Decision No. 28090

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,

Complainant,

vs.

L. C. BOWIE and L. C. BOWIE doing business under the fictitious name and style of Pacific Coast Truck Registry, 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.

ORIGINAL

Case No. 3927.

Reginald L. Vaughan for complainant.

F. Walter French for C. L. Bowie, defendant.

BY THE COMMISSION:

O P I N I O N

By complaint filed on November 2, 1934, complainant charges L. C. Bowie and L. C. Bowie doing business under the fictitious name and style of Pacific Coast Truck Registry, as well as various defendant Does, with unlawful common carrier operations by auto truck between San Francisco, Oakland, Alameda, Berkeley, Richmond, San Leandro and Emeryville on the one hand, and Los Angeles, Vernon, Huntington Park, Southgate and intermediate points on the

other hand.

A public hearing was had on May 28 and 29, 1935, and the case was submitted.

The evidence presented at the hearing discloses the following facts:

Defendant Bowie during 1934 established an office at 1107 Battery Street, San Francisco, and began business under the fictitious title Pacific Coast Truck Registry. He immediately began the solicitation of shipments by truck between San Francisco and Bay points and other points in California. Part of the time he employed a solicitor to obtain such shipments. Defendant owned no trucks but employed truckers variously to perform the services rendered for the shippers. The evidence shows that the bulk of the shipments was between San Francisco and Los Angeles and intermediate points. When a consignment was tendered to defendant he fixed a rate for the transportation and then employed such truckmen as were willing to conduct the transportation at the rate arranged between defendant and the shipper. Having concluded this arrangement, the truckman was given specific written directions to pick up the cargo tendered and transport it to destination at the agreed rate. Either the truckman collected the money or defendant collected it. Out of the proceeds of the trip defendant retained ten per cent for his services. The movement was protected by cargo insurance carried by defendant for which he charged the truckman three per cent. of the gross revenue from such movement. In this respect defendant was insured for an undisclosed principal.

The record, including the exhibits, clearly shows that defendant conducted a transportation business in major part between fixed termini, that he solicited shipments from various shippers and that he

assumed the responsibility of transporting the cargo to destination. The record is devoid of any showing of discrimination in the solicitation or acceptance of cargoes and any restriction as to commodity or quantity, the offer of the defendant being plainly to receive and transport shipments between definite points and for a definite rate. It appears that when such shipments were arranged for, defendant offered the transportation to truckmen who accepted or rejected the business. When such business was accepted by the truckmen, it was with the definite understanding with the defendant that the shipment was at defendant's direction and to be transported between definite points. The truckmen and defendant shared the benefits of the blanket insurance policy carried by the defendant. The truckmen contributed three per centum of the gross earnings from the transaction. In its essence the service performed by the defendant was a highway common carrier service between fixed termini and for compensation, principally between San Francisco and Los Angeles and certain intermediate points. He solicited cargoes from the shipper for transportation, agreed upon a rate and undertook to complete the transaction by truck. That the facilities he used were hired does not relieve defendant. What he did was to hold himself out "to the public to carry property" and thus become "a common carrier of whatever he thus offers to carry."(1) As his offer to the public was without limitation, according to the record, and as there is no evidence of his refusal to handle cargoes, he did in fact establish

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(1) Civil Code, Chapters 2168-70.

common carrier service. The name which he gave to his business and the theory that he represented a membership of uncertificated truckmen, who took casual and general employment, do not change this status. Rather, the record discloses that defendant used his method of operation as a device to escape jurisdiction of this Commission a device similar to the one considered in Regulated Carriers, Inc. v. Ramsey, et al (Decision 27087, dated May 21, 1934, in Case No. 3590). This matter is essentially the same as the Ramsey case except for some minor deviations. Defendant has sought to do indirectly what the law directly says he shall not do without proper authority from the Railroad Commission. Hence, we conclude that an order to cease and desist any highway common carrier service between San Francisco and Los Angeles and intermediate points should be entered.

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 Section 8 of the Auto Truck Act (Statutes 1917, Chapter 213, as amended), 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 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 L. C. BOWIE is operating as a transportation company as defined in Section 50-3/4 of the Public Utilities Act, as amended, with common carrier status between San Francisco and Los Angeles and intermediate points, and without a certificate of public convenience and necessity or prior right authorizing such operations.

Based upon the finding herein and the opinion,

IT IS HEREBY ORDERED that L. C. Bowie and L. C. Bowie, doing business under the fictitious name and style of Pacific Coast Truck Registry, shall cease and desist directly or indirectly or by any subterfuge or device from continuing such operations.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon L. C. Bowie, that he cause certified copies thereof to be mailed to the District Attorneys of San Mateo, Santa Clara, Santa Cruz, Monterey, Kings, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Kern, Fresno, Madera, Merced, Stanislaus, San Joaquin, and Alameda Counties and the City and County of San Francisco, 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, L. C. Bowie.

Dated at San Francisco, California, this 31st day of August, 1936.

M B Harris

Leon O Whitsell

Matthew Brady

Frank R Havenner

Commissioners.

I think the proper disposition of this case is to dismiss it without prejudice.

The pattern of Bowie's operations as traced by the testimony is confusing.- Of the shipments in which he participated in any fashion, some were part of an interstate movement, some were between points not within the issue, some appear to have been of a private rather than a public nature. The picture is further complicated by the claim earnestly advanced and finding some support in the evidence that Bowie was acting as a mere agent or broker between shippers and individual private truck operators rather than as a principal.

At the submission of the case more than a year ago, feeling that a case had not been made out which justified a cease and desist order, I recommended a dismissal without prejudice to a new case in which the real nature of Bowie's operations might be made clearer than they had been. Such a course, it seems to me, is even more appropriate now. New laws have come into effect dealing with truck transportation in its various aspects. Bowie may have ceased operations altogether or he may have reshaped his operations so that they are clearly authorized or unauthorized under present laws. If he has ceased operations no one is hurt by such a dismissal. If he is still in the transportation business in any of its classifications and it is claimed that he is conducting himself in an unlawful manner, a new case with a new record should result in action more likely to be sound and just than to make an order operating in the future based upon a weak and stale record.

W. A. Cox

Commissioner.