Decision No. 28091

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,
Complainant,

vs.

P. D. LANE, J. O. CAHILL, 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. 3960.

ORIGINAL

Reginald L. Vaughan for Complainant.

W. N. Mullen for Defendants Lane and Cahill.

BY THE COMMISSION:

OPINION

By complaint filed on January 18, 1935, complainant charges P. D. Lane and J. O. Cahill, as well as various defendant Does, with unlawful common carrier operations by auto truck between San Francisco, Oakland, Alameda, Berkeley, Richmond, San Leandro, Emeryville and Hayward on the one hand and (a) Los Angeles, Long Beach, Vernon, Huntington Park, Southgate and intermediate points on the other hand, and (b) El Centro, Brawley and intermediate points on the other hand, and (c) Sacramento, Marysville,

Stockton and intermediate points on the other hand.

A public hearing was had on May 24th, when the case was submitted.

The evidence presented at the hearing discloses the following facts:

Defendant Lane established himself in San Francisco in March 1934 in the business of negotiating for the hauling of truck-load shipments of various commodities. Defendant testified that he was acting as an agent for many private truckers, but was not soliciting cargoes from any shipper. The bulk of the business handled through him consisted of movements of citrus fruit, packed or unpacked, from citrus districts of Southern California and the San Joaquin Valley. There was a substantial volume, however, of other commodities transported. During the period of his operation prior to the hearing, he had used the services of more than a hundred independent truckers. In some cases, the truckmen suggested the cargo; in others, the shipper called by telephone. As the orders were booked, he sought to confer the benefit of the haul upon the first trucker who applied. Defendant owned no trucks and had no financial interest in any. Having contacted a cargo, either a whole or truck load, or mixed shipments, defendant arranged for the transportation between the point of origin and destination and charged the trucker ten per cent. of the gross amount received for the haul, plus two and one-half per cent. as a contribution to the premium upon a blanket insurance policy upon all cargoes carried in the name of defendant. All the shipping business (including all documents) was conducted under Lane's name. There were frequent move-

ments between San Francisco and Los Angeles sometimes four or five times a week. Some of these shipments moved on standard bills of lading under common carrier obligations. One feature of his business was the transportation of beer between the termini mentioned and intermediate points, which was especially consigned to one refrigerator truck and on which defendant received only five per cent. commission.

It appears immaterial whether Lane solicited this business (he denied that he made solicitation) or whether the business was solicited by the independent truckers he used, as the entire transaction was by him and through him protected by cargo insurance carried by him for his undisclosed principals to which they contributed proportionately. The establishment of the agency was a subterfuge to maintain a common carrier service. All who had shipments to offer were accommodated and their shipments were transported at agreed rates. The shipper dealt with Lane, paid the bills to Lane and depended upon the insurance policy held by him for recourse in case of damage to or loss of cargo. So far as the defendant's offer to the public was concerned, it meant only that he would undertake indiscriminately to receive and transport shipments between San Francisco and Los Angeles and intermediate points. The device invented to circumvent the law is too specious to merit discussion but a similar situation is thoroughly discussed in Regulated Carriers, Inc. v. Ramsey (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 Lane has sought to do indirectly what the law directly says he shall not do without proper authority from this Commission. Hence, we conclude that an order against

P. D. Lane to cease and desist any common carrier service between Oakland and San Francisco and Los Angeles and intermediate points only should be entered, as the record is not sufficient to involve any other points involved. Dismissal as to J. C. Cahill, defendant herein, is also justified by the record.

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. Section 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 $1000.00, 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.

ORDER

IT IS HEREBY FOUND THAT P. D. LANE 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 Oakland and San Francisco and Los Angeles 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 P. D. Lane 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 P. D. Lane, 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, Alameda Counties, and of 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.

IT IS HEREBY FURTHER ORDERED that the case herein be and the same hereby is dismissed as to J. O. Cahill, defendant.

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

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

M B Harris

Leon Whitsell

Wallace Ware

Frank R Devlin

Commissioners.

