

Decision No. 31039

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, class-)
fications, rules, regulations, con-)
tracts and practices, or any thereof, of)
I. V. MINSHEW, J. C. MINSHEW and)
RAYMOND MINSHEW, respondents, for the)
purpose of determining whether said)
respondents are, or any of them is, en-)
gaged in conducting any service as a)
highway common carrier between points)
in the Imperial Valley on the one hand)
and Los Angeles and San Francisco and)
other San Francisco Bay points, respect-)
ively, on the other hand, without having)
previously obtained therefor a certificate)
of public convenience and necessity.)

Case No. 4333

P. G. SEVILLE, for Respondents.

ORIGINAL

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by the Commission on its own motion to determine if the respondents or any of them are engaged in motor truck operation between Imperial Valley points and Los Angeles and between Imperial Valley points and San Francisco Bay points as a highway common carrier, without first obtaining a certificate of public convenience and necessity; and whether any operating permit now held by respondents

or any of them should be suspended or revoked for such unlawful operation as provided by Section 14 of the Highway Carriers' Act.

Public hearing was held before Examiner Elder in Brawley, California, on June 22nd, 1938.

Respondents J. C. Minshew and Raymond Minshew are brothers. I. V. Minshew is the wife of Raymond Minshew. I. V. Minshew holds permits 13-361 and 13-362 as radial highway common carrier and highway contract carrier, respectively. Respondent J. C. Minshew formerly held permits as a radial highway common carrier and city carrier which were cancelled in 1936 for expiration and non-renewal of insurance. Raymond and J. C. Minshew were respondents in Case No. 4129, and in Decision No. 29116 in said case, dated September 21st, 1936, they were found to be operating as a highway common carrier without certificate or other operative right between Brawley and Los Angeles, and Brawley and San Francisco, and were ordered to cease and desist.

The present permits of I. V. Minshew were applied for by her and the applications declare the two pieces of equipment listed are owned by the applicant. J. C. Minshew testified he is a partner of Raymond in the operation, receiving 50% of the profits, and that he did not know what happened to the other 50%. Raymond Minshew manages the operation, J. C. Minshew acts as billing clerk, and I. V. Minshew at times, at least, is present in the office answering the telephone, and performing various other duties.

According to Raymond Minshew, who testified voluntarily in the instant proceeding, respondents were out of business for four or five months after this Decision No. 29116 was issued, and thereafter they resumed business under his wife's name. This, he said was for the reason that a judgment had been obtained against him in Kern County in 1935 or 1936.

The record shows that four trucks, owned by the Minshews, have been used this season and others have been hired as needed. J. C. Minshew testified he could not recall or did not know just how many trucks had been used in all. A daily operation is conducted between the Brawley and Westmoreland districts, on the one hand, and Los Angeles, on the other hand. Agricultural products, chiefly tomatoes, squash and cantaloupes are handled. Pickup trucks are used between the fields and the carrier's dock in Brawley, where the loads are transferred to line haul trucks.

Raymond Minshew claims they have served about forty growers this season, but the record shows some sixty-three and even the larger number does not purport to include all. Many of the growers have patronized the service in former years, Raymond Minshew having been engaged in the trucking business in Imperial Valley for twelve years. Raymond Minshew testified that at the beginning of the current season he contacted the growers in the vicinities served and sought their patronage. He stated that he told them, however, that this year he would have to require them to give him their entire season's crop to haul and that this was agreed to. These agreements are apparently thought to establish the character of the operation as that of a contract carrier.

Whether or not this would be true, however, it is not necessary to decide for the testimony of the shippers is generally at variance with that of Raymond Minshew.

Henry H. Kubow testified he had a verbal contract for the Minshews to perform his season's hauling at an agreed rate, but the only obligation on his part to use the service was moral, not legal.

Leo Montero testified he had an unwritten contract, the terms of which were not stated. He said he felt obliged to give the Minshews the hauling because of some favor they did him at the beginning of the season, but had not agreed to do so.

