

Decision No. 30683

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Certificated Highway Carriers, Inc.,)

Complainant)

vs.)

F. T. Sakemi, E. K. Sakemi, John
Block, William Block, Edward Block
and L. R. Settlemire,)

Defendants)

Case No. 4265

ORIGINAL

H. J. Bischoff, for Certificated Highway Carriers, Inc.,
Complainant.

J. Marion Wright, for F. T. Sakemi, E. K. Sakemi,
John Block, William Block, Edward
Block and L. R. Settlemire,
Defendants.

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by the above named complainant against L. R. Settlemire, F. T. Sakemi and E. K. Sakemi, John Block, William Block and Edward Block.

Public hearing was held before Examiner Cameron at Indio, on December 21st and 22nd, 1937. E. K. Sakemi, William Block and L. R. Settlemire appeared personally and testified, all of the defendants being represented by counsel.

For reasons that will hereafter appear, we shall consider the evidence against the above named defendants as follows: (1) F. T. Sakemi and E. K. Sakemi; (2) John Block, William Block and Edward Block; (3) L. R. Settlemire.

(1) F. T. SAKEMI and E. K. SAKEMI. E. K. Sakemi is the son of F. T. Sakemi and holds a Contract Carrier's permit which was issued in

1935. They have been engaged in the trucking business since 1932 and are using two trucks in the conduct of said business. It appears that since the first part of October, 1937, they have been making trips between Indio and vicinity in the Coachella Valley, and Los Angeles, over Public Highway No. 99, in the delivery of farm products, consisting chiefly of beans, squash, tomatoes, eggplant and spinach; that said produce is picked up in the Coachella Valley, in the vicinity of Indio, and delivered to commission houses in Los Angeles practically every day, except Saturday; that from Los Angeles to the Coachella Valley, the property transported consists of groceries, petroleum products, fertilizer and seed. H. K. Sakemi stated that he and his father, F. T. Sakemi, operate the trucking business, all of his testimony referring to the business operated by himself and F. T. Sakemi. This fact is substantiated by the testimony of witnesses that they entered into transportation contracts with the father, F. T. Sakemi.

These defendants are rendering transportation services for the General Petroleum Corporation, W. D. Dickey, F. E. Sakei, T. Shibata, K. Sakemi, M. Nishamito, H. Nakamura, S. Nagata and H. Nagata, the last seven named being produce farmers.

L. P. Clause of Indio, representing the General Petroleum Corporation, stated that these defendants had been hauling for him since 1934, at various times; that he knew these defendants were making frequent trips to Los Angeles and arranged with them to purchase their gas and oil from the General Petroleum Corporation, in exchange for the transportation services; that the trucking services were rendered at the highway common carrier rate, and that the General Petroleum Corporation was not bound to employ said defendants, but that they did give them preference when possible. Mr. Clause further testified that the shipments varied in weight from a few pounds to

fourteen or fifteen thousand pounds.

W. P. Dickey testified that he was in the feed and fertilizer business; that he sold seed to F. T. Sakemi for use on the ranch and that the same was paid for by the transportation services rendered by these defendants in hauling seed and fertilizer for him from Los Angeles to points in the Coachella Valley.

The other witnesses testified to the effect that said defendants commenced transporting their produce around the first part of October, in practically all instances under contract, either oral or written; that they approached one or the other of these defendants to transport their produce to Los Angeles and bring back groceries, lug boxes, etc., when needed, because they knew those defendants were in the trucking business.

Five of the witnesses, namely: S. Nagata, K. Nagata, T. Shibata, H. Nakamura and F. H. Sakai, signed written contracts with said defendants for their hauling. These contracts are dated October 27, 1937, October 29, 1937, September 7, 1937, September 7, 1937, and October 29, 1937, respectively. The contracts are form contracts, practically identical, including rates, with names and dates inserted in blank spaces provided for that purpose. Two of the contracts provide that the produce be shipped to the Venice Celery Distributors, Los Angeles, and the others provide that the produce be shipped to points in Los Angeles designated by the shipper. Each written contract contains a provision providing, in substance, that any other freight will be carried by carrier at the rate of 50¢ per cwt. From the statements of the witnesses who signed the contracts, it appears that property was hauled from time to time and that the witnesses did not know what rate was charged. When groceries or other items were needed, the shipper would give instructions to secure the same and when requested in this manner, the items were purchased and upon

delivery to the shipper were sold at a price over and above the purchase price. This was called a "commission". H. Nagata testified that there was transported by these defendants, fifty thousand laths, at the rate of \$5.00 per ton. S. Nagata testified that these defendants hauled roofing material for him on November 26, 1937, from Los Angeles, and that there was a \$60.00 charge made for the material and the transportation service. It is very evident that the provisions of the contracts regarding rates for the transportation of property, other than produce, were completely disregarded. There was also testimony by the shippers that they employed other carriers, in violation of the provisions of the contract and that the carrier had knowledge of these violations but made no comment or objection to the same.

