

ORIGINAL

Decision No. 32212

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, con-  
tracts and practices, or any thereof,  
of ROBERT SNOWDEN, doing business as  
SNOWDEN TRANSPORTATION.

Case No. 4385

CARL B. STURZENACKER and E. W. HOLLINGSWORTE,  
For Respondent.

DOUGLAS BROOKMAN, For California Motor Express  
Ltd., Interested Party.

R. N. CHRISTENSON and H. J. BISCHOFF, for  
Southern California Freight Lines and  
Southern California Freight Forwarders,  
Interested Parties.

CRAEMER, Commissioner:

O P I N I O N

This proceeding was instituted by the Commission on its own motion, into the automotive truck operations of respondent, Robert Snowden, doing business as Snowden Transportation, for the purpose of determining whether said respondent has been and now is conducting such operations as a highway common carrier, between fixed termini or over a regular route or routes, between Los Angeles and territory proximate thereto, on the one hand, and San Francisco, Oakland and Richmond, and territory proximate thereto, on the other hand, without a certificate of public convenience and necessity as required by section 50 3/4 of the Public Utilities Act, (Stats. 195, Chap. 91, as amended), or any other operative right therefor.

The order instituting investigation directed said respondent to show cause why he should not be ordered to cease and desist operating as a highway common carrier, and why any permits held by

him should not be cancelled, revoked, or suspended, pursuant to section 14½ of the Highway Carriers' Act, (Stats. 1935, Chap. 223, as amended).

A public hearing was held at Los Angeles on March 7 and on April 6, 1939 at which evidence was adduced and the matter having been duly submitted is now ready for decision.

The record shows that respondent holds radial highway common carrier and highway contract carrier permits issued in 1935, and a city carrier's permit issued in 1936.

R. G. Tilden, office manager of Union Bag & Paper Corporation testified that his company uses respondent's motor truck service for the transportation of shipments from Los Angeles to San Francisco, and vicinity, including Oakland, Alameda and Richmond, on an average of twice weekly; that the minimum weight of such shipments is about 20 tons; that the charges for such transportation are usually paid by his company; that Haas Bros. of San Francisco has requested that shipments to them be made transportation charges collect; that the majority of such shipments between said points are hauled by respondent; and that he does not believe that his company is obligated to use respondent's services for all such shipments.

R. F. Bailey, Secretary-Treasurer of Pacific Tile and Porcelain Company of Los Angeles, testified that respondent transports shipments from his company's plant at Hynes, or the office at Los Angeles, to said company's office at San Francisco; that such transportation is almost daily, the tonnage being irregular; that respondent has never refused to perform such transportation;

that said company feels that there is no obligation on its part to use respondent's services for the transportation of its traffic between the points now served by respondent; and that the agreement between said company and respondent is merely an agreement as to rates and service (Exhibit No. 3).

Glenn Wilson, traffic manager for Ingram Paper Company of Los Angeles, testified that he was familiar with the services rendered by respondent to his company; and that no contract had ever been executed between them. His company has a so-called exchange agreement with Bonestell Paper Company of San Francisco to cover shortages in printing paper stock. Pursuant to instructions from the Bonestell Company all shipments to it from the Ingram Company are routed over respondent's facilities, transportation charges collect. Occasionally, as an accommodation, Ingram makes shipments for the account of Bonestell to Bonestell's customers, the transportation charges in such cases being prepaid. Wilson did not indicate who the carrier is in such cases. Shipments received by Ingram from Bonestell over respondent's line are consigned transportation charges collect. Wilson further testified that respondent's service is always available and that respondent had never refused such service.

It was stipulated that the testimony of approximately seventeen other witnesses, if called, would be substantially the same as that of the foregoing.

I. C. Story, who is now and for approximately three years has been employed by respondent as manager of the Los Angeles office, gave detailed testimony in regard to respondent's automotive transportation service.

From his testimony it is shown that respondent maintains an office at San Francisco, as well as Los Angeles, with an office manager in charge, and employs one bookkeeper and about ten truck drivers. In his operations respondent uses four Auto Car Diesel tractors and semi-trailers, each unit having a capacity of from 13 to 16 tons. Two trucks are dispatched daily northbound from Los Angeles, and two southbound from San Francisco. About ten per cent of the freight traffic handled moves through respondent's terminals at Los Angeles and San Francisco, the remainder being store-door service. Uniform types of shipping documents are used. (Exhibits 2 and 9).

The service rendered is principally between Los Angeles, on the one hand, and San Francisco and Oakland, on the other hand, over U. S. Highway No. 99. Formerly the Coast Route (U. S. Highway No. 101) was also used. His operations are substantially daily between such points. On the northbound movement he serves also the intermediate points of Fresno on the average twice weekly, Modesto, Visalia, Bakersfield and San Jose once a month, and south San Francisco twice monthly; on the southbound movement he serves Fresno and Bakersfield. Service is also rendered to Richmond and Alameda approximately every nine days, and Vallejo, Sacramento, and Stockton, on the northbound movement, and Long Beach, Los Angeles Harbor, Wilmington, Vernon, Burbank and San Diego, on the southbound movement. Points beyond Los Angeles or San Francisco, including Richmond, Vallejo, Sacramento, Long Beach, Wilmington, San Diego and others, are usually served by a connecting carrier at Los Angeles or San Francisco, said connecting carrier not being revealed by the record. At times, if there is a full load to Sacramento or Vallejo, respondent makes the entire haul by his own trucks.

