

Decision No. 20830

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, classi-  
fications, rules, regulations, contracts  
and practices, or any thereof, of  
A. M. BUCHANAN.

Case No. 4266

ORIGINAL

A. M. Buchanan, in propria persona.

H. E. Northway, for California Milk Transport,  
interested party.

W. Maxwell Burke, for Refugia Garcia, Concepcion  
Bustos, Felipa Dominguez, Max  
Attiliano and Jerry Ferraro,  
interested parties.

BY THE COMMISSION:

O P I N I O N

This proceeding originated by the Commission initiating its own investigation to ascertain whether A. M. Buchanan, respondent, violated the provisions of the Highway Carriers' Act, or any order, rule or regulation of the Railroad Commission issued pursuant thereto, and more particularly to determine whether or not said respondent conducted a transportation service without adequate insurance as required by Sections five (5), six (6) and seven (7) of said Act.

Public hearing was held before Examiner Cameron in the State Building at Los Angeles on the 14th and 21st days of December, 1937, at which time respondent appeared, participated in the hearing and testified.

The undisputed evidence shows that on the 13th day of May, 1937, and for some time prior thereto, respondent had been engaged in transporting property for compensation as a business by motor vehicle

on the highways of the State of California as a Radial Highway Common Carrier; that his equipment was garaged in the yard of the Inland Fertilizer Company at 4144 Bandini Boulevard, Los Angeles; that practically all of the for-hire hauling done by respondent was for said Inland Fertilizer Company, for which he was paid on a ton basis; that on the 13th day of May, 1937, respondent drove his truck in the delivery of a load of fertilizer for said Company from the above address, over the highways of the State of California, to the ranch of Elmer Battersby, near Vista, California; that after the fertilizer had been delivered, and while returning to Los Angeles in the evening of said day, at approximately 98.2 miles from the Inland Fertilizer Company, respondent's truck collided with an automobile sedan, which collision resulted in injury to the five occupants thereof, mortally injuring three.

The evidence also discloses that respondent was issued a Radial Highway Common Carrier's permit, numbered 19-1369, on November 27th, 1935; that there was filed with the Railroad Commission prior to the issuance of this permit an unlimited policy of insurance, issued by the General Casualty Insurance Company of America, which policy of insurance was secured through the Triangle Insurance Company of Huntington Park, which, according to the testimony of Howard Seybold, President, was the duly authorized agent of that Company. Subsequent thereto, this policy was cancelled, but prior to the cancellation thereof, after receiving notice of said cancellation, respondent went to Mr. Seybold and requested him to secure another policy of insurance. Mr. Seybold stated in effect that he would be unable to secure insurance in the Company he represented, but that he thought he could secure a policy from the Angelus Indemnity Corporation. Respondent testified that he requested Mr. Seybold to get the insurance, and thereafter the Angelus Indemnity Corporation issued its policy covering the

equipment operated by respondent, which policy was filed with the Railroad Commission on October 31st, 1936, and was in effect on the 13th day of May, 1937. This policy of insurance carried a rider to the effect that the use of the trucks "will be confined during the policy period to the territory within a fifty-mile radius of the place of principal garaging of such automobile; that no trips are or will be made during the policy period to any location beyond a fifty-mile radius from the place of principal garaging of such automobile, anything in the policy to the contrary notwithstanding." Upon receipt of the insurance policy by the Triangle Insurance Company from the Angelus Indemnity Corporation, the same was forwarded to the Railroad Commission for filing.

Respondent testified that he did not see this policy and was not aware of the fifty-mile limitation. Where one procures another to obtain insurance for him, he thereby makes such person his agent and assumes full responsibility for his acts. 32 Corp. Jur. 1054; Bennett v. Northwestern National Insurance Co., 84 C.A. 130; Solomon v. Federal Insurance Co., 176 Cal. 133; Purcell v. Pacific Automobile Insurance Co., 88 C.A.D. 527. In addition to respondent being bound by and charged with full responsibility of the acts of the Triangle Insurance Company, whom he employed to secure the Angelus Indemnity Corporation policy, the testimony of Mr. Seybold and that of respondent clearly shows that respondent had full knowledge of the provision of the insurance policy limiting his operations.

