

Decision No. 31968

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 and )  
practices of HUE FOLLENDORE, doing ) Case No. 4367  
business as HUE'S TRANSFER. )

ORIGINAL

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Edward Stern, for Railway Express Agency, Inc.,  
Interested Party.

BY THE COMMISSION:

O P I N I O N

This is an investigation on the Commission's own motion. Respondent was personally served with notice of the time and place of the hearing of the order, but made no appearance. The investigation, briefly stated, is to determine whether respondent was operating, as a highway common carrier without a certificate; as a highway common carrier, in violation of the Commission's General Order No. 91, within the operative rights granted by Decision No. 30500; and as a highway carrier, other than a highway common carrier, in violation of Sections 3, 5, 6 and 7 of the Highway Carriers' Act.

A public hearing was held in Los Angeles on February 10, 1939, before Examiner Cameron.

Six consignor witnesses appeared and testified. In effect, their testimony was practically the same, as follows: that certain shipments were delivered to respondent in Los Angeles by the consignors, for transportation to consignees in the Imperial Valley; that respondent was employed because the consignees who purchased the property from the consignors ordered the shipments to go via respondent's trucks; that with one or two exceptions,

the consignees paid the transportation charges.

(1)  
From the testimony and exhibits, it appears that respondent conducted a transportation service between Los Angeles and the Imperial Valley, during the months of March, April, May, June and July, 1938, making approximately fourteen trips between these points. During the last three months of this period it appears that only six shippers in Los Angeles and four consignees in the Imperial Valley were served. The property transported was general merchandise, chiefly hardware, consisting of stoves, garden hose, rakes, wire, galvanized iron pipe, oilcans, gas and acetylene cylinders.

The evidence shows that respondent did not have a single contract with the consignors. However, the evidence is lacking as to whether or not respondent had contracts with the consignees. There is no evidence as to what charges were made by respondent for the said transportation services. It appears, therefore, that there is a lack of evidence to support a finding that the respondent was illegally operating as a highway common carrier, as that term is defined by Section 2-3/4 of the Public Utilities Act.

Decision No. 30500, dated January 3, 1938, issued in Application No. 20874, authorized this respondent to engage in the transportation business as a highway common carrier, as that term is defined by Section 2-3/4 of the Public Utilities Act. Respondent was authorized to transport from farms, groves and other produce centers in or adjacent to the Imperial Valley points of Holtville, El Centro, Imperial, Brawley, Calipatria, Westmoreland and an area within a fifteen mile radius of each of said points, on the one hand, to Los Angeles, on the other, seasonally from approximately November 1st of each year to August 1st of the succeeding year, hay,

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(1) Exhibits Nos. 3 to 9, inclusive--Exhibit No. 9 prepared by Inspector MacKenzie, from respondent's records.

straw, grain, seeds, fresh fruits, edible nuts, animal and poultry feed, fresh vegetables, fresh or dried beans and fresh or dried peas, and for the transportation of fertilizer only from Los Angeles and Pomona to the Imperial Valley points above named, via the U. S. Highway No. 99, subject to the restriction that no service would be rendered to or from Niland or from the territory situated five miles north of a line drawn east and west through the center of Calipatria. The decision further specified that said rights and privileges granted to establish a transportation service must be commenced within a period of thirty days from the effective date of said decision and that the same could not be discontinued without the consent of the Commission.

Inspector MacKenzie testified in substance that he had examined the records of respondent and that said records disclosed that there had been no transportation services rendered by this respondent pursuant to the operative rights granted by the Commission in Decision No. 30500. In addition, Inspector MacKenzie had a conversation with respondent on January 24, 1939, at which time respondent stated, in effect, that he had not rendered any transportation service under the authority granted by and within the limits of said certificate and that apparently no effort was made to establish the service authorized thereunder. From this evidence and other testimony and exhibits, it is apparent that respondent has failed to comply with the conditions of said decision in so far as the establishment and operation of this service was required and, therefore, no operative rights were ever possessed by respondent due to such failure; therefore, the investigation of the insurance requirements provided by the Commission's General Order No. 91 which apply only to highway common carriers operating under certificates of public convenience and necessity, has developed the fact that this phase of the situation is no longer an issue.

