ORIGINAL

Decision No. 31236

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 ROBERT S. WILLIAMS, doing business as BOB WILLIAMS or BOB WILLIAMS TRUCK LINE or BOB WILLIAMS TRUCK LINES.	)	Case No. 4276

ROBERT S. WILLIAMS, in propria persona.

REGINALD L. VAUGHAN, for Truck Owners Association of California and Pacific Southwest Railroad Association, Interested Party.

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by the Commission upon its own motion into the operations of Robert S. Williams.

On May 13, 1936, Robert S. Williams, the respondent herein, applied to the Commission for a license as a motor transportation broker (Application No. 20555). The Commission denied the application by Decision No. 28958, dated July 2, 1936, describing therein respondent's proposed method of operation and holding that he was not proposing to act as a broker, an intermediary between shippers and carriers, but as a principal in the capacity of a carrier, subcontracting hauling to other carriers.

Subsequently the Commission, on its own motion, instituted an investigation into respondent's operations (Case No. 4256), and by Decision No. 30208, dated October 4, 1937, found respondent to have been operating as a highway carrier other than a highway common carrier without first having obtained a permit therefor as required by section 3 of the Highway Carriers Act, and thereupon ordered respondent immediately to cease and desist from conducting such

operations unless and until respondent should have obtained from the Commission a proper permit therefor.

The instant proceeding was instituted on January 3, 1938, for the purpose of determining whether respondent has violated the provisions of said Decision No. 30208 or has at any time engaged in the transportation of property for compensation as a highway carrier other than a highway common carrier, without first having obtained from the Railroad Commission a permit therefor as required by section 3 of the Highway Carriers Act, and whether any permit or permits now held by respondent should be cancelled, revoked, or suspended for such violation or violations, as provided in section 14½ of the Highway Carriers Act.

Public hearing was held before Examiner Paul at Watsonville, at which respondent appeared and participated. Evidence was adduced and the matter duly submitted. It is now ready for decision.

Frank S. Oliver, an apple broker, testified that he had used respondent's services for the transportation of property for compensation between Watsonville and Los Angeles, and between Watsonville and other points in California on numerous occasions between October 11, 1937, and January 1, 1938. When shipments were ready for transportation he telephoned respondent and in response to such telephone calls trucks arrived and picked up the shipments for delivery. Transportation charges were collected from the consignees. Such shipments occurred on January 11, 26 and 30; November 1, 3 and 11; and December 29, all in 1937. Since January 1, 1938, Oliver has had his hauling performed by one Houston, pursuant to an understanding with him that Houston would thereafter fill all orders for transportation placed with respondent on Houston's own responsibility.

Alvin Espindola, grocery buyer for Merchants Wholesale Company in Watsonville, testified that in ordering merchandise from the San Francisco Bay region, he prepares triplicate copies of purchase orders directed to the sellers. These purchase orders contain

routing instructions to guide the seller in shipping the purchased merchandise. One copy of such shipping orders was customarily delivered by him personally to respondent, as respondent's instructions and authority to perform the transportation. A number of such purchase orders for goods delivered to Merchants Wholesale Company during October, 1937, were introduced in evidence. Each bears instructions to ship by "Williams truck of Watsonville." On some, the routing instructions were made out in the witness' own handwriting, reading: "Hold for Williams truck of Watsonville to pick up." Espindola further stated that after respondent received the cease and desist order in Decision No. 30208, he told Espindola he could not haul any longer and "referred them to Briscoe Bros." to perform his hauling. Espindola made inquiry of an insurance broker concerning Briscoe Bros.' cargo insurance coverage. Then, Espindola stated, without discussing the matter with Briscoe Bros., making any hauling arrangements with them, or without even becoming acquainted with them, he "started using" Briscoe Bros.; that is to say, he started to place Briscoe Bros.' name on purchase orders which he left as usual with respondent. This, Espindola claims, continued during the month of October, 1937, though no such routing instructions appear on any of the purchase orders introduced in evidence. Respondent's name was used on these orders by mistake, Espindola stated.

