

Decision No. 28715

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,

Complainant

vs.

R.W.RASMUSSEN and R.W.RASMUSSEN doing
business under the fictitious name and
style of Ace Transportation Company, FIRST
DOE, SECOND DOE, THIRD DOE, FOURTH DOE,
FIFTH DOE, FIRST DOE CORPORATION, SECOND
DOE CORPORATION, THIRD DOE CORPORATION,
FOURTH DOE CORPORATION, FIFTH DOE CORPORA-
TION,

Defendants.

Case No. 3884

ORIGINAL

APPEARANCES:

REGINALD VAUGHAN and SCOTT ELDER, by SCOTT ELDER
for the Complainant

GEORGE W. HICKMAN, for the Defendant.

BY THE COMMISSION:

O P I N I O N

By complaint filed on the 12th day of August, 1934,
complainant charges R.W.RASMUSSEN, an individual, doing
business under the fictitious name and style of ACE TRANS-
PORTATION COMPANY, with unlawful common carrier operations
by auto truck between San Francisco, Oakland, Alameda, Berkeley,
San Leandro, Emeryville and Richmond on the one hand and Los
Angeles, Huntington Park, Riverside and contiguous territory
and Sacramento, Stockton and intermediate points on the other
hand.

A public hearing was held before Examiner Geary at San

Francisco on April 10th 1935, on which date the case was submitted without briefs. The matter is now ready for decision.

The Defendant's contentions were:

(1) That inasmuch as the defendant owns no automotive equipment but rather obtains the goods for shipment and has it hauled by truckmen, he cannot be a highway common carrier as defined by Section 2 3/4 of the Public Utilities Act, which supersedes Chapter 213, Statutes 1917, as amended.

(2) That the complainant failed to establish the dedication of service to the public on the part of the defendant, such as is necessary to place the defendant within the classification of a highway common carrier.

(3) That the complainant failed to establish that the Defendant was operating over a regular route or between fixed termini.

To consider these contentions in the order herein stated:

(1) This Commission has long held that the person who has dedicated his transportation services to the public and who agrees to transport property for the shipper but who arranges to have such property transported over a regular route or between fixed termini by automotive equipment furnished by others, maintains that degree of control and management of the trucks contemplated by the Public Utilities Act and Chapter 213, Statutes 1917, and accordingly is a highway common carrier. Motor Freight Terminal Company vs. Move Forwarding Company 37 C.R.C. 857; Regulated Carriers Inc., vs. Universal Forwarders Ltd., Decision No. 26236 Case No. 3544. The Supreme Court has denied writs of review from such Decisions; Koye Forwarding Co. vs. Railroad Commission S.F.NO-14801; Universal Forwarders Ltd., vs. Railroad Commission, L. A. 14457.

(2) Virtually all of the witnesses called by the Complainant and the witness called by the defendant, testified to the effect that they had used the Defendant's service; that they had no agreements with the defendant whereby they were bound to ship any amount of goods or any goods whatsoever by the defendant. They testified that at the outset of their relations with the defendant, he quoted them rates on the commodities that they desired to ship; that thereafter when they desired the defendant's service, they called him on the telephone and shortly thereafter a truck called at their places of business for the shipment; that each shipment was made under a separate agreement; that they looked solely to the defendant for responsibility and reimbursement for goods damaged or lost in transit. A few witnesses testified that they required the defendant to carry cargo insurance. The testimony of the defendant himself indicates his willingness to transport the types of commodities which the facilities he controls are prepared to haul for anyone who offers him a load together with his usual compensation therefor. This testimony clearly shows that the defendant has dedicated and holds out his transportation services generally to the public or a substantial portion thereof, for compensation, for the transportation of freight; consequently, he is a common carrier.

(3) The record shows that in serving the witnesses in the manner above indicated, that the defendant, through facilities he had arranged for, made in excess of ten (10) trips per week in transporting property for hire between San Francisco on the one hand and Los Angeles and vicinity including Sawtelle Veteran's

Hospital, and Riverside and vicinity including March Field and intermediate points on the other hand. This evidence conclusively establishes that the defendant was usually or ordinarily operating as a highway common carrier between the termini mentioned or over the intervening routes.

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., vs. 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 \$1,000.00 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, the matter being ready for decision, and the Commission now being advised in the premises.

IT IS HEREBY FOUND that R. W. RASMUSSEN, an individual doing business under the fictitious name and style of ACE TRANSPORTATION COMPANY, is operating as a highway common carrier as defined in Section 2 3/4 of the Public Utilities Act, with highway common carrier status between fixed termini or over regular routes over public highways between San Francisco on the one hand and Los Angeles and vicinity including Sawtelle Veteran's Hospital and Riverside and vicinity including March Field and intermediate points on the other hand without a certificate of public convenience and necessity or prior right authorizing such operation.

Based upon the opinion and findings herein,

IT IS ORDERED that R. W. Rasmussen, an individual doing business under the fictitious name and style of ACE TRANSPORTATION COMPANY, 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: San Francisco on the one hand and Los Angeles and vicinity including Sawtelle Veteran's Hospital and Riverside and vicinity including March Field and intermediate points 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 R. W. Rasmussen, and that he cause certified copies thereof to be mailed to the District Attorney of the City and County of San Francisco and of Ventura, Los Angeles, Riverside Counties and 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 12th day of April, 1936.

M B Harris
Leon O. Williams
W. A. Cline
W. B. Brown
Frank R. Deane