

Decision No. 32582

ORIGINAL

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 of FRANK VALDEZ, D. GALVAN,) Case No. 4476
PEDRO R. GONZALES, PONCIANO TERRONES,)
ANDRES CARRANZA, J. N. FERNANDEZ,)
A. RAMOS, and A. MORALES, doing business)
as OLD PLAZA TRANSFER SERVICE.)

Francisco Valdez, in propria persona
Dionicio Galvan, in propria persona
Pedro R. Gonzales, in propria persona
Ponciano Terrones, in propria persona
Andres Carranza, in propria persona
Jose Nova Fernandez, in propria persona
A. Morales, in propria persona

Robert A. Crossland, for Transportation
Department of the Railroad Commission.

CRAEMER, COMMISSIONER:

O P I N I O N

This proceeding was instituted by the Commission on its own motion into the operations of respondents Francisco Valdez (named in the order instituting investigation as Frank Valdez), Dionicio Galvan (named in the order instituting investigation as D. Galvan), Pedro R. Gonzales, Ponciano Terrones, Andres Carranza, Jose Nova Fernandez (named in the order instituting investigation as J. N. Fernandez), A. Ramos, and A. Morales, individually and as co-partners doing business under the name of OLD PLAZA TRANSFER SERVICE, for the purpose of determining whether or not respondents have been and now are, or any of them has been or now is engaged in for-hire motor vehicle transportation operations either as a "carrier" as that term

is defined in the City Carriers' Act (Stats. 1935, Ch. 312, as amended), or as a "highway carrier" (other than a highway common carrier) as that term is defined in the Highway Carriers' Act (Stats. 1935, Ch. 223, as amended), or both, without having secured a proper permit or permits therefor as required by said acts, and whether or not said respondents, or any of them, should be ordered to cease and desist from any such violations.

Public hearing in this matter was held at Los Angeles on January 18th and 22nd, 1940. All of the respondents except A. Ramos appeared, were called as witnesses by counsel for the Transportation Department of the California Railroad Commission and testified. An inspector of the Commission and other witnesses also testified, the matter was submitted, and the same is now ready for decision.

Victor Morel, a witness, who for several years and until November, 1939, conducted a transportation business by means of motor vehicles under the name of Old Plaza Transfer Service at 417 Sanchez Street, Los Angeles, testified that between 1933 and 1937 each of the respondents was associated with him to the extent that each shared equally in the rental of an office maintained at 417 Sanchez Street, Los Angeles, which Morel managed, and in the cost of a telephone there, and each made his tax return to the Board of Equalization as a partner of "Old Plaza Transfer Service" through Morel, who kept records of the transportation performed by them for that purpose. ⁽¹⁾ In order to make returns to the Board of Equalization as

(1) This tax is known as the "Motor Vehicle Transportation License Tax Act" (Stats. 1933, Ch. 339, as amended), and imposes a license fee or tax for the transportation of persons or property for hire or compensation upon the public highways in the State of California by motor vehicle. It exempts movements exclusively within incorporated cities.

partners, each of the respondents registered his truck with the Division of Motor Vehicles under the name of Old Plaza Transfer Service. The actual ownership of the trucks, however, at all times was in the respective respondents individually, and each retained all revenue realized from operating his truck. In November of 1939 Morel retired and the above arrangement ceased. At that time the registrations of respondents' trucks were changed to the individual names of the respondents respectively.

Morel further testified that each respondent owned a motor truck with a factory rating of 1 ton or $1\frac{1}{2}$ tons; that there was little active solicitation of business, the practice being for the respondents to park their trucks on Sanchez Street near the Old Plaza and wait until someone hired them; that very little business obtained by Morel at the office at 417 Sanchez Street was turned over to any of the respondents; that the number of hauls performed by each respondent varied from several per week to none for a week or two, and the income for each averaged from approximately \$15.00 to \$20.00 per month.

In reference to respondent A. Ramos, witness Morel testified that Ramos joined the group in 1937 and although he operated as did the others, he did not conduct a transportation service continuously because he worked as a laborer for a contractor in Glendale intermittently for the last two years; that Ramos usually came to the Old Plaza district on Sundays and holidays; that the transportation service rendered by Ramos included movements between points within the City of Los Angeles, but also included movements between points in the City of Los Angeles, on the one hand, and beyond the city limits of Los Angeles, on the other hand; that Ramos shared in the office expense until November, 1939, but ceased his for-hire

operations some time prior thereto; that Ramos made his returns to the Board of equalization through Morel under the name "Old Plaza Transfer Service" in the same manner as the other respondents above-mentioned.

