

Decision No. 29183

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the Commission's own motion into the operations, rules, regulations, contracts, practices, or any thereof, of C.W. CARLSTROM, FIRST DOE, SECOND DOE, THIRD DOE, FOURTH DOE, individuals doing business under the fictitious name and style of the ACE VAN & STORAGE COMPANY for the purpose of (a) determining whether said respondents are or any of them is engaged in conducting any service as a highway common carrier between any points in this State and more particularly between San Diego and the territory proximate thereto, on the one hand, and Los Angeles, Beverly Hills, Hollywood, Wilmington, Long Beach, Inglewood, Huntington Beach, San Pedro, Venice, Pasadena, Flintridge, Glendale, Redondo Beach and other points in the County of Los Angeles and points intermediate to all of said points, on the other hand without having first obtained therefor a certificate of public convenience and necessity; (b) determining whether said respondents are or any of them is engaged in any operations or practices in violation of the provisions of Chapter 223, Statutes of 1935 or any orders of the Railroad Commission of the State of California issued thereunder; (c) determining whether or not any permit or permits now held by said respondents or any of them should be cancelled and revoked pursuant to Section 14, Chapter 223, Statutes of 1935.

ORIGINAL

Case No. 4158

D.G. Shearer and C.P. Von Herzen for Certificated Highway Carriers Inc., intervenors

Ellis Brown, for Triangle Transfer and Storage, intervenor as its interests may appear.

W.L. Carpenter, for Argonne Van and Storage Co., intervenor.

Phil Jacobsen, for respondent C.W. Carlstrom.

Harold W. Dill, for Truck and Warehouse Association of San Diego and Imperial Counties.

BY THE COMMISSION:

O P I N I O N

By its order dated the 24th day of August, 1936, the Commission on its own motion instituted an investigation into the operations, rates, charges, classifications, practices and contracts

or any thereof, of C.W. Carlstrom, an individual, doing business under the fictitious name and style of Ace Van & Storage Company, for the purpose of:

(a) determining whether or not said respondent is engaged in operating or conducting a service as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act between any points in this State and more particularly between San Diego, and the territory proximate thereto, on the one hand, and Los Angeles and other points in the County of Los Angeles and points intermediate to all of said points, on the other hand, without first having secured from this Commission a certificate or certificates of public convenience and necessity authorizing such operations by said respondents;

(b) determining whether or not said respondent is engaged in any operations or practices or rendering of any service, in any manner whatsoever, in violation of the requirements of Chapter 223, Statutes of 1935, and the order of this Commission issued pursuant thereto;

(c) Determining whether or not any permit or permits now held by said respondent should be cancelled and revoked pursuant to Section 14, Chapter 223, Statutes of 1935.

Based on the finding that public necessity required an early hearing in this matter, the Commission ordered that hearing be had on not less than five days' notice to the respondent.

Public hearings were conducted by Examiner W.R. Williams at Los Angeles on September 2 and 3, 1936, and at San Diego on September 4 and 5, 1936. On the last date, the matter was submitted subject to the right of the parties to file concurrent memoranda of points and authorities on or before September 15, 1936. This right was waived by counsel and no briefs were filed. Herbert Cameron and Marshall K. Taylor, as counsel for the Transportation Department of the Commission, participated in the presentation of the evidence.

The facts, as developed at the hearings are briefly as follows:

The respondent, C.W. Carlstrom, has no certificate of public convenience and necessity nor other authority which would authorize him to conduct the operations of a highway common carrier between any of the points in question. Respondent has, however, Radial Highway Common Carrier Permit No. 37-82, and Highway Contract Carrier Permit No. 37-83, issued to him by the Commission, pursuant to Chapter 223, Statutes of 1935, and City Carrier Permit No. 37-84 issued to him by the Commission pursuant to Chapter 312, Statutes of 1935. We are not concerned in this proceeding with the operations of the respondent under his City Carrier Permit.

