

Decision No. 32918

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CERTIFICATED HIGHWAY CARRIERS, INC.,)

Complainant,)

vs.)

GEORGE BRAND, HARRY BRAND, and)
H. B. BRAND,)

Defendants.)

Case No. 4378

ORIGINAL

HENRY J. BISCHOFF, for Complainant.

WOLFORD and HEALD, by D. H. Wolford, for Defendant.

BAKER, Commissioner:

O P I N I O N

In this proceeding, the Certificated Highway Carriers, Inc., hereinafter referred to as Complainant, alleges that George Brand, Harry Brand and H. B. Brand, hereinafter designated Defendants, are operating unlawfully as highway common carriers for the transportation of fresh vegetables between the fields in the immediate vicinity of Niland, California, and the wholesale markets at Los Angeles, California.

A public hearing upon the issue raised was held in El Centro on the 7th day of February, 1939, at which time evidence, both oral and documentary, was introduced on behalf of the respective parties hereto; and the matter having been submitted upon the record, together with memoranda of the parties subsequently filed with the Commission, it is now ready for a decision.

George Brand, one of the defendants herein, appeared upon the hearing, represented by counsel, and testified in his own behalf. The defendants Harry Brand and H. B. Brand did not appear.

Defendant George Brand readily admitted that for several years he had been engaged in the automotive transportation of fresh vegetables (particularly squash, tomatoes and peas), between the fields and farms at or near Niland and the wholesale or commission markets at Los Angeles.

The said defendant George Brand further testified that he had been engaged in this business since 1931 and had continued to date, with no particular change in his method of operation, except that which was necessitated by reason of the passage in 1935 of the Highway Carriers' Act. This witness also stated that he had been in business first with a man by the name of Sones, and subsequently with his brother Harry, (apparently the H. B. Brand named in this complaint). Originally, according to this witness, there were only five growers in the district served by him. Since that time, however, the number of growers in that area has increased to approximately ninety-three. Of this number, Brand admitted that he was serving about thirty-eight under contract, of which eighteen were written and the balance oral. Such operations have been, and are being, carried on ostensibly under or by virtue of two certain permits issued by this Commission, the one being a highway contract carrier's permit (No. 13-434), and the other a radial highway common carrier permit (No. 13-433).

The permits referred to above are issued in the names of George Brand and H. B. Brand, as co-partners. In this respect, it is quite evident from the record that during a considerable part of the time referred to herein, that is, from 1931 until the early part of 1939, H. B. Brand has been fairly active in this transportation business. It is interesting to note in this connection that George Brand testified that he had signed the name of H. B. Brand to a number of contracts entered into on behalf of the co-partnership. From the record it does not appear that Herman Brand, another

brother, was active in such operations except merely as a driver for his two brothers. From the testimony of public witnesses in the proceeding, it is clearly shown that George Brand acted as principal in practically all instances.

Additionally, the defendant George Brand admitted having hauled occasionally for at least one party besides the said number of contracting producers, and also stated that he had a contract to haul grapes out of Modesto during the grape season. This operator has also hauled fertilizer and household goods for some of the said growers with whom he had contracted for the transportation of produce. The said defendant George Brand further stated that he had operated as many as four or five trucks, some of which were leased by him for such operations, and that quite often he had more produce to move than his own equipment could handle.

The complainant's witnesses, two in number, verified and substantiated the general facts set forth above, and definitely established that George Brand, and to a limited degree his brother Harry Brand or H. B. Brand, had engaged in the automotive transportation of fresh vegetables, daily, during the cropping season of 1938-39, between Niland and Los Angeles.

With consideration for the record in its entirety, it is quite clear that defendants George Brand and H. B. Brand have been and now are operating an automotive service for compensation between fixed termini and over a regular route. It is equally clear that these operations are limited only by the defendants' resources toward obtaining transportation equipment, or their ability to procure agreements, either oral or written, for the performance of such services; and, further, that they are serving the public, or a substantial portion thereof, as represented by the growers in the district which they have elected to serve. The defendants' practice

of obtaining business in excess of the capacity of their equipment, and then arranging to obtain the required additional trucks, through leasing thereof, as alleged, is further evidence that they are not now attempting, and apparently never have attempted, to restrict their activities to any appreciable degree. In the matter of commodities transported, the record reveals that while they have thus far transported only such farm produce as tomatoes, squash and peas, together with an occasional shipment of commodities of a different type, such as fertilizer, shock, and household effects, they have done so with no intent to limit their operations to any particular type of hauling for a restricted group of shippers, but whose operations were limited only by the fact that the agricultural commodities mentioned above apparently represented all the different kinds of produce grown in the particular district served.