Don A. Susa testified he asked Raymond Minshew for a written contract at the beginning of the season so he could be assured of his hauling and that Minshew prepared a paper which he signed. He did not receive a copy of the paper and it was not produced at the hearing. Susa said he thought he read the paper but could not understand it very well; however, he said he felt that it was all right because Minshew has done the hauling very well.

Ernest Alsleben testified he was asked to sign a written contract, but refused to do so and said only that he would use the service as long as it was satisfactory.

Tom Miyamoto testified he agreed verbally to give the Minshews his season's hauling sometime in February, after having received satisfactory daily service from them without any such agreement since January. He could not recall how this verbal agreement came to be made nor why, nor could he remember anything else about the conversation in which it was made.

Clyde A. Jacks testified he has received the service as often as seven times a week this season without any written or verbal contract or understanding and is free to use any hauler he wishes.

L. Kurisaka testified his company has used the service for several years. When the season starts Raymond Minshew comes around and says he would like to have the hauling and Kurisaka replies, "OK, Ray". They do not even discuss rates as Kurisaka assumes the current rates in the locality will be charged.

If the arrangements with the foregoing witnesses were typical, and respondents did not attempt to explain them or to show that the circumstances surrounding the use of the service by these witnesses were in any way extraordinary or different from the usual, it is plain that respondents generally have no contracts with their patrons imposing any mutuality of obligation or specifying the respective rights and obligations of the parties. No written contracts whatever appear in the record and the one with Susa is the only one specifically mentioned, though J. C. Minshew said he had seen some around the office. There is nothing to show any selection

of shippers by respondents or any withholding of public dedication. On the contrary, business has been solicited and the service held out to the Westmoreland and Brawley growers. The record shows this has been done even to the extent of advertising in the directory of a local growers' association. The operation is clearly that of a common carrier and, being conducted daily between the Brawley and Westmoreland districts and Los Angeles, between those fixed termini and over a regular route between them.

This is the second time it has become necessary to declare the operation of J. C. and Raymond Minshew illegal, I. V. Minshew now being drawn in through applying for the permits in her name. By reason of their failure to comply with the previous order to cease and desist, J. C. and Raymond Minshew are actually in contempt of the Commission. The situation warrants severe action, and such action in this proceeding must be the revocation or suspension of the permits.

In this connection it is to be observed that the current season in the Imperial Valley is nearly over. The record shows that very little if any traffic moves between the middle of July and December or January. Suspension of the permits during this period will be of little consequence. Taking this fact into consideration, suspension for a period of one year appears appropriate.

O R D E R

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

IT IS HEREBY FOUND that respondents J. C. Minshew, Raymond Minshew and I. V. Minshew are engaged in owning, controlling, operating and managing auto trucks used in the business of transportation of property for compensation or hire over the public highways of this State between the fixed termini of Brawley and Westmoreland, on the one hand, and Los Angeles, on the other, as a highway common carrier without certificate of public convenience and necessity and without other operative right therefor in violation of Section 50-3/4 of the Public Utilities Act and in violation of the terms and conditions of their permits Nos. 13-361 and 13-362.

IT IS HEREBY ORDERED that said J. C. Minshew, Raymond Minshew and I. V. Minshew and each of them cease and desist from conducting or continuing said operation, directly or indirectly or by any subterfuge or device, unless and until they shall obtain a certificate of public convenience and necessity therefor from this Commission.

IT IS HEREBY FURTHER ORDERED that by reason of said violation said permit No. 13-361 as a radial highway common carrier and said permit No. 13-362 as a highway contract carrier in the name of I. V. Minshew be and the same are hereby suspended for a period of one year, commencing on the effective date of this order.

IT IS HEREBY FURTHER ORDERED that during said period of suspension said J. C. Minshew, Raymond Minshew and I. V. Minshew and each of them cease and desist from any and all operation, directly or indirectly or by any subterfuge or device, as a radial highway common carrier or as a highway contract carrier.

The effective date of this order shall be twenty (20) days after the service of this order upon said respondents and each of them.

Dated at San Francisco, California, this 27th day of June, 1938.

Walter A. Brown
Leon Whittell
Frank R. Newell
Ralph A. Sheffield
Ray H. Riley
COMMISSIONERS.