Respondent Francisco Valdez, 4824 Hammel Street, Belvedere Gardens, California (named in the order instituting investigation as Frank Valdez), testified that he has been conducting for-hire motor truck transportation operations since 1923; that his business for the most part consists of movements of household goods between points within the City of Los Angeles, but also includes movements between points in the City of Los Angeles, on the one hand, and beyond the city limits of Los Angeles, on the other hand; that in said business he is now using a Chevrolet truck with a factory rating of 1½ tons; that the average monthly income derived from said operations is from \$10.00 to \$15.00; that he was a member of the group who made tax returns to the Board of Equalization through Victor Morel under the name of "Old Plaza Transfer Service"; that he contributed approximately \$1.35 per month toward the rent and telephone at 417 Sanchez Street, Los Angeles; that in harvesting season he and his family picked fruit and cotton; that he knew he was required to have permits from this Commission in order lawfully to engage in for-hire transportation, as provided by the Highway Carriers' and City Carriers' Acts, and in this respect stated that he was present when representatives of the Railroad Commission so informed the above-mentioned group; that notwithstanding this information he never obtained any such permits, stating that he could not afford the insurance which is a condition to the issuance of same.

Respondent Dionicio Galvan (named in the order instituting investigation as D. Galvan), testified that he has been conducting

for-hire motor truck transportation operations since 1927; that although he is willing to haul any type of property his truck will accommodate, his business for the most part consists of movements of household goods between points within the City of Los Angeles; that in said business he is using a Chevrolet truck with a factory rating of approximately 1 or 1½ tons; that the average monthly income derived from said operations is from \$15.00 to \$25.00; that he was a member of the group who made tax returns to the Board of Equalization through Victor Morel under the name of "Old Plaza Transfer Service."

Respondent Pedro R. Gonzales testified that he has been conducting for-hire motor truck transportation operations since 1923; that his business for the most part consists of movements of household goods between points within the City of Los Angeles, but also includes movements between points in the City of Los Angeles, on the one hand, and beyond the city limits of Los Angeles, on the other hand; that in said business he is now using a 1929 Ford truck with a factory rating of 1½ tons; that he was a member of the group who made tax returns to the Board of Equalization through Victor Morel under the name of "Old Plaza Transfer Service"; that he contributed approximately \$1.35 per month toward the rent and telephone at 417 Sanchez Street, Los Angeles; that since November 1939 he has not transported any property but still parks his truck in the Old Plaza district and is willing to transport any property which might be tendered him.

Respondent Ponciano Terrones testified that he has been conducting for-hire motor truck transportation operations since 1923; that his business for the most part consists of movements of household goods between points within the City of Los Angeles but also includes movements between points in the City of Los Angeles, on the one hand, and beyond the city limits of Los Angeles, on the other

hand; that in said business he is now using a small 1927 Chevrolet truck; that the average monthly income derived from said operations is approximately \$25.00; that he was a member of the group who made tax returns to the Board of Equalization through Victor Morel under the name of "Old Plaza Transfer Service"; that he contributed approximately \$1.35 or \$1.50 per month toward the rent and telephone at 417 Sanchez Street, Los Angeles; that he parks his car on Sanchez Street near the Old Plaza every day for the purpose of obtaining transportation business and that he performed three or four hauls per week; that he transported property on or about September 16, 1938, for Mr. J. D. Watson, 1643 Wabasco Road, Glendale, California, from 4500 South Vermont Avenue to Sixth and Main Streets, Los Angeles, and that he was paid for said transportation.

Respondent Andres Carranza testified that he has been conducting for-hire motor truck transportation operations since 1935; that his business for the most part consists of movements between points within the City of Los Angeles, but also includes movements between points in the City of Los Angeles, on the one hand, and beyond the city limits of Los Angeles, on the other hand; that in said business he formerly used a 1928 Ford truck with a factory rating of approximately 3/4ths of a ton, but since 1936 has used a 1934 Ford truck with a factory rating of 1 ton; that the average monthly income derived from said operations up until November, 1939, was approximately \$10.00 to \$15.00, and that little or no hauling has been performed by him since November; that he was a member of the group who made tax returns to the Board of Equalization through Victor Morel under the name of "Old Plaza Transfer Service"; that he contributed approximately \$1.35 per month toward the rent and telephone at 417 Sanchez Street, Los Angeles; that he was employed on the W. P. A. intermittently during the years 1935, 1936, and 1937, and that in the harvesting season each year he and his family

picked fruit and cotton; that he sometimes obtains transportation jobs at his home as well as in the Old Plaza district; that on or about January 9, 1939, he and respondent Fernandez transported property by means of their respective trucks for Lovrich & Konjevod of 2835 Newell Street, Los Angeles, to 3311 North Figueroa Street, Los Angeles, and that both he and respondent Fernandez were paid \$15.00 each for said transportation; that he still parks his truck in the Old Plaza district and is willing to transport any property which might be tendered to him for transportation.

