

Decision No. 28699

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC.,
a corporation,

Complainant,

vs.

F. W. PETERS, FIRST DOE,
SECOND DOE, THIRD DOE, FOURTH
DOE, FIFTH DOE, FIRST DOE
CORPORATION, SECOND DOE COR-
PORATION, THIRD DOE CORPORA-
TION, FOURTH DOE CORPORATION,
and FIFTH DOE CORPORATION.

Defendants.

Case No. 3864.

R. L. Vaughan and Scott Elder, for Complainant.

Jesse W. Carter, for Defendants.

BY THE COMMISSION:

O P I N I O N

By complaint filed on June 30, 1934, complainant charges F. W. Peters with unlawful common carrier operations by auto truck between Sacramento and Yreka and intermediate points.

Public hearings were had before Examiner Williams on March 11, 1935, on which date the case was submitted.

The facts as developed at the hearing may be summarized briefly as follows:

Defendant F. W. Peters maintains his equipment (one truck, ten tons capacity) at Le Moine, where he has his home. From this point he has been conducting transportation of various commodities particularly between Sacramento and Yreka and certain intermediate points. He has performed service from San Francisco, Vallejo and other points. His trips between Sacramento and Yreka

have varied from once to three or four times weekly depending upon the volume or the shipments available. So far as this proceeding is concerned, the only proof to be considered is whether such operations were between the fixed termini of Sacramento and Yreka and intermediate points and to the exclusion of isolated movements which were a part of defendant's business and which do not appear to have been with sufficient regularity to stamp them as common carrier movements.

Defendant has been engaged in trucking for more than a decade, and only the last five years has he extended his business to the volume shown by the witnesses in this proceeding. There is evidence that about five years ago Peters began to solicit transportation and did acquire some volume. Five witnesses, produced by complainant at Yreka, testified as to the availability of defendant for any service desired and the frequent regularity with which he met their needs. In addition it was stipulated that nine other witnesses at Yreka would testify similarly. None of these witnesses had any written contract with defendant.

The defendant, under examination by complainant, testified that he has been in the trucking business for thirteen years mainly between Sacramento and Yreka and intermediate points; that he owns one truck which he operates, and that he makes from one to four trips a week; that his truck has a maximum capacity of ten tons; that he began in 1929 helping another carrier, one Russell, who asked him to "take up the slack", meaning that Russell did not have the equipment necessary to transport the volume offered him. His present service has been to Dunsmuir, Shasta City and Weed and Redding. His rate for such service was

almost uniformly 50 cents per hundred weight without discrimination as to commodity. He testified that he never advertised, that he had refused certain business offered him because, as he stated, he "Was in the hauling business when there was any money in it." He also testified that he took orders from various stores which he filled at Sacramento and brought back to his customers.

The record does not disclose that defendant took any particular care to retain the status of a contract carrier. He could remember of two occasions when he has refused shipments tendered him, and one of these cases was because the rates offered were not satisfactory. The witnesses who testified presented the usual picture of a servant carefully performing his duties and always ready, willing and able to extend his services when, as defendant puts it, "there was any money in it."

Defendant possesses no authority for any common carrier operations. Much of the volume he transported from Sacramento appears to have been borne to that point by common carriers. At terminals in Sacramento his business was identified as "Peters truck" and it was so known in the area between Dunsmuir and Yreka, where he rendered the bulk of his service.

Defendant seeks to establish his business as that of an "on call" carrier, and that all his business has been that of one between himself and the customer, without any tender of regularity of service, and that he did not operate between fixed termini. The record appears to present the reverse. While his service was not based upon any particular schedule and while he did vary it by making deliveries of building material to points other than the road points, the movement as accounted for by the witnesses and by Peters indicates an established business by

defendant known to shippers in the area he serves and elsewhere as an available service and to the extent that shippers from remote points designated him as the carrier to receive cargoes for transshipment at Sacramento. His attempts to distinguish his operations from those of the usual common carrier cannot be successful in view of the record presented.

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 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 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 F. W. Peters is operating as a

highway common carrier as defined in Section 2 3/4 of the Public Utilities Act, which succeeds 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 Sacramento and Yreka and certain intermediate points between, namely, Redding, Dunsmuir, Mt. Shasta and Weed, 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 the findings herein,

IT IS HEREBY ORDERED that the following designated highway common carrier, to-wit: F. W. Peters 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: Sacramento and Yreka and the intermediate points of Redding, Dunsmuir, Mt. Shasta and Weed, 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 F. W. Peters 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 F. W. Peters, and that he cause certified copies thereof to

be mailed to the District Attorneys of Siskiyou, Shasta, Tehama, Glenn, Colusa, Yolo, Butte, Sutter and Sacramento Counties and to the Department of Public Works, Division of Highways at Sacramento.

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

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

W. B. Harris
Leon Whittell
W. P. Cunn
Walter H. ...
Frank ...
COMMISSIONERS.