George W. Law, Assistant Office Manager for Merchants Wholesale Company, testified to receiving from respondent under date of November 2, 1937, a statement for transportation services performed for Merchants Wholesale Company between October 18 and November 2, including the transportation of the goods described in the purchase orders introduced through Espindola. The statement was prepared on a billhead of Williams Service Station, the printed heading of which had been removed. At the foot of this statement appeared the words: "P.S. Make payable to Briscoe Bros.," with the words "Briscoe Bros." stricken out in pencil. Mr. Law stated he did not know who had

crossed out the stricken words. Attached to the statement were thirty-four documents used as freight bills and freight receipts in the transportation of shipments itemized on the statement. One of the documents was on a printed form of Williams Service Station. Thirty-one of the remainder were on the same form with the printed headings cut off; one of the others was on another printed form headed "Shipping Order and Freight Bill," and one was written on the reverse of a printed form headed "Encinal Terminals." Eleven of the freight bills dated October 29 and 30 bore the signature "C. S. Welch." Several others bore the signature "Paul Bezzerides." Others carried the notation "Hauled by Briscoe Bros." or "Briscoe Bros., Tenant." Still others contained no such signatures or notations.

Law also testified that notwithstanding the postscript on the statement, he drew the check in payment of the charges in favor of Williams Service Station, and the cancelled check, introduced in evidence, bore the endorsement "Williams Service Station, R. S. Williams."

Clarence S. Welch testified that he hauled the shipments referred to in the freight bills bearing his signature from Oakland to Merchants Wholesale Company on October 29 and 30, 1937; that he obtained the purchase orders and freight bills for those shipments from respondent, and that the signatures on the freight bills were his; that respondent paid him for the work but that he received very little cash, most of the compensation being credited against a debt he owed Williams; that he never talked to Briscoe Bros. about any of the shipments; that Briscoe Bros.' name was on some of the documents but that made no difference to him; that he never received any compensation from Briscoe Bros. for any hauling; that it was his understanding that the hauling he was performing for respondent, respondent himself was handling for Briscoe Bros., but that the only foundation for such understanding was the fact that Briscoe Bros.' name was on some of the papers.

James D. Briscoe testified that he and his brother Clifford Briscoe are partners in the trucking business; that during October, 1937, they had no contract with Merchants Wholesale Company, performed no hauling for Merchants Wholesale Company, and that they received no money or compensation for any hauling performed for Merchants Wholesale Company during that month.

Lloyd Crabb testified that during October, 1937, he was employed as a truck driver by Briscoe Bros.; that during that month he saw purchase orders of Merchants Wholesale Company, bearing Briscoe Bros.' name, in respondent's service station, but the orders were never given to him to perform the hauling; that he called Clifford Briscoe's attention to such purchase orders and suggested that he had better have the use of his name discontinued; that he visited Espindola with Clifford Briscoe and was present when Briscoe told Espindola to discontinue the use of Briscoe Bros.' name.

Respondent, testifying voluntarily on his own behalf, identified the check that witness Law drew in payment of the freight charges billed on the statement of November 2, 1937, and admitted endorsing and cashing the check. He also admitted making out the freight bills signed by Welch as well as the others attached to the statement of November 2, and testified that part of Welch's compensation for the hauling he performed was credited to Welch's debts to him. He undertook to claim, however, that nevertheless the check had been made out to him in error and that his name had been shown by Espindola on the purchase orders by mistake.

It appears that on December 29, 1937, and February 10, 1938, applications therefor having been received from respondent, the Commission issued to him radial highway common carrier permit No. 44-343 and highway contract carrier permit No. 44-330, respectively, pursuant to the mandatory requirements of section 3 of the Highway Carriers Act.

A careful review of the record shows that respondent, during the period from October 18, 1937, to December 29, 1937, was engaged in operation as a highway carrier without a permit as required by section 3 of the act. The evidence is fully persuasive that Briscoe Bros. had no interest in the hauling for Merchants Wholesale Company and that the use of their name was for the purpose of diverting attention from respondent's connection with the transaction. An attempt to conceal respondent's participation in the operation is further manifested by the removal of the portions of the printed statement form and freight bills which bore his name.

The nature of the mistake which is claimed to have occurred when the shipments were routed by and the payment made to respondent was not explained. The documents, however, correctly show the transactions as the evidence discloses they were actually carried out.

It is clear from the evidence that hauling instructions authorizing respondent to perform hauling for Merchants Wholesale Company were delivered to respondent by that company in accordance with previous practice; that respondent performed the hauling through the employment of Welch, for whose services respondent personally paid the compensation; that respondent personally received, endorsed, and cashed Merchants Wholesale Company's check in payment for the hauling; that Briscoe Bros., by whom Merchants Wholesale Company and respondent claim the hauling was performed, had nothing to do with the hauling.