Respondent Jose Nova Fernandez (named in the order instituting investigation as J. N. Fernandez) testified that in 1934 or 1935 he purchased a 1929 Ford truck with a factory rating of 1 or 1½ tons and sold the same in August, 1939; that in 1936 he became a member of the group who made tax returns to the Board of Equalization through Victor Morel under the name of "Old Plaza Transfer Service"; that he transported dirt and furniture, and that the transportation service rendered was mostly between points within the City of Los Angeles but occasionally included movements between points in the City of Los Angeles, on the one hand, and beyond the city limits of Los Angeles, on the other hand; that the average monthly income derived from said operations was from \$10.00 to \$15.00; that on January 9, 1939, he and respondent Andres Carranza transported property for Lovrich & Konjevod from 2835 Newell Street, Los Angeles, to 3311 North Figueroa Street, Los Angeles; that he knew he was required to have permits from the Railroad Commission in order to engage in for-hire transportation, and in this respect stated that representatives of the Railroad Commission told all of the members of the group several times of the requirement for permits, but that he never had permits from the Railroad Commission because he could not afford them; that he has not rendered any for-hire transportation service since August, 1939, and that for the last three or four years he has at times worked for the W. P. A. and at the present time is

steadily employed with the W. P. A.

Respondent A. Morales testified that at the present time he is working for the W. P. A. and has been so employed for the last four years, and that he has conducted no for-hire motor truck transportation operations since 1934.

Leon B. Royer, Deputy City Clerk and custodian of the records in the License Bureau of the City of Los Angeles, testified that the 1938 and 1939 records of the City of Los Angeles show that the following respondents in 1938 and 1939 obtained licenses from the City of Los Angeles as required by Ordinance No. 77229 to conduct a transportation business in the City of Los Angeles for the years 1938 and 1939, respectively: Francisco V. Valdez, 4824 Hammel Street, Los Angeles; Pedro R. Gonzales, 2330 Damon Street, Los Angeles; Ponciano Terrones, 834 Rosabel Street, Los Angeles; Jose Nova Fernandez, 417 Sanchez Street, Los Angeles; and that the 1939 records showed that D. Galvan, 417 Sanchez Street, Los Angeles, had obtained a license for the year 1939.

Gaspar Arriola, of 822 Alpine Street, Los Angeles, identified respondent Francisco Valdez in the court room and testified that he (Gaspar Arriola) was an employee of the Anderson Die Casting Company; that he hired Valdez to transport loose household goods from 41st and Wall Streets, Los Angeles, to 822 Alpine Street, Los Angeles; that the latter, pursuant to said hiring, did transport said household goods in April, 1939, by means of a motor vehicle and that the witness' wife paid Valdez for said transportation.

Alphonso Salas, 362 Patton Street, Los Angeles, identified respondent Dionicio Galvan in the court room and testified that he became acquainted with said respondent in March, 1939, at which time he hired him at the office of the Old Plaza Transfer Service on Sanchez Street to transport furniture from 1961 South Los Angeles

Street, Los Angeles, to 362 Patton Street, Los Angeles; that pursuant to said hiring respondent Galvan transported the said property between the said addresses on or about March 17, 1939 by means of a motor vehicle driven by said respondent; that he paid said respondent the sum of \$4.50 as consideration for said transportation and that nothing was said to said respondent about the Old Plaza Transfer Service.

H. B. Dierkes, 2121 West 11th Street, Los Angeles, a former police officer called as a witness, identified respondent Galvan in the court room and testified that he had seen said respondent and the other respondents herein many times in the Old Plaza district; that he hired someone other than said respondent to transport household goods from 1234 S. Lake Street, Los Angeles, to 2121 West 11th Street, Los Angeles, but that respondent Galvan performed said transportation between said points by means of a motor vehicle in February, 1939, and that he paid said respondent for said transportation.

