

Decision No. 28735

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,

Complainant.

vs.

W. M. PETTY, C. RIVERS, W. M. PETTY and C. RIVERS doing business under the fictitious name and style of Associated Dispatchers, 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. 3930

REGINALD L. VAUGHAN for Complainants.

RAY E. UNTEREINER, for Defendants Wm. M. Petty and C. Rivers and specially for Mrs. Alice Tolentino.

BY THE COMMISSION:

O P I N I O N

By this petition filed on November 7, 1934, complainant charges W. M. Petty and C. Rivers and W. M. Petty and C. Rivers, doing business under the fictitious name and style of Associated Dispatchers, as well as various defendant Does with unlawful common carrier operations by auto truck between San Francisco, Oakland, Alameda, Berkeley, Richmond, Emeryville and San Leandro on the one hand, and Los Angeles, Vernon, Huntington Park and Pasadena and intermediate points on the other hand.

Defendant Petty made no formal answer to the complaint; defendant Rivers answered. Defendant Alice Tolentino was

substituted in place of First Doe defendant and made answer.

A public hearing was held before Commissioner Carr on May 22, 1935, and before Examiner Geary on June 14, 1935. Both hearings were held in San Francisco. The matter was duly submitted on concurrent briefs due July 20, 1935.

This record shows that the Associated Dispatchers is a fictitious name for an organized business owned and conducted by Mrs. Alice Tolentino. The auto truck service was first furnished to the public early in 1935 by Mrs. Tolentino who had formerly worked for United Forwarders until November 3, 1934. Petty and Rivers were revealed as employees only of Associated Dispatchers with no proprietary interest in the Company.

The testimony of shipper witnesses having their places of business in San Francisco was to the effect that defendants responded to practically all calls, usually by telephone, and furnished trucks whenever needed ranging from daily to four or five times weekly and some monthly shipments depending upon shippers' needs. Truck drivers sign bills of lading and receipts on behalf of Associated Dispatchers at regularly scheduled rates. Defendants collect the hauling charges about once a month and pay loss and damage claims. No written contracts have been executed by any of these witnesses. The tonnage offered by the San Francisco territory appears to be mostly in truckload lots although smaller shipments were accepted. Shippers have no dealings or contacts with the truck owners or drivers, they transact all their business with the Associated Dispatchers. The traffic southbound is substantially in excess of that northbound.

Defendant Tolentino's testimony showed that there was no ownership of trucks and that offices were maintained at 15 De Boom

Street, San Francisco, and 2232 East 32nd Street, Vernon. W. M. Petty was employed in the capacity of bookkeeper in the San Francisco office and handled all moneys; C. Rivers was employed delivering freight. Defendant claims to be only acting as agent for truck owners and that she decides if local or line-haul trucks shall make the pickup and delivery of cargo. She further testified that the truckers receive 65 per cent of the gross collections, that cargo insurance is carried, four to eight trucks are used southbound and a few less northbound. A pickup service to the East Bay is operated about once a week. Mrs. Tolentino further testified that she had refused a few consignments to escape Railroad Commission regulation and that she had taken over the business of Wm. Logan, doing business as Associated Dispatchers, after that firm had ceased business. She was formerly employed by both Logan and United Forwarders to whose business Logan had succeeded after United Forwarders had been ordered to cease and desist by the Commission. There is practically no movement to points other than Los Angeles.

Exhibits were introduced showing that Associated Dispatchers had printed accounting forms and used standard bills of lading receipted for by this defendant per the truck owner.

It is quite apparent from the record herein that defendant Tolentino offered transportation generally to large shippers limited only by lack of trucks or the occasional refusal of shipments to avoid Railroad Commission regulation. In other words, the offer of service was there and defendant indicates her awareness of the probable highway common carrier status of her operation by the occasional effort she made to employ the palpable subterfuge of shipment refusal. The record is entirely void of any evidence

as to contracts between defendant and shippers or between shippers and individual truckers, as indicative of a desire to confine transportation activities to contract carrier operations only. Testimony of witnesses definitely indicates the Associated Dispatchers were the principals in all phases of these transportation operations and were entirely responsible for the service rendered including naming of individual truckers, collection of charges, maintaining of cargo insurance and payment of claims. It is also apparent that a regular movement of freight was maintained between San Francisco and Los Angeles.

After carefully considering the evidence in this proceeding, we conclude and find as a fact that Mrs. Alice Tolentino, operating under the fictitious name and style of Associated Dispatchers, is operating as a highway common carrier within the meaning of Sections 2-3/4 and 50-3/4 of the Public Utilities Act between San Francisco and points adjacent thereto on the one hand and Los Angeles and points adjacent thereto on the other hand and that defendant does not possess a certificate of public convenience and necessity. It therefore follows that a cease and desist order should be issued.

The record does not justify a like finding as to W. M. Petty and C. Rivers and the complaint in so far as it embraces said Petty and Rivers should be dismissed.

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 (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, 38 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 violated an order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding \$1000, 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 Alice Tolentino, operating under the fictitious name and style of Associated Dispatchers, is operating as a highway common carrier as defined in Sections 2-3/4 and 50-3/4 of the Public Utilities Act with common carrier status between San Francisco and points adjacent thereto on the one hand, and Los Angeles and points adjacent thereto on the other hand, 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 Alice Tolentino, operating under the fictitious name and style of Associated Dispatchers, 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 the Commission shall cause a certified copy of this decision to be personally served upon Alice Tolentino, that he cause certified copies thereof to be mailed to the District Attorneys of San Francisco, Alameda and Los Angeles Counties, 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 above entitled complaint in so far as it refers to W. M. Petty and C. Rivers be and the same hereby is dismissed.

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

Dated at San Francisco, California, this 3<sup>rd</sup> day of May, 1937.

William W. Warr  
Leon A. Whittier  
Frank P. Weller  
Harold W. Weller  
Ray L. Kelly  
COMMISSIONERS.