It was impossible from the evidence to determine the nature of the oral contracts under which these defendants were transporting property. There was, however, evidence to show that there was an understanding between the shippers and the carrier as to rates.

Defendant H. K. Sakemi testified that he had no regular route, no certain hours or time in which he operated his truck, but that in most instances Public Highway No. 99, from Indio to Los Angeles, was used; that he arranged his schedule to deliver produce of the shippers at the markets in Los Angeles before three o'clock A. M.; that the same price was charged to all shippers and that he had uniform waybills; that he protected his shippers by carrying cargo insurance, and that if business increased and was steady he would lease additional equipment if necessary, stating that he would not take business from any other shippers unless they entered into contracts with him. He further stated that he thought he had a right to contract with anybody when hauling was to be done; that he refused

a transportation service two or three weeks prior to the hearing. The testimony of other witnesses, however, was to the effect that these defendants have never refused to render a transportation service when called upon to do so. It appears that defendant E. K. Sakemi assisted the shippers, in some instances, by giving them market quotations and suggesting to what commission house the produce should be sold. On the shipments of produce from points in the Coachella Valley to Los Angeles, the transportation charges, in practically all instances, were paid by the commission house direct to these defendants and the commission house deducted the said transportation charge when remitting the cost of the produce to the shipper.

It thus appears that the agreements, either written or oral, which were entered into with the various shippers by these defendants, the time at which they were made, the lack of performance in accordance with the provision of the agreements and the uniform nature of the rates, could be nothing more than agreements to charge certain rates; that these defendants were attempting to get business wherever it could be obtained, and secured as much as their equipment would handle. The testimony further shows that if new business could be secured additional equipment would be leased to handle the same. This, in conjunction with the regularity of the trips made from Indio and vicinity, in the Coachella Valley, to Los Angeles, clearly must be held to be a highway common carrier operation.

(2) JOHN BLOCK, WILLIAM BLOCK and EDWARD BLOCK. John Block is the father of William Block and Edward Block. A Contract Carrier's permit was issued to John Block, and according to William Block, the three are conducting a transportation business as partners; that all of their earnings go into the same account and the revenues are distributed. The evidence also shows that in the conduct of the transportation business, they use two trucks, a Chevrolet 4- $\frac{1}{2}$ ton,

used as a pick-up, and a G.M.C. 8-ton, used in transporting property between points in the Coachella Valley and Los Angeles; that the transportation business is under the active management of defendant William Block. From the testimony, including that of William Block, it appears that these defendants have transported property, chiefly farm products, including eggplant, beans, peas, spring tomatoes, peppers, squash and dates, from the Coachella Valley, in the vicinity of Thermal, to the markets in Los Angeles, daily, except Saturday, since the first part of October, 1937; that groceries, laths, lug boxes and other materials requested by shippers are transported from Los Angeles to Thermal and vicinity, in the Coachella Valley, and that these back-hauls average approximately two a week.

K. Doibatake, a grower in the Coachella Valley, testified that he was a member and head of the Oasis Growers Exchange of Oasis, California; that this was an unincorporated association of growers who had mutual interests, and that on September 20, 1937, the Oasis Growers Exchange, through said K. Doibatake, entered into a contract with defendant John Block; this was a form contract with blank spaces left for dates and names, and was signed by K. Doibatake, Shipper. It was also signed, however, by J. M. Yano, M. Hirata, K. Tsunoda, G. Hirose, K. Matsuishi, W. Watanabe and M. Kitsunai. This contract was supplemented by a contract dated November 28, 1937, which was in every particular identical with the contract dated September 20, 1937, except that there was written in "lugs 11¢, crates 32¢". There was also entered in evidence a contract dated September 7, 1937, between John Block and H. R. Sugimoto, which was identical with the contract entered into with the Oasis Growers Exchange, except for names and dates. The rates in this latter contract were 8¢ per lug and 25¢ per crate. This contract was supplemented on the 22nd day of November, 1937, by a similar contract, except that the rates were changed to 10¢ per lug and 30¢ per crate.

All of these contracts were practically identical with the contracts entered into between defendants F. T. and E. K. Sakemi and their shippers, except as to rates, including a provision in substance that any other freight will be carried by the carrier at the rate of 50¢ per cwt. This provision of the contract was disregarded, as property other than produce was transported and charges other than those provided by the contracts were made. Groceries were hauled from time to time on order of the shippers, for which these defendants received from 20% to 25% over and above the cost of the merchandise. It was contended that this was not a transportation charge but a commission for buying and selling. However, the facts showed that when merchandise was needed, a shipper would give defendant William Block, or his brother, defendant Edward Block, a written statement requesting them to secure the same in Los Angeles and deliver it to the shipper. Upon delivery the shipper paid these defendants the purchase price and in addition an amount which defendant William Block contended was a commission and not a transportation charge.

