

Decision No. 29182

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

THE RIVER LINES (The California Transportation Company, Sacramento Navigation Company, and Fay Transportation Company),

Complainants,

vs.

PEARL F. LANE, doing business under the name and style of "ASSOCIATED TRUCKERS," JOHN DOE, RICHARD ROE, and JOHN DOE CORPORATION,

Defendants.

ORIGINAL

Case No. 4102.

McCutchon, Olney, Mannon & Greene, by F. W. Mielke, for Complainants;

Edward M. Berol and Marvin Handler, for Defendant Pearl F. Lane.

BY THE COMMISSION:

O P I N I O N

Complainants are engaged in the transportation of freight by water between San Francisco Bay points and points on the San Joaquin and Sacramento Rivers, including Sacramento. They allege in their complaint that defendant is unlawfully engaged in the transportation of freight as a common carrier by auto truck between the fixed termini of San Francisco and Sacramento, without a certificate of public convenience and necessity or other right. The answer of defendant Pearl F. Lane admits she possesses no certificate, but denies complainant's

other allegations. She contends that, as the holder of a permit as a highway contract carrier, she is serving a few selected customers, and is a contract and not a common carrier.

Public hearings were held before Examiner Elder, the matter was submitted, and it is now ready for decision.

For about two years defendant has been engaged in the operation, almost entirely between San Francisco and Sacramento, of four tractors and semi-trailers. At the time of the first hearing herein she was serving some thirteen shippers in the transportation of a variety of general commodities in both directions between those points. She was also engaged in transporting wine for an additional shipper between San Francisco and Lodi, a point not strictly involved in this proceeding. All of this traffic was obtained by the solicitation of D. E. Lane, defendant's manager, or through shippers' familiarity with the service being rendered others. Other shippers also were solicited with defendant's approval, although she testified that D. E. Lane was "not authorized to solicit much." Several shippers previously served were not using defendant at the time of the first hearing; certain other shippers defendant ceased serving between the first and the last hearing, and one new shipper was first served during the same period. While defendant's trucks sometimes run "light," she testified that she keeps them busy and has all the business and customers she can take care of. Shipments move under individual billings either on a hand-tag or receipt, the form for which applicant supplies, or on standard straight bills of lading.

Defendant contends her customers constitute a selected group served pursuant to bona fide mutually-binding contracts for a continuing course of business. Of the fourteen shippers shipping

between San Francisco and Sacramento during the hearings, defendant had entered into written contracts with eleven, and claimed to have oral contracts or arrangements with three. Five of the ten written contracts purported to require the shippers to use defendant's service for all of their shipments between San Francisco and Sacramento; four imposed on the shippers the illusory obligation of using defendant for all such shipments transported by truck, and one of these four provided that the shipper might use other trucks than defendant's, at the shipper's option. The other two written contracts impose no obligation whatever upon the shippers except, in the case of one, to pay agreed rates for the transportation of such shipments as might be tendered. One shipper, asserted to have an oral contract to the same effect as the written ones, denied having any contract with defendant and testified it was optional with him whether he should patronize defendant at all. Another was shown to be using complainant's service to Sacramento as well as defendant's, evidently without remonstrance from defendant. Numerous other patrons of defendant were using other carriers as well, among them being two of the shippers whose written contracts purported to bind them to ship exclusively by defendant. Defendant, in fact, testified that she interpreted the contracts to require the shippers to tender her only those shipments which were to be transported by truck.

It thus appears that, in general, defendant's contracts, either on their face or as interpreted and applied by the parties, contain no real mutuality of obligation; the shippers' use of defendant's service is optional with them. It is impossible to conclude, moreover, that defendant's shippers constitute a selected or limited group. On the contrary, it appears that they are

constantly fluctuating and changing. Their number is few, but this is largely due to the fact that defendant's service consists of the transportation of large lots, and the extent of her equipment is rather limited. The public is served to the extent these conditions permit, and an offer to do so is maintained by solicitation, as the evidence shows. Under such circumstances, refusal to accept certain shipments does not establish contract carrier status. There is no question that defendant operates usually and ordinarily between San Francisco and Sacramento. We conclude, therefore, that defendant should be ordered to cease and desist operation as a common carrier of freight by truck between the fixed termini of San Francisco and Sacramento.

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, the Public Utilities Act, and the Highway Carriers' 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 days, or both. C.C.P. Sec. 1218, Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; In re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 438; Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 79 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 fine and imprisonment.

O R D E R

IT IS HEREBY FOUND that defendant Pearl F. Lane, doing business as "ASSOCIATED TRUCKERS," is operating as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act of the State of California and Sections 1 (f) and 1 (g) of the Highway Carriers' Act of the State of California, between the fixed termini of San Francisco and Sacramento, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operation, and without other operative right.

IT IS HEREBY ORDERED that defendant Pearl F. Lane cease and desist, directly or indirectly or by any subterfuge or device, from conducting or continuing any and all of such operation, unless and until she shall have secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this order to be personally served upon said Pearl F. Lane, and that he cause certified copies thereof to be mailed to the District Attorneys of the City and County of San Francisco, the Counties of Alameda, Contra Costa, Solano, and Sacramento.

IT IS HEREBY FURTHER ORDERED that the complaint herein be and the same is hereby dismissed as to the defendants named therein as John Doe, Richard Roe, and John Doe Corporation.

IT IS HEREBY FURTHER ORDERED that the effective date of this order shall be twenty (20) days from the date of service hereof upon defendant.

Dated at San Francisco, California, this 13th day of October, 1936.

W B Lewis
Leon O'Connell
J. J. Lewis
William M. ...
Frank ...

Commissioners.