I find myself unable to assent to this order.

The opinion seems to be premised largely upon the assumption, repeatedly emphasized, that Lane was seeking to circumvent the law. This, as a basis of the order, may be dismissed with a reference to the statement of Mr. Justice Holmes, speaking for the court in Superior Oil Co. v. Mississippi, 280 U.S. 390, that -

> "The fact that it was desired to evade the law, as it is called, is immaterial, because the very meaning of a line in the law is that you may intentionally go as close to it as you can, if you do not pass it."

Furthermore, I doubt if a reasonably open minded trier of facts could deduce from the evidence any of the usual indicia of a malevolent design or purpose on the part of the defendant. Certainly there was no element of concealment or covering up, the parties participating in the transportation being fully advised of Lane's position.

Here the complainant claims and the opinion and order declare Lane to have been a transportation company defined by the statute as one "owning, controlling, operating or managing, any auto truck, used in the business of transportation of property, or as a common carrier of property, for compensation * * between fixed termini or over a regular route." (Stats. 1917, Chap. 213, as amended). Lane claimed he was a mere broker or agent arranging transportation between individual private truck operators and shippers.

In the development of the complicated business of transportation there have sprung up a large number of individual truck owners who transport loads hither and yon about the State to meet the demands of commerce. That many of them may be and are purely private operators may hardly be questioned. (See Frost & Frost Trucking Co. v. Railroad Commission, 271 U.S. 583; People v. Duntley, 217 Cal.

150; People v. Lang Transportation Co., 217 Cal. 166.) The 1935 legislature recognized the existence and lawfulness of such private operators and provided for their regulation. (Stats. 1935, Chap. 223.) Under this legislation several thousands of these have been licensed by this Commission.

These individual truckers were not business men. They found it difficult to come in contact with shippers with whom they could negotiate haulage. Shippers, on the other hand, could not always contact such operators when they were desirous of arranging for haulage. Thus, there developed a perfectly natural field for the transportation agent or broker who would bring the shipper and the trucker together. The 1935 legislature recognized the propriety and lawfulness of such brokerage or agency service, as well as the possibilities of evil in its conduct by providing for the licensing and regulation of transportation brokers. (Stats. 1935, Chap. 705.)

Not only is the line separating the operations of an agent or broker from that of a transportation company not always easy of delineation but the position of the broker or agent in relationship to that of the individual truckers is such that there is a tendency for the broker to assume such measure of control over the latter that he may properly be characterized as a transportation company. Hence this Commission has always scrutinized carefully the actual operations of those claiming to be brokers or agents, and slight circumstances have been deemed sufficient to remove them from the category to which they claimed to belong and to warrant their being given the transportation company status. The most extreme of the cases decided by the Commission is that referred to in the opinion. (Regulated Carriers, Inc. v. Ramsey, Dec. 27087 in Case No. 3590.) There Ramsey had a place which was a

rendezvous for various truckers and as pointed out in the opinion "he supplied gasoline and other things necessary for the operation of trucks on credit," the sums due him being deducted from collections. This and the fact that "certain truckers alone participated in the benefit of the arrangement" furnished the basis for concluding that it (one or the other of these circumstances) "amounted to financially sustaining the operations."

No such circumstances are here present. Lane had no dock or place of rendezvous for truckers. He made them no advances. There was nothing in the evidence to indicate a limitation upon those for whom he would negotiate haulage.

In the opinion in the instant case references are made to the business being conducted under Lane's name and to his "undisclosed principals." The evidence showed very clearly that shippers were fully advised respecting his operations and shipping papers and billings did not refer to him as principal and did disclose the name of the trucker who did the hauling.

Indeed, the only circumstance upon which the transportation caste may be imputed to Lane's operations lies in his carrying blanket cargo insurance, the cost being charged back to the various individual truckers. This was cheaper than for the individual truckmen to carry their own coverage.

In my opinion something of a more substantial nature than is disclosed by the evidence is necessary to warrant a finding that Lane was operating as a transportation company.

Commissioner.