The testimony showed that in some instances the shippers employed other carriers to transport their property, inconsistent with the provisions of the contracts; that these defendants had knowledge of this practice and made no mention or objection to the shippers for so doing. This is also true regarding the provision in reference to the rate charged for property other than produce. It is clear that the contracts between these defendants and their shippers were nothing more than agreements to charge certain rates if and when the shippers requested these defendants to transport their property. On the shipments of produce from points in the Coachella Valley to Los Angeles, the transportation charges were paid by the commission house direct to these defendants, in most instances, and the commission house deducted such transportation charge in remitting the cost of the produce

to the shipper.

The shippers who signed contracts stated they were not solicited but that they knew these defendants were in the transportation business, making regular trips to Los Angeles, and asked these defendants to do their hauling; that the contract was signed at the request of one or the other of these defendants.

Defendant William Block testified in this particular that they would haul for anyone who would sign a contract but that they would not contract to haul for any other shippers at the present time for the reason that they had all the business they could handle. He further testified that there was no regular route, no schedule or rates established, but the testimony of other witnesses conclusively shows that in practically all instances Public Highway No. 99, from Thermal to Los Angeles, was used, and that he arrived at the commission houses in Los Angeles at approximately the same time every morning, about three o'clock A. M.

It thus appears from the manner in which the contracts were executed, the time at which they were executed, the mutual violation of the provisions of the contracts, except as to rates, together with the fact that these defendants would take business from any shipper would would sign a contract and that they would take no additional business at the present time because of insufficient equipment to handle the same, in addition to the regularity of their trips between Thermal and points in the Coachella Valley, and Los Angeles, that these defendants must be held to be conducting a highway common carrier operation.

(3) L. R. SETTEMIERE. This defendant has been engaged in the trucking business for the past several years and holds a Contract Carrier's permit, issued by the Railroad Commission in 1935. For

the past year he has been using three trucks in conducting his trucking business, and has been operating between Indio and points in the Coachella Valley, and Los Angeles, since September, 1937. In this service he has been using two, and some times three, trucks daily. He transports chiefly figs, grapes, tangerines, spinach and farm products from Indio and vicinity, in the Coachella Valley, to Los Angeles, and on the back-haul transports a variety of commodities, including pipe, stoves, water heaters, refrigerators and household supplies. These shipments range from a few pounds to several tons. Some of the shippers have been using the defendant's transportation service for a number of years, the testimony indicating that this defendant maintained a service between Los Angeles and the Coachella Valley and when the shippers had property to be transported between these points they would contact this defendant and arrange for the hauling.

L. W. Thurlow, Manager of the Southeastern Service Corporation, Indio, testified that the services of this defendant were used to transport merchandise from Los Angeles to Indio, consisting chiefly of pipe, stoves, water heaters and refrigerators; that the price ordinarily charged was 40¢ per cwt. and that the extent of the hauling done by this defendant for the Southeastern Service Corporation was determined, in most instances, by the amount of materials purchased.

In the spring of 1937, L. R. Hayward began using the services of this defendant in the transportation of property between Los Angeles and Indio and vicinity, in the Coachella Valley; that the extent of the transportation services rendered by this defendant were determined largely by the purchases he made; that during the months of April and May, 1937, this defendant averaged from twelve to fifteen trips

a month between Los Angeles and points in the Coachella Valley.

Francis A. Koehler, representing Koehler & Sons, stated that he employed the services of this defendant because he knew said defendant was in the transportation business, operating between Los Angeles and points in the Coachella Valley. He further stated that the services of this defendant were employed on an average of from 25 to 30 times a year, the shipments ranging from a few pounds to several tons; that the rate ordinarily charged was 25¢ per 100 pounds for merchandise hauled from Los Angeles to the Coachella Valley. He also testified that when he had hauling to be done he attempted to locate this defendant, but in the event he was unsuccessful, he would then contact this defendant's driver; that he paid practically the same rate for all commodities transported.

Jake and Andy Lolmaugh, who operate separate ranches in the Coachella Valley, testified somewhat similarly, in substance to the effect that they employed defendant to haul tangerines, grapes, figs and other products produced on their farms, from their ranches in the Coachella Valley to the commission houses in Los Angeles. Each testified that in some instances they instructed the defendant to select the commission house where the best market prevailed, but that in most instances defendant was instructed to deliver the commodities to certain commission houses; that the price charged was 10¢ per lug for grapes and 9¢ per lug for tangerines. Jake Lolmaugh testified that he often saw the property of other shippers on the truck which came to his ranch to make the pick-up.

