

Decision No. 29278

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the Commission's own motion into the operations, rates, charges, classifications, rules, regulations, contracts and practices or any thereof, of BLANCH JACOBS, A.W.HENNIGER and C.J.HOFFMAN doing business as individuals, jointly and severally, under the fictitious names and styles of ASSOCIATED TRUCKING SERVICE and/or PRODUCE SERVICE COMPANY and/or CONTRACT HAULING, and R.S.WILLIAMS, doing business as an individual under the fictitious name and style of BOB WILLIAMS TRUCK LINES and/or WILLIAMS SERVICE STATION, FIRST DOE, SECOND DOE, THIRD DOE, FOURTH DOE, respondents, for the purpose of (a) determining whether said respondents are or any of them is engaged in any service as a highway common carrier between any points in this State and more particularly between points in the Counties of Santa Cruz, Monterey, San Benito, Santa Clara, Merced and Madera, on the one hand, and San Francisco, Oakland and San Francisco Bay area points, on the other hand without having previously obtained therefor a certificate of public convenience and necessity; (b) determining whether said respondents are or any of them is engaged in conducting any service as a highway carrier, other than a highway common carrier, as defined in Section 1, Chapter 223, Statutes of 1935 without having previously obtained therefor the proper permit or permits as required by said Chapter 223, Statutes of 1935; (c) determining whether said respondents are or any of them is engaged in any operations or practices in violation of the provisions of said Chapter 223, Statutes of 1935 or any Orders of the Railroad Commission of the State of California issued thereunder; and (d) 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. 4156

B.F.JACOBS, for Respondents Blanch Jacobs and
A.W.Henniger

R.S.WILLIAMS, in propria persona.

C.J.HOFFMAN, in propria persona.

REGINALD L. VAUGHAN, for Regulated Carriers, Inc.,
intervenors.

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 rates, charges, classifications, rules, regulations, contracts and practices, or any thereof, of Blanch Jacobs, A.W.Henniger, C.J.Hoffman and R.S.Williams, for the purpose of:

(a) Determining whether said respondents are, or any of them is, engaged in operating or conducting service as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, between any points in this State, without first having secured from this Commission a certificate or certificates of public convenience and necessity authorizing such operation;

(b) Determining whether said respondents are, or any of them is, engaged in operating or conducting a service as a highway carrier other than a highway common carrier over the public highways of this State, as defined in Section 1, Chapter 223, Statutes of 1935, without first having secured from this Commission the proper permit or permits authorizing such operation;

(c) Determining whether or not said respondents are, or any of them is, engaged in operating and conducting service as a highway carrier under permits granted by this Commission pursuant to Chapter 223, Statutes of 1935, in violation of the provisions of said statute or of any order issued by the Commission pursuant thereto;

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

Pursuant to a finding in said Order that public necessity required an early hearing in this matter, public hearings were conducted by Examiner W.R.Williams at Watsonville on September 14, 1936, and at Merced on September 17, 1936. The matter was submitted on the latter date. Mary J.Moran and Marshall K. Taylor, as counsel for the Transportation Department of the

Commission, participated in presenting the evidence.

The facts, as disclosed by the record at the hearings, are briefly as follows:

Respondent R.S. Williams is not, nor has he been since the effective date of Decision No. 28958, dated July 2nd 1936, in Application No. 20555, for a Motor Transportation Broker's License, engaged in any manner in the transportation of property as a carrier for compensation or hire.

Respondent Hoffman is employed by respondent Jacobs as a driver of one of her trucks and in no other way participates in the operation, management or control of the business owned by respondent Jacobs.

Respondent Blanch Jacobs is the holder of radial highway common carrier permit No. 44-103 and of highway contract carrier permit No. 44-187. She is the sole owner of the trucking operation which is in question.

