

Decision No. 20588

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, con-
tracts and practices, or any thereof,
of GEORGE W. JOHNSON.)

Case No. 4299

ORIGINAL

Clara R. Cushman, for respondent.

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by the Commission on its own motion into the operations, rates, charges, contracts and practices of George W. Johnson for the purpose of determining whether or not respondent is engaged in operation as a highway common carrier between Cloverdale, on the one hand, and Novarro, Booneville and Philo, on the other hand, without certificate; and whether he is operating as a highway carrier other than a highway common carrier at rates less than minimum rates for such transportation as established in Decision No. 28761, and without issuing freight bills to the shippers as required in that decision.

Public hearing was held at Cloverdale on April 5th, 1938, before Examiner Elder at which the respondent appeared and was represented by counsel. The matter was submitted and is now ready for decision.

Evidence was received from shippers, from an inspector for the Railroad Commission and from respondent himself, who testified voluntarily. Respondent resides at Philo where he conducts a general merchandise business. He owns a truck, which he operates between Cloverdale and the points above mentioned once or twice a week. Respondent asserts that he operates the truck principally to transport supplies for his store. At the same time he engages in the transportation of property for compensation for residents in the vicinity of the towns mentioned. This for hire hauling is conducted under the purported authority of a permit as a radial highway common carrier. The evidence shows that respondent's transportation service is rendered on request or demand for the public generally without express contract or other special arrangement, and is that of a common carrier. The operation, however, is not radial in character but is one between the fixed termini above mentioned and over a regular route between them.

Testimony was received from Harold E. Eyles, Earl V. Clark, Mrs. Peter Pinoli, Mrs. J. W. Reilly, W. R. Day, Mrs. D. H. Van Zandt, Mrs. R. E. Brown and John H. Decater. All these witnesses, who are residents of Booneville, Philo, Novarro, or the vicinity thereof, testified to receiving respondent's service in the transportation of freight from Cloverdale whenever it was requested. None had ever been refused service. Samuel E. Sanford, agent for the Northwestern Pacific Railroad at Cloverdale, testified that respondent called at

the depot once or twice a week to receive shipments consigned to the points involved in respondent's care for the witnesses named as well as others. It was intimated that respondent's transportation service is rendered as an accommodation and as an adjunct to his merchandise business. The evidence shows that the transportation service is more than an accommodation and is actually the service principally relied on by the public in the locality. Coast Truck Line, a certificated carrier, offers service between the same points, but practically all the traffic is handled by respondent and the witnesses' testimony indicates that respondent's service is preferred to that of the certificated carrier. Respondent himself formerly held a certificate over the route in question, which was revoked at his request in 1923; but there appears to have been no interruption in respondent's service nor in the reliance placed on that service by many members of the public during the intervening years. We must conclude from the foregoing that respondent's transportation service is carried on as a business and not as a mere accommodation.

A small amount of hauling is performed by respondent between other points than those above mentioned as a radial highway common carrier.

Inspector Elmer J. Bennett of the Railroad Commission testified to two interviews with respondent in 1936 and 1937, in the course of which he described to respondent the characteristics of the various classes of operators subject to the Public Utilities Act and the Highway Carriers' Act, instructed him in the application of minimum rates pursuant to Decision No. 28761, and called his attention to the requirement in that order that the carriers issue freight bills. At the time of the second interview, Bennett testified

that respondent was not issuing the freight bills nor keeping copies thereof and when Bennett admonished him concerning it, respondent stated that he was not going to issue the freight bills, that he knew he was operating as a highway common carrier, and that the Commission could stop him if it wished to.

Respondent testified his service is performed at a rate of 30 cents per hundred pounds regardless of commodity.

The record clearly discloses that respondent has been operating as a highway common carrier between Cloverdale, on the one hand, and Novarro and intermediate points, on the other hand, under the guise of a radial highway common carrier. While purporting to act as a radial highway common carrier, respondent has failed to comply with the order of the Commission in Decision No. 28761 in that he has charged less than the rates therein established, and has not issued or kept copies of the required freight bill. It is also evident that respondent's failure to comply with this order was deliberate and that he has no intention of complying with it in the future. He should be ordered to cease and desist operation as a highway common carrier and his radial highway common carrier permit should be revoked pursuant to Section 14-1/2 of the Highway Carriers' Act.

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.

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 respondent George W. Johnson is operating as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California usually and ordinarily between the fixed termini of Cloverdale, on the one hand, and Novarro, Booneville and Philo, on the other, 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, and in violation of the provisions of Permit No. 23-37 issued to him as a radial highway common carrier.

IT IS HEREBY ORDERED, by reason of said offense, that said Permit No. 23-87 issued to said George W. Johnson as a radial highway common carrier be and the same is hereby revoked.

IT IS HEREBY FURTHER ORDERED that respondent George W. Johnson immediately cease and desist from conducting or continuing, directly or indirectly or by any subterfuge or device any and all such operation as a highway common carrier hereinabove set forth unless and until he shall have secured from the Railroad Commission a proper certificate of public convenience and necessity therefor, and from conducting any and all operations as a highway carrier other than a highway common carrier.

IT IS HEREBY FURTHER ORDERED that for all other purposes the effective date of this order shall be twenty (20) days from the date of service hereof upon respondent.

Dated at San Francisco, California, this 23rd day of May, 1938.

Walter A. Mac
Leon A. Whately
James R. Nelson
Raymond A. ...
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COMMISSIONERS.