Story testified that respondent has written arrangements or agreements with approximately fifty-four customers. These vary only as to the parties, dates and schedules of rates for the transportation of property between various points. When the hearings herein commenced, the form in use required respondent to transport from time to time "commodities" offered by the shipper between such places as the latter directed, at rates specified in a schedule attached. The term provided in the agreements generally was one year and thereafter until cancelled on three days' notice. Similar oral arrangements are claimed to exist with other shippers. These agreements, whether written or oral, imposed no obligation on the shippers to tender any freight for transportation and hence are lacking in mutuality. During the hearings, respondent revised the form of the agreement to require the shipper to tender to respondent for transportation a specified percentage of the shippers "merchandise shipped between Los Angeles and San Francisco." The contract in this form was entered into with about sixty-five shippers.

Much service is performed however, for shippers without any such agreement, either written or oral, for the record shows that during the month of August 1938 respondent provided transportation northbound from Los Angeles, Vernon, Glendale, Wilmington, Inglewood, Culver City and other nearby points, to San Francisco, Oakland, Alameda, Berkeley, Richmond, Vallejo, San Jose, Stockton, Bakersfield and other points. (Exhibits Nos. 6 and 7). An analysis of these movements shows that the service was performed for ninety different firms which paid the transportation charges, forty-five of whom had either a written or oral arrangement with respondent, the remainder having neither. Story testified that the southbound movement was substantially

the same as the northbound, although somewhat less, and that there has been no change of consequence.

Story stated that as a rule, the trucks are filled to capacity but at times moved with loads one or two tons less than capacity. Respondent desires the patronage only of shippers, who will ship an average weekly tonnage of five to seven tons, and Story said respondent would drop shippers whose volume was less. He also claimed that only those shippers who would sign a written agreement or make equivalent verbal arrangements would be served. However, the record shows that a large part of respondent's patronage is served without any formal written or verbal contract.

The record is clear and convincing that respondent's service is that of a highway common carrier, being open and available, limited only by the capacity of his equipment, to all shippers having attractive volume of traffic who desire to use it. As it is conducted usually and ordinarily between the fixed termini of Los Angeles and San Francisco and the nearby points above named, the operation is that of a highway common carrier. Respondent should be ordered to cease and desist such operations in the absence of a certificate of public convenience and necessity, and respondent's radial and contract permits, under the authority of which he purported to conduct the illegal operation, should be ordered suspended.

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 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. 571.

It should also be noted that under Section 14 of the Highway Carriers' Act (Chapter 223, Statutes of 1935), 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.

The following form of finding and order is recommended.

#### FINDING AND ORDER

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

IT IS HEREBY FOUND that the respondent, Robert Snowden, doing business as Snowden Transportation, has been and now is operating as a highway common carrier, as that term is defined in Section 2-3/4 of the Public Utilities Act of the State of California, between Los Angeles and territory proximate thereto, on the one hand, and San Francisco, Oakland and Richmond and territory proximate thereto, on the other hand, and the intermediate points of Bakersfield, Visalia, Fresno, Modesto, San Jose and South San Francisco without first having obtained from the Railroad Commission a certificate of public convenience and necessity authorizing such operation, and without other operative rights therefor, in violation of Section 50-3/4 of said Public Utilities Act, and in violation of the provisions of radial highway common carrier

permit No. 19-3245 and highway contract carrier permit No. 19-1460.

IT IS HEREBY ORDERED, by reason of such offense,

1. That respondent, Robert Snowden, shall immediately cease and desist from conducting or continuing, directly or indirectly, or by any subterfuge or device, any and all of said operations as a highway common carrier as set forth hereinbefore in the finding of fact, unless and until he shall have obtained from the Railroad Commission a certificate of public convenience and necessity therefor.

2. That highway contract carrier's permit No. 19-1460, dated November 25, 1935, and radial highway common carrier's permit No. 19-3245, dated November 25, 1935, issued to and held by said respondent be and the same hereby are, and each of them hereby is suspended for a period of thirty (30) days; and that said thirty- (30) day period of suspension shall commence on the 16th day of October, 1939, and continue to the 14th day of November, 1939, both dates inclusive, if service of this order shall have been made upon respondent, Robert Snowden, more than twenty (20) days prior to the 16th day of October, 1939; otherwise, said thirty- (30) day period of suspension shall commence on the effective date of this order and continue for a period of thirty (30) days thereafter.

3. That during said period of suspension said respondent Robert Snowden, shall desist and abstain from conducting or continuing, directly or indirectly, or by any subterfuge or device, the transportation of property for compensation or hire over the public highways of this State as a highway contract carrier as that term is defined in Section 1-(1) of the Highway Carriers' Act (Stats. 1935, Chap. 223, as amended), or as a radial highway common carrier as that term is defined in Section 1-(h) of said Act.

The Secretary of the Railroad Commission is hereby authorized and directed to cause a certified copy of this decision to be served upon respondent.

The effective date of this order shall be twenty (20) days after the date of service 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 12<sup>th</sup> day of

September, 1939.

Raymond H. [unclear]  
Stuart [unclear]  
Ray [unclear]  
[unclear]  
Justice J. [unclear]  
COMMISSIONERS