations. No affirmative defense was pleaded.

Upon the issues thus joined a public hearing thereon was conducted by Examiner Williams at San Francisco. The matter was submitted on the record.

E. H. Jenanyan, proprietor of the Planters Nut and Chocolate Company, of San Francisco, testified that the defendant transported 27 shipments, for his company, from San Francisco to Los Angeles between November 30 and December 7, 1934. No contract existed and the movements were made at a rate of 30 cents per 100 pounds. Although Minardi requested truck load volume this was not always furnished. The service ceased, as Minardi said the volume was not large enough. All shipments were prepaid.

A. R. Woodman, Manager of Nestle's Foods, San Francisco, testified that his firm shipped nine tons of cartons from Oakland to the Nestle plant at Gonzales, at 30 cents per 100 pounds; and other shipments from San Francisco to Gonzales, principally canned milk, and reverse, at rates from 30 cents to 12 cents per 100 pounds. Two other shipments were empty containers from Oakland to the Nestle plant at Ripon. No written contract existed and all shipments were prepaid.

L. V. Cox, Assistant Traffic Manager of Libby, McNeill & Libby, San Francisco, testified to 12 shipments of from 100 to 2000 cases of canned goods between Oakland and

San Francisco by Minardi, all consigned to and from the Libby plants. Also interplant shipments from Sacramento to Chico and from Burbank to Oakland. All traffic was handled without written contract and all charges were prepaid after separate arrangement for each shipment. When Minardi increased rates he lost the traffic.

L. R. Keith, Traffic Department of California Packing Company, testified defendants accepted shipments after the rate for transportation was agreed upon and after all charges were prepaid. The shipments transported by defendants between July, 1934, and March, 1935, 32 in number, are shown on Exhibit No. 3. Californic Packing Company was the consignor and, in most cases, the consignee at its various plants, particularly at Sacramento and Los Angeles (26 movements).

Similar testimony was given by F. W. Kerrigan, Traffic Manager of Kraft-Phoenix Company, San Francisco, which made 23 shipments to its Los Angeles agency at the rate of \$5.00 a ton; John J. Schmale, of Newbauer & Schmale, wholesale grocers, San Francisco; Frank R. Knippenberg, Secretary American Forge Company, San Francisco; and A. R. Lapachet, Traffic Manager, Rix Company, air compressors and pneumatic tools, San Francisco.

The only defendant personally appearing was Minardi. He has operated under the name of Garden City Transfer Company at San Jose for many years. Since the filing of the instant complaint, this business has been incorporated as Garden City Transportation Company. He testified that B. L. Schuttere induced him to establish an agency of the unincorporated business in San Francisco. Schuttere opened an office and E. D. Paronimo, a freight transportation broker, solicited the

business, except in one or two instances where Schuttere solicited the account. All operations ceased April 1, 1935, Minardi testified, after Schuttere retired. The "experience proved very costly" to Minardi, he testified.

Analysis of the testimony and exhibits shows that defendants offered transportation generally to large shippers and did, before April 1, 1935, transport large tonnage of several shippers in consolidated truck loads. The general movement was of truck loads for a single consignor and, in a majority of such cases, the consignor was also the consignee. The bulk of the movement was between San Francisco and Los Angeles, and San Francisco and Sacramento.

The record discloses that business was solicited by Paranimo and Schuttere indiscriminately and that they held out a service to and from the points indicated above on a highway common carrier basis. The remainder of the operations were sporadic and, alone, would not justify a finding of common carrier service, as do the continuous regular movements.

A cease and desist order should issue.

An order of the 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 thereof constitutes a contempt. 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 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; Rice
v. Betts, 38 C.R.C. 30; Re Victor on Habeas Corpus, 220 Cal.
729).

O R D E R

IT IS HEREBY FOUND that T. A. Minardi, E. D. Paranimo, and B. L. Schuttere, operating under the fictitious name of Garden City Transfer Company, are operating as a "highway common carrier" as defined in Section 2-3/4 of the Public Utilities Act, with common carrier status, between fixed termini and over regular routes and public highways, between San Francisco on the one hand, and Los Angeles and Sacramento on the other hand, without having a certificate or certificates of public convenience and necessity and without having any prior operative right for any or all of such operations.

Based upon the opinion and findings herein,

IT IS ORDERED that each and all of the following designated highway common carriers, to-wit: T. A. Minardi, E. D. Paranimo, and B. L. Schuttere, operating under the fictitious name of Garden City Transfer Company, shall cease and desist, jointly and severally, 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, jointly and severally, directly or indirectly, or by any subterfuge or device from operating as a highway common carrier between any or all of the following points, to-wit: San Francisco on the one hand, and any or all of the following points, to-wit: Los Angeles and Sacramento on the other hand, and shall similarly cease and desist, jointly and severally, from operating as a highway common carrier

between any two or more of the points hereinabove specified and found as being places between which the said T. A. Minardi, E. D. Paronimo, and E. L. Schuttere, operating under the fictitious name of Garden City Transfer Company, are 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 T. A. Minardi, E. D. Paronimo and E. L. Schuttere.

IT IS HEREBY FURTHER ORDERED that, in all other respects, except as specifically set forth in the preceding order, the complaint be and it hereby is dismissed.

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

Dated at San Francisco, California, this 21st day of October, 1935.

Leon Whitney

M B Hessie
M Schuttere

COMMISSIONERS.