

Decision No. 30161

ORIGINAL

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, contracts)
and practices, or any thereof, of Harry) Case No. 4226.
LeSer, doing business as Los Angeles)
and Portland Transportation Company.)

HARRY LESER, in Propria Persona.

J. W. KENDALL, for Bekins Van Lines, Inc.
and Bekins Van and Storage Company,
as their interests may appear.

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by the Commission on its own motion to determine whether the respondent, Harry LeSer, is engaged in the transportation of property as a highway common carrier without a certificate of public convenience and necessity, as required by Section 50-3/4 of the Public Utilities Act.

Public hearing was held at Los Angeles on September 2, 1937, before Examiner Elder. Respondent appeared personally and participated in the proceeding.

Testimony was given by nine persons who had received service from respondent for the transportation of their own property, and by three other persons engaged in the household goods moving and transfer business, who had used respondent's services for the transportation of property of their customers. In all cases the shipments consisted of household goods or per-

sonal effects. All the shipments moved between Los Angeles and San Francisco, come northbound and some south, except one from Fresno to Los Angeles and another from Alameda to Los Angeles.

Several of the witnesses testified that they were led to patronize respondent when, after seeing his advertisement in the telephone directory, they called him for an estimate of the cost of transporting their goods and found his estimate lower than other carriers'. Others were directed to respondent through friends or acquaintances. Still others made the transportation arrangements, not with respondent directly, but with or through other carriers, notably Cottrell Bros. of San Francisco. In some instances these persons were told by Cottrell Bros. that the goods would be transported by respondent; others understood that Cottrell Bros. would not perform the transportation itself but were not informed who would haul the shipments. Some, however, expected Cottrell Bros. to perform the service and were surprised when their goods were picked up or delivered by a truck bearing the name: "Los Angeles-Portland Van Lines", or a similar name.

From the testimony of transfer men, it appears that respondent is well known to have moving vans going between Los Angeles and San Francisco, Portland and Seattle, and to pay commissions to moving companies who turn over to him traffic for these points. The record shows that respondent has solicited this business from other moving companies by post card. Although respondent does not offer immediate delivery unless he happens to have a truck moving at the time, none of the witnesses was ever declined service when respondent had a truck available, and respondent evidently is ready and willing to receive shipments for transportation whenever a van is available. The shipments are commonly transported under uniform, straight bills of lading in form prescribed by Interstate

Commerce Commission, with respondent's fictitious name: "Los Angeles-Portland Van Lines," printed in, as carrier. It is intimated in the record that respondent has also been known by the name "Los Angeles-Portland Transportation Company."

While the record does not purport to contain a complete account of all of respondent's shipments during any period of time, there is evidence of at least six trips between San Francisco and Los Angeles and intermediate points in July, three in May and two in August, 1937, as well as others in November, 1936, and February and April, 1937. Some of the witnesses testified that they had also used respondent's services on previous occasions; that after having moved them in one direction, they called upon him to move them back, and received the service. One witness, Mrs. Hinkelman, had been moved by respondent between Los Angeles and San Francisco five times during the last several years. On northbound shipments she arranged the transportation directly with respondent and on southbound shipments she arranged it through Cottrell Bros.

Respondent declined to offer any evidence in his own behalf.

The evidence clearly shows that the defendant is engaged in transportation of household goods and personal effects by motor vehicle over the public highways, usually and ordinarily between the fixed termini of San Francisco and Los Angeles. The record further shows that the service is available and offered by respondent to the public generally. In so doing, respondent is operating as a highway common carrier, and should be ordered to cease and desist therefrom unless and until he receives a proper certificate of public convenience and necessity.

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 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. 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 \$500.00, or by imprisonment in the County Jail for not exceeding three months, or by both fine and imprisonment.

O R D E R

Public hearing having been had in the above-entitled proceeding, evidence having been received, the matter having been duly submitted and the Commission being now fully advised,

IT IS HEREBY FOUND that the respondent, Harry LeSer, doing business as "Los Angeles-Portland Van Lines" or "Los Angeles-

Portland Transportation Company", or both, is operating as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act of the State of California, between the fixed termini of San Francisco and Los Angeles, without first having secured from this Commission a certificate of public convenience and necessity, authorizing such operation, and without other operative right, in violation of Section 50-3/4 of the Public Utilities Act.

IT IS HEREBY ORDERED that respondent Harry Le Ser immediately cease and desist from conducting or continuing, directly or indirectly or by any subterfuge or device, any and all of said operation as a highway common carrier hereinabove in the next preceding paragraph set forth, unless and until he 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 the Commission cause a certified copy of this order to be personally served upon respondent, Harry Le Ser.

IT IS HEREBY FURTHER ORDERED that for all other purposes the effective date of this order shall be twenty days from the date of service hereof upon the defendant.

Dated at San Francisco, California, this 20th day of Sept., 1937.

Wallace L. Stone
Leon Phillips
Frank P. Blaine
Paul S. Bond
Walter H. Hilly
Commissioners.