The record also shows <sup>(2)</sup> that respondent had obtained Radial

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(2) Ex. No. 2.

Highway Common Carrier and Highway Contract Carrier permits, dated April 8, 1938. Subsequent thereto, after due notice to respondent, on the 22nd day of May, 1938, these permits were cancelled for failure of respondent to comply with the insurance requirements of Sections 5, 6 and 7 of said Highway Carriers' Act. Respondent now has on file with the Commission, applications numbered 13-437 and 13-438 for Radial Highway Common Carrier and Highway Contract Carrier permits, respectively. It is also established that respondent engaged in the business of transporting property for compensation by motor vehicle over the public highways of the state of California as a highway carrier, other than a highway common carrier, from May 22nd, 1938, to the latter part of July, 1938, without a permit, as required by Section 3 of said Highway Carriers' Act, and in violation of the insurance requirements of Sections 5, 6 and 7 of said Act.

This record clearly supports the following conclusions:

1. That respondent, Hue Follendore, by virtue of his failure to comply with conditions of Decision No. 30500, issued in Application No. 20874, dated January 3, 1938, requiring establishment and operation of the operative rights set forth therein, and within the time specified, has forfeited said rights.
2. That respondent engaged in the business of transporting property for compensation or hire by motor vehicle over the public highways of the State, between Los Angeles and Imperial Valley points, as a highway carrier, other than a highway common carrier, during May, June and July, 1938, as a business, without a permit as required by Section 3 of the Highway Carriers' Act; that during this period respondent conducted said transportation business above set forth without procuring and continuing in effect adequate public liability and property damage insurance, as required by Sections 5, 6 and 7 of said Highway Carriers' Act.

In view of these conclusions, Decision No. 30500 should be revoked and annulled and a cease and desist order should issue. The order following will so provide.

An order of the 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, 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

Wernuth 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, Stats. 1935, as amended,) a person who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding Five Hundred Dollars (\$500) or by imprisonment in the county jail not exceeding three (3) months, or by both such fine and imprisonment.

**O R D E R**

A public hearing having been held in the above entitled matter, evidence having been received, the matter duly submitted, and the Commission now being fully advised,

**IT IS HEREBY ORDERED:**

1. That Decision No. 30500, dated January 3, 1938, be and it is hereby revoked and annulled and all tariffs and time schedules, filed with the Commission thereunder, cancelled.

2. That respondent, Hue Follendore, individually and doing business as Hue's Transfer, immediately cease and desist and thereafter refrain from conducting, directly or indirectly, or by any

subterfuge, or device, any and all operations in the transportation of property for compensation or hire as a business by motor vehicle as a highway carrier, as that term is defined in the Highway Carriers' Act (Stats. 1935, Chapter 223, as amended), other than a highway common carrier, over any public highway in this state until he has first obtained a permit from the Commission as required by Section 3 of said Act, authorizing the conduct of said transportation service, and procures and continues in effect during the life of said permit adequate protection against liability imposed by law upon such highway carrier, other than a highway common carrier, for the payment of damages, as required by Sections 5, 6 and 7 of said Highway Carriers' Act.

IT IS HEREBY FURTHER ORDERED that the secretary of this Commission shall cause a certified copy of this decision to be personally served upon said respondent and shall further cause that a certified copy of this decision be placed in the formal file of Application No. 20874.

In all other respects Case No. 4367 be and the same hereby is dismissed.

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 25<sup>th</sup> day of April, 1939.

Raymond H. Jones  
Frank R. Deane  
W. L. Rice  
W. L. Rice  
Justin D. Greene  
COMMISSIONERS