Witness F. V. Leal, store manager and bookkeeper of the Calderon Music Company, 408 North Main Street, Los Angeles, testified that he went to 417 Sanchez Street, Los Angeles, where he saw respondent Galvan in a truck; that he hired said respondent to transport furniture from the Calderon Music Company to 511 Ivy Street, Glendale, and that pursuant to said hiring said respondent performed said transportation on December 10, 1938, for which he was paid \$3.00; that he had seen respondent Galvan in the vicinity of the Old Plaza district many times and understood he was in the transfer business; that also at many times he had seen trucks there which he knew were for-hire trucks. Exhibit No. 2 shows the property which was transported to be household furniture.

Witness Mrs. Ernest La Carra, 1124 E. Nado Street, Los Angeles, identified respondent Galvan in the court room and testified that her husband hired him to transport used household goods from 3707 Lee Street, Los Angeles, to 1124 East 77th Place, outside the city limits of Los Angeles, and that pursuant to said hiring said respondent transported said property between said points on or about September 4, 1938, by means of a motor vehicle and that he was paid approximately \$10.00 for said service.

Witness J. D. Watson, 1643 Wabasco Road, Glendale, California, identified respondent Terrones in the court room and testified that he was acquainted with said respondent and hired him on several occasions to transport property, the last time being in November, 1939.

Witness W. Presser, of Lovrich & Konjevod, 2835 Newell Street, Los Angeles, testified that he hired someone to transport lumber for his company on or about January 9, 1938, from 2835 Newell Street, Los Angeles, to 3311 North Figueroa Street, Los Angeles, the latter address being that of the Florence Nightingale High School; that pursuant to said hiring the transportation was performed by means of motor vehicles and payment was made by check, which was produced at the hearing. The check, in the sum of \$30.00, was dated January 9, 1939, drawn on the Bank of America, Melrose and LaBrea Branch, by L. J. Konjevod, and named the "Old Plaza Transfer Service" as payee. The endorsement on said check was "Old Plaza Transfer Service, Victor Morel." Printed on the face of the check was the following: "full payment for hauling lumber from Newell Street to 3311 North Figueroa Street, Los Angeles." It is to be noted that this is the same haul that respondents Fernandez and Carranza testified they performed on January 9, 1939.

Harry Roenthal, an inspector of the Railroad Commission, testified that at various times he and other inspectors from the Rail-

road Commission had spoken to the respondents herein as a group in reference to the requirements of the Highway and the City Carriers' Acts, and informed them it was unlawful to operate either as a highway or a city carrier within the meaning of the respective acts without obtaining the proper permits therefor from this Commission; that he and W. J. Hynes, another inspector of the Commission, on September 14, 1938, observed respondent Galvan drive a Chevrolet truck to 3707 Lee Street, Los Angeles, where loose household goods were loaded on to said truck and transported to 1124 East 77th Place, Los Angeles; that he saw the certificate of registration in the cab of said truck, which showed the name of respondent Galvan as the registered owner. It should be noted that this is the transportation testified to by witness Dierkes. On September 16, 1938, he observed a Chevrolet truck driven by respondent Ponciano Terrones, which he followed from the Old Plaza district to 4500 Vermont Avenue, Los Angeles; that tables and other equipment were there loaded on to said truck; that he then followed the truck loaded with said property to Sixth and Main Streets, Los Angeles, where said property was unloaded at a saloon; that he has seen respondent Terrones and other members of the group parked on Sanchez Street near the Old Plaza on various occasions, apparently awaiting business; that on January 15th and 16th, 1940, he served respondents Francisco Valdez, D. Galvan, Pedro R. Gonzales, and A. Carranza with subpoenas for the present hearing, at which time each of them stated he was at the present time in the transfer business.

From the evidence herein it is apparent that the for-hire motor truck transportation services rendered by each of the respondents were conducted both as city carriers, within the meaning of the City Carriers' Act, and highway carriers (other than highway common carriers), within the meaning of the Highway Carriers' Act, and that said respondents conducted said transportation operations individually

and not as co-partners under the name of Old Plaza Transfer Service. An order of this Commission should be issued against each of the respondents herein except A. Morales (who ceased such operations several years ago), directing that each cease and desist such operations.

With reference to respondent A. Morales, the evidence indicates that he has not engaged in for-hire truck transportation operations for approximately four years and, accordingly, the order should be dismissed as to him.

