

Decision No. 28687

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a
Corporation,

Complainant,

vs.

GULARTE TRANSPORTATION CO.,
a Corporation,

FRANK GULARTE, et al.,

Defendants.

Case No. 3909

APPEARANCES:

REGINALD L. VAUGHAN, for the Complainant.

L. M. PHILLIPS, for Frank Gularte, a defendant.

BY THE COMMISSION:

O P I N I O N

By complaint filed on the 28th day of September, 1934, complainant charges Gularte Transportation Company, a corporation, and Frank Gularte, an individual, with unlawful common carrier operations by auto truck between Guadalupe and Santa Maria on the one hand and Los Angeles, Los Angeles Harbor, Vernon and contiguous territory on the other hand, and between Guadalupe, Santa Maria on the one hand, and San Francisco and East Bay Cities and intermediate points on the other hand.

Public hearings were had before Examiner Albert Johnson, February 5, 1935, on which date the case was submitted on concurrent briefs. The matter is now ready for decision.

The principal contention made by the defendant was that the complaint had not made out a case of highway common carrier operations because all of the public witnesses called lacked knowledge as to the extent of the defendant's operations and that the hauls testified to by these witnesses were subject to separate arrangement in each case and were so infrequent that the transportation should be classified as contract hauling.

The witnesses called by the complainants both in Santa Maria and Los Angeles testified, for the most part, that the defendant had hauled occasional loads for them, and in most cases made separate agreements as to the compensation and service to be given on each shipment. These agreements were for no term longer than the individual shipment; they were not specific as to time nor as to route or termini, nor did they in any way bind the shipper to ship any amount of commodities by the carrier; nor did they bind the carrier to transport any specific or determinable amount of commodities for the shipper. These arrangements appear to be nothing else than mere rate agreements.

The question then arises as to whether the defendant's operations were those of a Highway Common Carrier or those of a Radial Highway Common Carrier.

In *Rampone vs. Leonardini*, 39 C.R.C. 588 at 591, this Commission distinguished the Highway Common Carrier as follows:

The "highway common carrier" is distinguished as one who dedicates and holds out his transportation services generally to the public, for the transportation of some certain variety or varieties of freight, at rates filed with the Commission, and who usually

or ordinarily operates between fixed termini or over a regular route. Before commencing his operations as such, a "highway common carrier" is required to justify and culminating in the issuance by the Commission of a certificate that declares that public convenience and necessity require such operation. Such a "highway common carrier" is also required to file with the Commission his schedule of rates and time table."

On page 593, this Commission distinguished the Radial Highway Common Carrier as follows:

A "radial highway common carrier" is distinguished as one who dedicates and holds out his transportation services generally to the public, or a substantial portion thereof, for compensation, for the transportation of some certain variety or varieties of freight, and who does not usually or ordinarily operate between fixed termini or over a regular route, and who offers to serve anyone within the scope of his dedication, which scope must be a clearly defined area.

A "radial highway common carrier" may operate, within this defined area, over any public highway, subject, of course, to the possibility that frequent operations between fixed termini or over any definite route may transform his operations into those of a highway common carrier, for which a certificate of public convenience and necessity is required....."

The Exhibits placed in evidence at the hearings on this case, indicate that the defendant made somewhere in excess of seventy-five (75) trips between Santa Maria and Guadalupe on the one hand and Los Angeles, Los Angeles Harbor, Vernon and contiguous territory and intermediate points on the other hand from the first of 1934 until the time of the hearing.

The exhibits further show that the defendant made frequent trips between Guadalupe and Santa Maria and vicinity on the one hand and San Francisco and East Bay Cities and intermediate points on the other hand.

It would appear from these exhibits that the defendant's

operations over the routes and between the termini involved in the complaint were usual and ordinary operations between fixed termini or over regular routes. Accordingly, his operations over such route are those of a Highway Common Carrier within the meaning of Section 2 3/4 (a) of the Public Utilities Act, which succeeds Section 1 (c) of the Auto Truck Transportation Act.

Further, insofar as the defendant's operations between Santa Maria and Guadalupe on the one hand and Los Angeles, Los Angeles Harbor, Vernon and contiguous territory on the other hand are concerned, in Case No. 3589, by Decision No. 27758, dated February 18th 1935, this Commission found that Frank Gularte and Gularte Trucking Company, a corporation, had been operating as a transportation company, as defined in Section 1, Subdivision (c) of the Auto Truck Transportation Act, Chapter 213, Statutes 1917, as amended, between Santa Maria, Guadalupe, on the one hand, and Los Angeles, Los Angeles Harbor, Vernon and contiguous territory on the other hand, serving also intermediate points en route without a certificate of public convenience and necessity or prior rights authorizing such operations and ordered Frank Gularte, an individual, and Gularte Trucking Company, a corporation, to cease and desist from continuing all such operations.

Defendant Gularte's testimony brought out by complainant's cross-examination under Section 2055, Code of Civil Procedure, shows that the Gularte Transportation Company, the defendant corporation, engaged in the same business as the Gularte Trucking Company and that the defendant corporation in the instant case used the old books of the defunct Gularte Trucking Company,

served that corporations customers over the same route and by the same method of operation. Therefore it devolves upon the Commission to find that Gularte Transportation Company, the successor corporation, and Frank Gularte, an individual, as proven by the admission of Gularte and the corporation books are operating as a common carrier between Guadalupe and Santa Maria on the one hand and Los Angeles, Los Angeles Harbor, Vernon and contiguous territory and intermediate points on the other hand.

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 vests 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; Rice vs. Betts, 38 C. R. C. 30; re Victor on Habeas Corpus, 220 Cal. 729.

It should also be noted that under Sections 76 and 77 of the Public Utilities Act, 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 under Section 79 of the Public Utilities Act, a shipper or other person who aids and 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

Complaint herein having been duly heard, briefs having been filed on behalf of the defendant and complainant, the matter being ready for decision, and the Commission now being advised in the premises:

IT IS HEREBY FOUND that the Gularte Transportation Company, a corporation, and Frank Gularte, an individual, 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 or over regular routes over public highways between Guadalupe and Santa Maria on the one hand and Los Angeles, Los Angeles Harbor, Vernon and contiguous territory and intermediate points on the other hand, and between Guadalupe and Santa Maria on the one hand and San Francisco and East Bay Cities on the other hand, without a certificate of public convenience and necessity or prior right authorizing such operations.

Based upon the opinion and findings herein,

IT IS HEREBY ORDERED that each and all of the following designated highway common carrier, to-wit: Gularte Transportation Company, a corporation, and Frank Gularte, an individual, 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: Guadalupe and Santa Maria on the one hand and Los Angeles, Los Angeles Harbor, Vernon and

contiguous territory and intermediate points on the other hand, and between Guadalupe and Santa Maria on the one hand and San Francisco and East Bay Cities on the other hand, 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 Frank Gularte, and that he cause certified copies thereof to be mailed to the District Attorneys of Santa Barbara, Ventura, Los Angeles, San Luis Obispo, Monterey and Alameda Counties, and of the City and County of San Francisco and to the Board of Public Utilities and Transportation of the City of Los Angeles and to the Department of Public Works Division of Highways at Sacramento.

The effective date of this order shall be twenty (20) days after the date of service upon defendant.

Dated at San Francisco, California, this 6th day of April, 1936.

W. B. Davis
Leon A. H. H. H.
W. J. H.
W. J. H.
Frank H. H.