This policy limited the operation of respondent within a fifty-mile radius of 4414 Bandini Boulevard, Los Angeles, the principal place of garaging of respondent's equipment. Section two (2) of the Highway Carriers' Act provides that no highway carrier may operate except in accordance with the provisions of the Act.

Sections five (5) and seven (7) of said Act require a highway carrier, other than a highway common carrier, to procure and continue in effect during the active life of the permit adequate public liability and property damage insurance, and the operation by the respondent as a radial highway common carrier beyond a fifty-mile radius was beyond the limitation provided by said insurance. The operations of respondent, therefore, beyond a fifty-mile radius of 4144 Bandini Boulevard, Los Angeles, were unlawful, and justified the suspension of respondent's operating permit. Due to the cancellation of the insurance policy filed by respondent, radial highway common carrier permit No. 19-1369 was revoked November 27, 1937. Pursuant to a new application filed by respondent January 13, 1938, which was accompanied by a new insurance policy, radial highway common carrier permit No. 19-7322 was issued to respondent February 10th, 1938. However, in view of respondent's dereliction, this permit will stand suspended for a period of ten (10) days from the effective date of this order.

An order of this Commission directing that an unlawful operation cease and desist is in effect not unlike an injunction 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 a 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 Hayes, 37 C.R.C. 407; Wermuth 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 14 of the Highway Carriers' Act (Chapter 223, Statutes 1935), a person who violates an order of the Commission is guilty of a misdemeanor and is punish-

able by a fine not exceeding \$500.00, or by imprisonment in the county jail not exceeding three (3) months, or by both such 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 now being fully advised:

IT IS HEREBY FOUND that respondent A. M. Buchanan, on the 13th day of May, 1937, engaged in the transportation of property for compensation as a business over the public highways of the State of California, from 4144 Bandini Boulevard, Los Angeles, to the ranch of Elmer Battersby, near Vista, California, by means of motor vehicle, as a radial highway common carrier; that said transportation service rendered on May 13, 1937, extended beyond a fifty-mile radius from the principal place of garaging of said truck; that respondent had on file with the Railroad Commission on said date a policy of insurance limiting the public liability and property damage coverage within a radius of fifty miles from the principal place of garaging of his equipment; that said respondent was not adequately protected by public liability and property damage insurance as required by the Highway Carriers' Act for the transportation service rendered beyond said fifty-mile radius, and was therefore operating in violation of said act.

IT IS HEREBY ORDERED that said respondent A. M. Buchanan shall immediately cease and desist and thereafter abstain from engaging in the transportation of property for compensation or hire as a business by motor vehicle as a radial highway common carrier, as defined in the Highway Carriers' Act (Stats. 1935, Chap. 223, as amended), over any public highway in this state, without first

having provided and continued in effect adequate public liability and property damage insurance, as required by Sections (5), (6), and (7) of said Highway Carriers' Act.

IT IS HEREBY FURTHER ORDERED that radial highway common carrier permit No. 19-7322, issued to respondent A. M. Buchanan, shall be suspended for a period of ten (10) days; that said ten-day period of suspension shall commence on the 28th day of February, and continue to the 9th day of March, 1938, both dates inclusive, if service of this order shall have been made upon respondent A. M. Buchanan more than ten (10) days prior to the 28th day of February, 1938; otherwise, said ten-day period of suspension shall commence on the effective date of this order and continue for a period of ten days thereafter.

IT IS HEREBY FURTHER ORDERED that during said period of suspension said respondent A. M. Buchanan shall desist and abstain from engaging in the transportation of property for compensation or hire as a business over any public highway in this state not exclusively within the limits of any incorporated city, or city and county, by means of motor vehicle or motor vehicles, and from performing any other service as a radial highway common carrier, as defined in said Highway Carriers' Act.

The effective date of this order shall be ten (10) days after the date of service hereof upon respondent.

Dated at San Francisco, California, this 14<sup>th</sup> day of February, 1938.

William A. Brown  
Frank A. Whelan  
Frank R. Newman

Commissioners.