Decision No. 30208 ordered respondent immediately to cease and desist from his highway carrier operations, other than a highway common carrier, until he obtained a permit and, to afford him opportunity to petition for rehearing, provided that in other respects the order should become effective twenty days after service thereof upon respondent. Respondent claims he understood therefrom that he was allowed twenty days from service, which was accomplished October 9, 1937, to continue the operation. This plea is inconsistent with his claim that he did not perform the service for Merchants Wholesale

Company and is of no aid to respondent as the evidence shows operation on October 30 and thereafter, more than twenty days after service. The order, furthermore, is clear and not reasonably susceptible to the construction given it by respondent. In any event, the postponement of the effectiveness of an order to cease and desist operations found illegal, to allow time for application for rehearing and review, is not to be taken as legalizing for the period of the postponement the very operations found illegal. Not even an application for rehearing has that effect as it is expressly provided in section 66 of the Public Utilities Act, the procedural provisions of which control Commission proceedings under the Highway Carriers Act:

> "An application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission may by order direct."

Respondent here was forewarned not only by Decision No. 30208 but also by Decision No. 28958; yet the unauthorized operations were continued with an attempt at concealing them, which renders their deliberateness and wilfullness the more apparent.

In issuing respondent's permits on December 29, 1937, and February 10, 1938, the Commission acted pursuant to the mandatory requirements of the Highway Carriers Act inasmuch as section 3 thereof provides, in part:

> "Except as otherwise provided in this act, a permit must be issued by the commission upon compliance with this act . . ."

The only provision of the act conferring any discretion upon the Commission in the granting of permits is found in section 14½, authorizing the Commission to cancel, revoke, or suspend operating permits for illegal highway carrier operations, and also providing:

> " . . . After the cancellation or revocation, pursuant to this section, of any permit of any highway carrier, the commission may in its discretion either grant or deny the application of such highway carrier for a new permit or permits."

No permits of applicant having previously been revoked, the Commission was obliged to issue the permit to respondent upon respondent's complying with the act by filing his application, together with public liability and property damage protection, and payment of the filing fee.

Section 14½, however, is in terms broad enough and appears to contemplate that even though a permit has been issued in accordance with the requirement of the statute, the Commission shall nevertheless have the power to cancel, revoke, or suspend such permit for violations committed prior to the issuance thereof, for it provides, in part:

> "The Commission may, in its discretion, cancel, revoke, or suspend the operating permit or permits of any highway carrier whenever it shall appear that said highway carrier has conducted any highway carrier operations illegally, or has violated any of the provisions of this act . . ."

Revocation of respondent's permits appears proper, and it will be so ordered.

An order of the Commission directing the cessation of an operation is, in its 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 contempt, a fine may be imposed in the amount of $500, 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 Co. v. Keller, 33 C.R.C. 371.)

It should also be noted that under section 12 of the Highway Carriers Act (Chapter 223, Statutes of 1935, as amended), one who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding $500, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment.

Respondent is cautioned not to accept transportation business for reference to other carriers upon a commission basis unless he shall first obtain the license required by the Motor Transportation Broker Act (Statutes 1935, Chapter 705). It is to be noted that, under section 16 of said Motor Transportation Broker Act, one who engages in business as a transportation broker without the necessary authority is subject to a fine of not to exceed $500, or to imprisonment in the county jail for a term not to exceed six months.

O R D E R

Public hearing having been hold in the above entitled proceeding, evidence having been received, the matter submitted, and the Commission being fully advised:

IT IS HEREBY FOUND that respondent Robert S. Williams between October 18, 1937, and November 2, 1937, inclusive, engaged in the transportation of property for compensation or hire over the public highways of the state of California, by motor vehicle, as a highway carrier (as that term is defined in section 1 (f) of the Highway Carriers Act) other than a highway common carrier (as that term is defined in section 1 (g) of said act) without a permit authorizing such operation in violation of section 3 of said act and in violation of the Commission's Decision No. 30208, dated October 4, 1937.

IT IS ORDERED, by reason of such offense, that highway contract carrier's permit No. 44-330, dated December 29, 1937, and radial highway common carrier's permit No. 44-343, dated February 10, 1938, both having been issued to respondent Robert S. Williams, be and they are hereby revoked.

IT IS FURTHER ORDERED that respondent shall cease, desist, and refrain from engaging directly or indirectly or by any subterfuge or device, in the transportation of property for compensation or hire as a radial highway common carrier or highway contract carrier, as those terms are defined in section 1, subdivisions (h) and (i), respectively, of the Highway Carriers Act; and the Secretary of the Railroad Commission is hereby authorized and directed to cause service of this order to be made upon respondent.

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

Dated at San Francisco, California, this 14th day of February, 1939.

COMMISSIONERS