The first condition in each of the highway carrier permits is as follows:

" (1) No vehicle or vehicles shall be operated by said carrier unless adequately covered by a public liability and property damage insurance policy or other means of protection as required by Sections 5, 6 and 7, of Chapter 223, Statutes of 1935."

In this connection it is to be noted that respondent filed two such policies of public liability and property damage insurance with his applications for permits. Policy No. 36572 of the Pacific Automobile Insurance Company, which insured a Chevrolet tractor and a homemade semi-trailer, carries the following endorsement:

" In consideration of the reduced premium at which this policy is written, it is agreed that the use of the commercial automobiles and trailers described in this policy is and will be confined during the policy period to the territory within a 50-mile radius of the place of principal garaging of said automobiles and trailers; and that no trips are or will be made during the policy period to any location beyond a 50-mile radius from the place of principal garaging of such automobiles and trailers, except as follows:

" It is permissible for each truck or unit of truck and trailer to make not more than ten (10) trips beyond the 50-mile radius during the policy year."

The policy itself states:

" 6. The automobiles described herein will be principally used and garaged in San Diego, California."

Policy No. 14104-P of the Paramount Underwriters, for the Superior Indemnity Association which insured the remainder of the vehicles listed in respondent's applications, carries an endorsement containing the following provision:

"In consideration of the premium at which this policy is written, it is understood and agreed that there shall be no liability on the part of the Association while the automobile insured hereunder is being operated beyond a fifty (50) mile radius from the principal place of garaging of such automobile as shown in the policy to which this endorsement is attached."

The principal place of garaging is stated in the policy to be at San Diego, California.

On October 11th, 1935, which was subsequent to the effective date of said policy, the following endorsement was added:

"It is hereby understood and agreed that permission is granted for the Truck No. 1, Chevrolet 1935, 1½ ton motor T5232596 to make not more than ten (10) trips beyond the 50-mile radius during the policy year. All other terms and conditions remain unchanged."

The above policies were cancelled as of August 10, 1936, and August 16, 1936, respectively.

To replace the above policies respondent filed, on August 7, 1936, policy No. A-71256 of the Northwest Casualty Company. This policy carries an endorsement which provides, in part:

" In consideration of the premium at which this policy is issued, it is agreed that any automobiles described herein will be used and operated entirely within a radius of 150 miles of the Insured's address given in this policy."

The address given for the assured is San Diego, California.

Thus it appears that prior to August 7, 1936, respondent had authority to operate only one truck and one tractor and semi-trailer unit beyond a distance of fifty miles from San Diego. It further appears that even those vehicles could be operated beyond fifty miles from San Diego on only ten trips a year each. Since August 7, 1936, respondent's public liability and property damage insurance covers the operation of vehicles within a radius of one hundred and fifty miles of San Diego.

Respondent repeatedly indicated that he was at all times willing to transport all shipments that were offered to him by anyone between San Diego, on the one hand, and Los Angeles and other points in Los Angeles County, on the other hand.

To illustrate: One witness testified that on two different occasions respondent told him that he would take all the shipments that he could get to haul between San Diego and Los Angeles. Another witness testified that she was told by respondent's agent that they would make pick up in San Diego for delivery to Los Angeles at any time.

The record clearly established that between January 1, 1936, and the date of the order instituting investigation in this proceeding, respondent transported shipments between San Diego, on the one hand, and Los Angeles, Inglewood, Beverly Hills, Pasadena, Burbank, Santa Monica, San Pedro, Long Beach and Alhambra, on the other hand, on over thirty occasions. The distance of the haul in each of these cases was in excess of one hundred miles. Those shipments were distributed throughout that period. The record further indicates that respondent had rendered transportation services between those points on many other occasions during the same period. One witness testified that respondent told him that he had a truck going to

Los Angeles from San Diego regularly twice a week. Other witnesses testified that there were other shipments on the truck which picked up or delivered the shipments which they had made by respondent.

