

Decision No. 28700

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC.,
a corporation,

Complainant,

vs.

W.W.NOBLE, FIRST DOE, SECOND
DOE, THIRD DOE, FOURTH DOE,
FIFTH DOE, FIRST DOE CORPORATION,
SECOND DOE CORPORATION, THIRD DOE
CORPORATION, FOURTH DOE CORPORATION,
FIFTH DOE CORPORATION,

Defendants.

Case No. 3863

ORIGINAL

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

Jesse W. Carter, for defendant.

BY THE COMMISSION:

O P I N I O N

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

Public hearings were had before Examiner Williams on March 12, 1935, on which date the case was submitted.

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

Defendant W. W. Noble has been engaged in transportation business for the last six years, with headquarters at Redding. He possesses a certificate to conduct operations between Red Bluff and Eureka, and this service has been maintained by him. Complainant herein does not allege any misuse of this certificate but does

solicited both by applicant and his drivers. Refusals of commodities for transportation were made in cases where the commodity was unsuitable, where the rate offered was too low, or where the credit of the shipper was not established. In fact, Noble, under examination by complainant, testified that he lost many customers who did not like his rates and he would not consent to their reduction; and further that he solicited "the business of large freight shippers." While the defendant did not have any form of waybill or bill of lading or receipts, he did accept such documents from others and the record shows he transported many shipments based upon the ordinary railroad bill of lading, as is evidenced by exhibits produced by complainant. The operations in no sense may be regarded as radial from Redding, as the movements were made upon a more or less fixed frequency and over regular routes. There appears to be no uncertainty as to the proof of common carrier dedication, and the attempt to cloak the operations with the nature of a highway contract carrier by means of the contracts existing is little more than the familiar subterfuge of such carriers in seeking to contravene the mandate of the Auto Truck Transportation Act and its successor, Sections 2 3/4 and 50 3/4 of the Public Utilities Act.

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 person 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 W. W. Noble 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, with common carrier status, between fixed terminal and over regular routes and public highways, between Sacramento on the one hand, and Redding and intermediate points on the other hand, 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: W. W. Noble shall cease and desist, 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, 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 on the one hand, and any or all of the following points, to-wit: Red Bluff, Redding, Dunsmuir, Yreka and points intermediate to all on the other hand, and shall similarly cease and desist from operating as a highway common carrier over the routes between any two or more of the points herein above specified, except insofar as operations heretofore authorized by the Commission by Decision No. 23150 are concerned, 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 W. W. Noble and to cause certified copies thereof to be mailed to the District Attorneys of Siskiyou, Shasta, Tehama, Yolo, 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.

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

M. B. Harris

John Anthony

H. J. Lane

W. H. [unclear]

Frank R. Levin

COMMISSIONERS.