The defendants' method of operation clearly indicates, therefore, that they are holding themselves out to serve any and all of the public within a particular district, subject only to the limitations imposed by the capacity of their transportation equipment, coupled with the fact that certain written or oral agreements were generally insisted upon, albeit not too strenuously, and such as imposed no particular mutuality of obligation. From no viewpoint may the Commission, based upon this record, reasonably conceive that the defendants George Brand and H. B. Brand are, or were, operating merely for a select or limited group of shippers as contract or private carriers, particularly when it is considered that they have negotiated with, or operated for, approximately forty per cent or more of the growers in Niland and the immediate vicinity, together with the fact that they engaged in such transportation of specified commodities under agreements whereby recourse to their services was wholly optional with the said shippers.

Based upon this record, it is quite obvious that the defendant co-partners have, in fact, been operating as a highway common carrier, as such is defined in sections 2 3/4 and 50 3/4 of the Public Utilities Act, between the termini herein mentioned, without first having obtained a certificate of public convenience and necessity so to do. Therefore, the issuance of a cease and desist order is indicated at this point, and the order following will so provide.

An order of the Commission directing the suspension 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 may courts of record. In the event a person 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 & Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 371.

O R D E R

A public hearing herein having been duly had, the matter being ready for decision, and the Commission now being advised in the premises,

IT IS HEREBY FOUND that George Brand, and H. B. Brand, as co-partners, are now, and have been for some time past, operating as a highway common carrier as defined in section 2 3/4 and 50 3/4 of the Public Utilities Act, with common carrier status, between fixed termini and over regular routes, over public highways between Niland and fields and farms adjacent thereto, on the one hand, and wholesale or commission markets in Los Angeles, on the other hand, without having first obtained from this Commission a certificate of

public convenience and necessity, or without prior right authorizing such operation.

Based upon the opinion and findings herein,

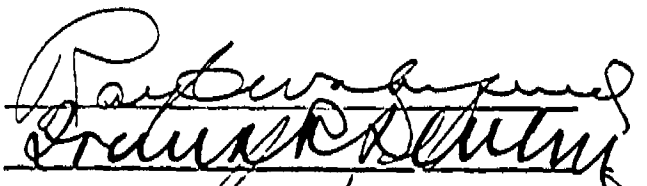
IT IS HEREBY ORDERED that George Brand and E. B. Brand cease and desist, directly or indirectly, or by any subterfuge or device, from operating as a highway common carrier between Niland and the fields and farms adjacent thereto, on the one hand, and Los Angeles, on the other hand, unless and until they have first obtained from this Commission a certificate of public convenience and necessity authorizing such operation.

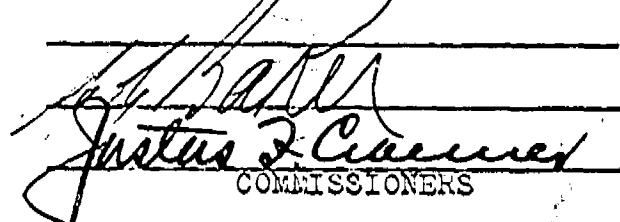
The Secretary of the Railroad Commission is directed to cause personal service of a certified copy of this decision to be made upon said respondents, George Brand and E. B. Brand, and to cause certified copies thereof to be mailed to the District Attorneys of Imperial and Los Angeles County, respectively, and the Board of Public Utilities and Transportation of the City of Los Angeles, and to the Department of Motor Vehicles, California Highway Patrol, at Sacramento, California.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

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

Dated at San Francisco, California, this 11th day of April, 1939.




Justus J. Cameron
COMMISSIONERS