Lee Anderson, representing the Covaldo Date Company of Coachella, stated that the services of this defendant were used practically every day from September to January of each year, including 1937, and that in many instances there were household supplies delivered from Los Angeles to the Coachella Valley on the back-haul. He stated also that

when hauling was to be done from time to time, arrangements were made with this defendant to do the same.

The testimony of Frank Parker of Coachella, who used the services of this defendant to transport dates and bring anything back that was requested of the carrier from Los Angeles, and the testimony of Frank Winters, Manager of the United Date Growers, was to the same effect. There was no evidence that any attempt was ever made to require the shippers to enter into written contracts for the transportation services of this defendant.

Defendant contends that he had an oral contract with each shipper and that he would not transport property for any one unless he had such a verbal contract. When asked if he ever refused to haul for a shipper when requested so to do, this defendant stated he had refused on occasions because he had other work to do. The record shows that said defendant carried cargo insurance and agreed to protect the shippers from any loss or damage to their property occurring in transit; that for all services rendered he was either paid by the shipper who called him or by the commission house, and when paid by the latter, the transportation charge was deducted from the amount returned to the shipper.

It is evident from the foregoing that the transportation service rendered by this defendant is a highway common carrier service.

Request has been made by these defendants, through their counsel, for the Railroad Commission to clearly outline, define and distinguish the distinctions between the different types of carriers in order that they may be apprised of the type of service they may legally render under the authority of a Contract Carrier's permit. It will be unnecessary here to discuss the distinctions in detail as this has already been done in the case of *Rampone v. Leonardini*,

Decision No. 28526, 39 C.R.C. 588. See also Haynes v. MacFarlane, (1929) 207 Cal, 529; George v. Railroad Commission (1933), 219 Cal. 451.

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 (5) days, or both. C.C.P. Sec. 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; re Ball and Hays, 37 C.R.C. 407; Wernuth v. Stamper, 36 C.R.C. 458; 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 \$1000.00, 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

A public hearing having been held 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

(1) Defendants F. T. Sakemi and H. K. Sakemi, and each of them, have engaged in the transportation of property for compensation over

the public highways of the State of California by motor vehicles between fixed termini or over a regular route, to-wit: between Indio and vicinity, in the Coachella Valley, and Los Angeles, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from the Railroad Commission a certificate of public convenience and necessity or a prior right authorizing the conduct of such operation.

(2) Defendants John Block, William Block and Edward Block, and each of them, have engaged in transporting property for compensation over the public highways of the State of California by motor vehicles between fixed termini or over a regular route, to-wit: between Thermal, Indio and points in the Coachella Valley, and Los Angeles, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from the Railroad Commission a certificate of public convenience and necessity or without a prior right authorizing such service.

(3) Defendant L. R. Settlemire has been engaged in transporting property for compensation over the public highways of the State of California, between fixed termini or over a regular route to-wit: between Coachella, Indio and vicinity in the Coachella Valley, and Los Angeles, as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having obtained from the Railroad Commission a certificate of public convenience and necessity, or without a prior right authorizing such operation.

By reason of the foregoing opinion and findings herein,

IT IS HEREBY ORDERED THAT

(1) Defendants F. T. Sakemi and E. K. Sakemi be, and each of them is hereby required and directed to cease and desist, directly or

indirectly, or by any subterfuge or device, from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles, over the public highways between fixed termini or over a regular route, to-wit: between Indio and vicinity, in the Coachella Valley, and Los Angeles, without first having obtained from the Railroad Commission a certificate of public convenience and necessity, or without a prior right authorizing such operation.

(2) Defendants John Block, William Block and Edward Block be, and each of them is hereby required and directed to cease and desist, directly or indirectly, or by any subterfuge or device, from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles, over the public highways between fixed termini or over a regular route, to-wit: between Thermal, Indio and points in the Coachella Valley on the one hand, and Los Angeles, without first having obtained from the Railroad Commission a certificate of public convenience and necessity, or without a prior right authorizing such operation.

(3) Defendant L. R. Settlemyre be and he is hereby required and directed to cease and desist, directly or indirectly, or by any subterfuge or device, from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles, over the public highways between fixed termini or over a regular route, to-wit:

between Coachella, Indio and vicinity in the Coachella Valley, on the one hand, and Los Angeles, without first having obtained from the Railroad Commission a certificate of public convenience and necessity, or without a prior right authorizing such operation.

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

Dated at San Francisco, California, this 4th day of February, 1938.

Robert M. McLean
Leon A. Dwyer
James R. Dwyer

Commissioners.