

Decision No. 32137

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Investigation,
on the Commission's own motion, into
the operations and practices of
ALBERT M. CORDERO.

)
) Case No. 4417
)
)

ALBERT M. CORDERO, in propria persona

MARY V. CORDERO, for respondent

CRAEMER, COMMISSIONER:

OPINION AND ORDER

This proceeding was instituted by the Commission on its own motion to determine whether or not Albert M. Cordero, respondent herein, has been operating as a highway carrier other than a highway common carrier without first having obtained and without holding a permit from the Railroad Commission authorizing such operations, in violation of Sections 3 and 14 $\frac{1}{2}$ of the Highway Carriers' Act, and whether or not, for and on account of such unlawful operations, respondent's pending application No. 42-534 for a radial highway common carrier permit should be denied and cancelled.

Public hearing was held in the Courthouse at Santa Barbara on June 1, 1939, at which time and place respondent appeared

personally and participated in the hearing, evidence was received, and the matter was submitted and is now ready for decision.

It appears from the record that respondent has not held any operative rights as a highway carrier since January 14, 1938, on which date the Commission cancelled his radial highway common carrier permit No. 42-285 because of his failure to keep on deposit with the Commission evidence of adequate or any protection against liability imposed by law for personal injuries or property damage occurring in the course of his operations, as required by Sections 5, 6, and 7 of the Highway Carriers' Act. Prior to that time he held radial highway common carrier permits No. 42-84, issued on November 20, 1935, and revoked on May 1, 1936, and No. 42-224, issued on December 8, 1936, and revoked on February 14, 1937, each of which was revoked for the same reason as permit No. 42-285.

It further appears that since the revocation of his last permit respondent has on three separate occasions filed applications for new radial highway common carrier permits. The first of these applications, No. 42-423, filed on April 7, 1938, was cancelled on May 23, 1938; the second, No. 42-481, filed on September 22, 1938, was cancelled on October 28, 1938. As in the case of the permit revocations specified above, the reason for the cancellation of each of these applications was respondent's failure to keep in effect a policy of public liability and property damage insurance or other protection covering his equipment, as required by the Highway Carriers' Act. The most recent application, No. 42-534, was filed on May 6, 1939, and is still pending, one of the purposes of this proceeding being, as aforesaid, to determine whether or not said

application should be denied and cancelled.

Although respondent has possessed no operative rights as a highway carrier since January 14, 1938, the record shows that he has engaged in highway carrier operations almost continuously since that date. Mr. Robert C. Spencer, bookkeeper of the Southern Pacific Milling Company in Santa Barbara, testified that his company has frequently used respondent's transportation services since that time and produced records of his company, which are in evidence, showing that respondent transported property for the Southern Pacific Milling Company for compensation or hire by means of motor vehicles over the public highways between various points in this state on each of 124 days, as follows: January 18, 19, 20, 21, 25, 26, 27, 28, 1938; February 1, 2, 3, 8, 9, 12, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 1938; March 7, 8, 9, 10, 14, 15, 16, 18, 19, 21, 22, 23, 24, 25, 26, 27, 29, 31, 1938; April 3, 4, 5, 6, 7, 8, 9, 12, 13, 15, 16, 18, 21, 22, 23, 25, 26, 28, 1938; May 5, 6, 7, 9, 10, 11, 12, 13, 16, 17, 19, 20, 21, 24, 25, 1938; June 10, 11, 12, 14, 16, 17, 18, 21, 1938; July 5, 6, 7, 8, 18, 19, 20, 21, 22, 23, 25, 26, 28, 30, 1938; August 6, 9, 10, 18, 1938; November 14, 1938; December 20, 23, 28, 29, 30, 31, 1938; January 4, 6, 11, 13, 17, 1939; February 1, 15, 17, 18, 22, 23, 1939; March 11 and 14, 1939; April 21 and 24, 1939. All of this transportation was performed for compensation, the exact amount for each shipment appearing in the record. Since respondent's transportation services were not conducted over regular routes or between fixed termini, but rather were performed between numerous different points as the occasion demanded, it is apparent that his operations were those of a highway carrier other than a

highway common carrier and should have been conducted under authority of a proper permit therefor issued by the Railroad Commission pursuant to the Highway Carriers' Act. Since respondent had no such permit during the period in question, his operations were accordingly unlawful.

Respondent neither denied that he had performed the transportation services described above nor offered any explanation of his reasons for conducting such unlawful operations. That he had full knowledge of the illegality of his operations is indicated not only by the fact that he had previously held several permits, a notice of revocation of each of which was duly mailed to him, but also by the fact that three times during the period in question he filed applications for new permits, as explained above. Mary V. Cordero, respondent's wife, testified that his failure during the period in question to obtain and keep continuously in effect the insurance coverage or other protection required by law was due to his financial inability to pay the requisite premiums. Such inability would obviously constitute no valid excuse for unlawful operations; moreover, it is questionable that such inability actually existed, at least during a portion of the period in question, since the record shows that respondent's operations for the Southern Pacific Milling Company alone yielded him a gross revenue of over \$2000.00 during the first four months following the revocation of his last permit in January, 1938. When this fact is considered in the light of respondent's permit history, the real explanation of respondent's unlawful operations appears to be gross indifference to the purpose and policy as well as the regulatory provisions of the

Highway Carriers' Act. Under such circumstances a proper disposition of the case requires the denial of respondent's application for a new permit, and the issuance of a cease and desist order requiring him to abstain in the future from operating as such highway carrier other than a highway common carrier.

An order of this 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 \$500.00, 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 Company v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 14 of the Highway Carriers' Act, a person who violates an order of the Commission is guilty of a misdemeanor and punishable by a fine not exceeding \$500.00, or by imprisonment in the county jail not exceeding three (3) months, or by both such fine and imprisonment.

Upon full consideration of all the evidence of record, I HEREBY FIND that Albert M. Cordero, respondent herein, is now, and more particularly on the dates specified in the opinion herein was, engaged in the transportation of property for compen-

sation or hire as a business over the public highways of this state by means of motor vehicles as a highway carrier other than a highway common carrier without first having obtained and without holding a permit authorizing such operations, in violation of Sections 3 and 14½ of the Highway Carriers' Act.

The following form of order is recommended:

O R D E R

This matter having been duly heard and submitted,
IT IS HEREBY ORDERED that Application No. 42-534 of Albert M. Cordero, respondent herein, for a radial highway common carrier permit be and it is hereby denied and cancelled.

IT IS HEREBY FURTHER ORDERED that Albert M. Cordero, respondent herein, cease, desist, and refrain from engaging in the transportation of property for compensation or hire as a business over any public highway in this State by means of motor vehicle, as a highway carrier other than a highway common carrier.

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

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.

Dated at San Francisco, California, this 27th day of June, 1939.

Robert W. ...
Francis R. ...
Arthur ...
...
Justus J. ...
Commissioners