By decision No. 27105, in case No. 3403, the record of which was stipulated into the record in the instant case, respondent Henniger was found to have been conducting an operation of substantially the same nature between the same points and over the same routes as the operation here in question. He was ordered to cease and desist such unlawful operations. ⁽¹⁾

(1) The Order in Decision No. 27105, Case No. 3403 is in part as follows:

O R D E R

"IT IS HEREBY FOUND THAT A.W.HENNIGER is operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Act (Chapter 213, Statutes 1917, as amended), with common carrier status between Los Angeles and San Francisco, Santa Cruz, Monterey, Salinas, Modesto and Hughson, Oakland and San Jose and intermediate points without a certificate of public convenience and necessity or prior right authorizing such operation.

Based upon the finding herein and the opinion,

IT IS HEREBY ORDERED that A.W.Henniger shall cease and desist directly or indirectly or by any subterfuge or device from continuing such operations."

It is to be noted that Watsonville and Castroville are inter-

The testimony of the respondents Henniger and Jacobs, when called on their own behalf, clearly establishes that Henniger is employed by respondent Jacobs as manager with power to collect and disburse funds, purchase equipment, to hire and discharge employees, to direct the truck drivers where to pick up shipments and where to deliver them. In the words of respondent Jacobs, Henniger is employed "to do whatever a manager usually does."

These respondents admit that they transport property for compensation or hire for a great many people between Watsonville and its surrounding rural area and Castroville and its surrounding rural area, on the one hand, and San Francisco and Oakland, on the other hand. The exhibits in the record alone are sufficient to indicate almost daily movements between these points and over intervening routes. These exhibits also indicate that the respondents have served over thirty different shippers between the above points in the current year.

During a three weeks' period in June and July, 1936, respondents performed a daily service between Merced and its surrounding rural area on the one hand and San Francisco and Oakland, on the other hand. This three weeks' period constitutes the harvesting season for tomatoes and peppers grown in the Merced area. Over thirty shippers in the Merced area were served during that time.

The record shows that these respondents are willing to serve any one who has a substantial amount of property to be moved between the areas which they serve.

Respondents contend that the above operations are those of a legitimate highway contract carrier. Pursuant to this

(Footnote 1- continued from page 3)
mediate points between Santa Cruz, Monterey, Salinas, San Jose, San Francisco and Oakland.

contention, respondents introduced in evidence written agreements with many of the shippers whom they served. (2) These alleged contracts are nothing more than mere rate quotations. They do not obligate the shippers to ship any amount of property whatsoever by the respondents. In fact, the testimony of some shipper witnesses was that they have used other motor carriers during the period covered by said purported contracts. There are, moreover, many shippers, both in the Watsonville area and in the Merced Area, for whom respondents transported goods, but with whom they have no written contracts. Respondent Henniger testified that he would

(2) Typical of the agreements with the shippers in the Watsonville and Castroville area, except as to the name of the shipper and the amount to be paid, is the following:

"October 15 1936

"MUTUAL HAULING CONTRACT

"This Mutual Contract Constitutes the essentials and Items of That certain Verbal contract entered into by and Between (shipper's name) "Shipper" and Blanch Jacobs Contract Carrier, to the Commission Markets and Docks, in the Bay Area, designated by the shipper herein, the Following Produce or Tonnage, raised in Season :- 1936-37.

"Artichokes Boxes 10¢ $\frac{1}{2}$ Boxes 7¢ (Chokes, rhubarb)
Lettuce Crates Produce 15¢ Sacks Produce 15¢ L.A.Lugs Produce 15¢ Tonnage Produce \$ 4.00 per Ton.

"Hauling prices subject to Change by California State Regulations.

"Shipper.....
"Contract
.Carrier....."

Typical of the contracts with the shippers in the Merced area, except as to the name of the shipper and the amount to be paid, is the following:

"June 15 1936

"Mutual Hauling Contract

"This Mutual Contract entered into between (Shipper's name) "Shipper" and Blanch Jacobs, Contract Carrier, to Bay Area and Commission Markets, Produce designated by said shipper herein, the following produce Tonnage raised by said Shipper in season of 1936.

"L.A.Lugs Produce 15¢ Crates Produce 30¢ Sacks Produce 20¢
Tons produce \$4.00 per Ton.

"Hauling Prices subject to Change by California State Regulations.