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 and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 371. It should also be noted that under Section 79 of the Public Utilities Act, a person who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding \$1,000.00 or by imprisonment in the County Jail not exceeding one year, or by both such fine and imprisonment. Also under Section 14 of the Highway Carriers' Act and Section 13 of the City Carriers' Act any person, or any director, officer, agent or employee of a corporation who violates any of the provisions of these acts, respectively, or of any operating permit issued thereunder to any highway carrier or city carrier, respectively, or any order, rule or regulation of the Commission, is guilty of a misdemeanor and is punishable by a fine

not exceeding \$500.00, or by imprisonment in the county jail for not exceeding three months, or by both such fine and imprisonment.

I recommend the following form of order:

O R D E R

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 respondents Francisco Valdez, Dionicio Galvan, Pedro R. Gonzales, Ponciano Terrones, and Andres Carranza have been and now are, and each of them has been and now is engaged in the transportation of property for compensation or hire as a business over the public highways of the State of California in the City of Los Angeles by means of motor vehicles as a carrier, as that term is defined in Section 1(f) of the City carriers' Act (Stats. 1935, Ch. 312, as amended), without having secured a permit therefor as required by Section 3 of said City Carriers' Act.

IT IS HEREBY FURTHER FOUND that respondents Francisco Valdez, Dionicio Galvan, Pedro R. Gonzales, Ponciano Terrones, and Andres Carranza have been and now are, and each of them has been and now is engaged in the transportation of property for compensation or hire as a business over the public highways of the State of California by means of motor vehicles as a highway carrier (other than a highway common carrier) as that term is defined in Section 1(f) of the Highway Carriers' Act (Stats. 1935, Ch. 223, as amended), without having secured a permit therefor as required by Section 3 of said Highway Carriers' Act.

IT IS HEREBY FURTHER FOUND that respondents Jose Nova Fernandez and A. Ramos have been and each of them has been engaged in the transportation of property for compensation or hire as a

business over the public highways of the State of California, in the City of Los Angeles, by means of motor vehicles as a "carrier" as that term is defined in Section 1(f) of said City Carriers' Act, without having secured a permit therefor as required by Section 3 of said City Carriers' Act.

IT IS HEREBY FURTHER FOUND that respondents Jose Nova Fernandez and A. Ramos have been and each of them has been engaged in the transportation of property for compensation or hire as a business over the public highways of the State of California, by means of motor vehicles, as a highway carrier (other than a highway common carrier) as that term is defined in Section 1(f) of said Highway Carriers' Act, without having secured a permit therefor as required by Section 3 of said Highway Carriers' Act.

IT IS HEREBY FURTHER FOUND that the evidence is not sufficient to show that respondent A. Morales is engaged in the transportation of property for compensation or hire either as a "carrier" as that term is defined in Section 1(f) of said City Carriers' Act, or as a "highway carrier" (other than a highway common carrier) as that term is defined in Section 1(f) of said Highway Carriers' Act.

IT IS HEREBY ORDERED that respondents Francisco Valdez, Dionicio Galvan, Pedro R. Gonzales, Ponciano Terrones, Andres Carranza, and Jose Nova Fernandez, and each of them, shall immediately cease and desist and refrain from conducting or continuing, directly or indirectly or by any subterfuge or device, any and all of said operations as a "carrier," as that term is defined in Section 1(f) of the City Carriers' Act (Stats. 1935, Ch. 312, as amended), unless and until said respondents and each of them shall have secured from the Railroad Commission the proper permit as required by said City Carriers' Act.

IT IS HEREBY FURTHER ORDERED that respondents Francisco Valdez, Dionicio Galvan, Pedro R. Gonzales, Ponciano Ferrones, Andres Carranza, and Jose Nova Fernandez, and each of them, shall immediately cease and desist and refrain from conducting or continuing, directly or indirectly or by any subterfuge or device, any and all of said operations as a "highway carrier" (other than a highway common carrier) as that term is defined in Section 1(f) of the Highway Carriers' Act (Stats. 1935, Ch. 223, as amended), unless and until said respondents and each of them shall have secured from the Railroad Commission the proper permit as required by said Highway Carriers' Act.

IT IS HEREBY FURTHER ORDERED that the order instituting investigation as to respondent A. Morales be and the same is hereby dismissed.

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

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 9th day of April 1940.

Ray L. Riley
Francis R. Sawyer
Ralph W. Sawyer
W. H. Hall
Justus J. Gaemen
Commissioners.