The unescapable conclusion from the above facts is that respondent's operations between the points above referred to, and over the routes between said points, are the operations of a highway common carrier as that term is defined by Section 2-3/4 of the Public Utilities Act.

Inasmuch as it is found that respondent's operations between said points are those of a highway common carrier which could not be authorized by any permits granted to respondent under Chapter 223, Statutes of 1935, it becomes unnecessary to press further the inquiry as to whether respondent has violated or exceeded the authority granted by such permits. It is sufficient at this time to place respondent on notice that under the provisions of those permits and of Chapter 223, Statutes of 1935, the scope of his lawful operations, either as a radial highway common carrier or as a highway contract carrier, is limited to the scope of the public liability and property damage insurance policy or evidence of other public protection which he has on file with the Commission pursuant to Sections 5, 6 and 7 of said Chapter 223, Statutes of 1935. The holder of such permits can increase the scope of his lawful operations only after he has increased the scope of such insurance or other public protection. Any operations by the respondent as a radial highway common carrier or as a highway contract carrier which are not so covered by public protection, evidence of which is on file with the Commission, immediately makes his highway carrier permits subject to cancellation at the discretion of the Commission.

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, the Public Utilities Act, the Highway Carriers' Act and the City 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 or he may be imprisoned for five days, or both. 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 or by imprisonment in the County Jail not exceeding one year, or both fine and imprisonment. Also under Section 14 of the Highway Carriers' Act and Section 13 of the City Carriers' Act, any person, or any director, officer, agent or employee of a corporation who violates any of the provisions of these acts, respectively, or of any operating permit issued thereunder to any highway carrier or city carrier, respectively, or any order, rule or regulation of the Commission, is guilty of a misdemeanor, and is punishable by a fine not exceeding \$500, or by imprisonment in the County Jail for not exceeding three months, or by both fine and imprisonment.

O R D E R

Public hearings herein having been duly had, the matter being ready for decision, and the Commission now being advised in the premises

IT IS HEREBY FOUND that C.W. Carlstrom, an individual doing

business under the fictitious name and style of the Ace Van & Storage Company, is, and during the time hereinabove mentioned was, operating as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act, with common carrier status between fixed termini or over regular routes, over public highways between San Diego, on the one hand, and Los Angeles, Inglewood, Beverly Hills, Pasadena, Burbank, Santa Monica, San Pedro, Long Beach and Alhambra, on the other hand, without having first obtained from this Commission a certificate of public convenience and necessity or without a prior right authorizing such operation.

Based upon the opinion and findings herein,

IT IS HEREBY ORDERED that the following designated highway common carrier, to-wit: C.W.CARLSTROM, an individual doing business under the fictitious name and style of Ace Van & Storage Company, 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, or any two or more of the said points, to-wit: San Diego, on the one hand, and Los Angeles, Inglewood, Beverly Hills, Pasadena, Burbank, Santa Monica, San Pedro, Long Beach and Alhambra, on the other hand, unless and until he has first obtained from this Commission a certificate of public convenience and necessity authorizing such operations.

IT IS HEREBY FURTHER ORDERED that in all other respects the Order Instituting Investigation and Order to Show Cause be, and the same hereby is, dismissed.

The Secretary of the Railroad Commission is directed to cause personal service of a certified copy of this decision to be made upon said respondent, C.W.CARLSTROM, and to cause certified copies



thereof to be mailed to the District Attorneys of Los Angeles, Orange and San Diego Counties and the Board of Public Utilities and Transportation of the City of Los Angeles, and to the Department of Motor Vehicles, California Highway Patrol, at Sacramento.

The effective date of this order shall be twenty (20) days after the date of service thereof upon respondent.

Dated at San Francisco, California, this 13<sup>th</sup> day of October, 1936.

M. B. Davis

Leon Whitley

W. G. Cune

Walter Moore

Frank Deaver

COMMISSIONERS