"Shipper.....
"Contract
.Carrier....."

enter into such a contract with any one who had shipments to make and who would ship entirely by respondents during the instant season. This latter qualification must be viewed in the light of the testimony of shippers that have used other truck operators during the time in question, and in the light of the absence of any provision in the contracts themselves obligating the shipper to use respondent's service to any extent whatsoever.

From the facts established at the hearings, it is impossible to escape the conclusion that the operations above described are those of a highway common carrier, as defined by Section 2-3/4 of the Public Utilities Act.

Respondent Jacobs owns the business described above. Accordingly, she comes within the purview of the statutory provision cited.

It appears from the record that respondent Henniger does not share in the ownership of the business in question, it is true. However, the testimony of the respondents themselves and of shipper witnesses clearly established that Henniger plays a controlling part in the management and direction of the operation in question, which operation is substantially the same as part of his own former unlawful operations. It appears, therefore, that he has been aiding and abetting respondent Jacobs in her illegal operations.

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, or he may be imprisoned for five days, or both. C.C.P. Sec. 1918; 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 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

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 BLANCH JACOBS, an individual, is, and during the times mentioned in the Order Instituting Investigation herein 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 Watsonville and ranches, farms and packing sheds within a radius of ten miles and Castroville and ranches, farms and packing sheds within a radius of ten miles thereof, on the one hand, and San Francisco and Oakland, 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.

IT IS HEREBY FURTHER FOUND that A.W.HENNIGER, an individual, is, and was during the times mentioned in the preceeding paragraph hereof, assisting, aiding and abetting the unauthorized and unlawful operations there set forth.

IT IS HEREBY FURTHER FOUND that BLANCH JACOBS, an individual, during the harvesting season for peppers and tomatoes in the rural territory surrounding Merced, which season ordinarily comes during the months of June and July, operates 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 Merced and ranches, farms and packing sheds within a radius of fifteen miles thereof, on the one hand, and San Francisco and Oakland, 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 operations.

IT IS HEREBY FURTHER FOUND that A.W.HENNIGER, an individual, during the times mentioned in the preceeding paragraph hereof, assists, aids and abets the unauthorized and unlawful operations there set forth.

Based upon the opinion and findings herein,

IT IS HEREBY ORDERED that BLANCH JACOBS cease and desist, directly and 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: Watsonville and ranches, farms and packing sheds within a radius of ten miles thereof, and Castroville and ranches, farms and packing sheds within a radius of ten miles thereof, on the one hand, and San Francisco and Oakland, on the other hand, unless

and until she has first obtained from this Commission a certificate of public convenience and necessity authorizing such operations.

IT IS HEREBY FURTHER ORDERED that A.W.HENNIGER, an individual, cease and desist from assisting, aiding or abetting through the use of trucks or services, or otherwise, the said BLANCH JACOBS, or any other person, firm or corporation, from operating as a highway common carrier between the points specified in the preceding paragraph hereof, unless and until a certificate of public convenience and necessity is secured authorizing such operations.

IT IS HEREBY FURTHER ORDERED that BLANCH JACOBS, an individual, cease and desist, directly and 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 said points, to-wit: Merced and ranches, farms and packing sheds within a radius of fifteen miles thereof, on the one hand, and San Francisco and Bakland, on the other hand, unless and until she has first obtained from this Commission a certificate of public convenience and necessity authorizing such operations.

IT IS HEREBY FURTHER ORDERED that A.W.HENNIGER, an individual, cease and desist from assisting, aiding or abetting, through the use of trucks or services, or otherwise, the said BLANCH JACOBS, or any other person, firm or corporation, from operating as a highway common carrier between the points specified in the preceding paragraph hereof, unless and until a certificate of public convenience and necessity is secured authorizing such operations.

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

The Secretary of the Commission is directed to cause personal service of a certified copy of this decision to be made upon said respondents BLANCH JACOBS and A.W. HENNIGER, and to cause certified copies thereof to be mailed to the District Attorneys of Merced, Santa Cruz, Monterey, Santa Clara, San Mateo, San Francisco and Alameda Counties, 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 the respondents.

Dated at San Francisco, California, this 16th day of November, 1936.

W B Harris
Leon Whittell
W J Carr
William J. ...
Frank ...
COMMISSIONERS