

Decision No. 33024

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

G. F. D. LINES, INC., a corporation,)
Complainant,)
vs.)
JOSEPH E. MARTIN, an individual;)
doing business under the fictitious)
firm name of FEEL DELIVERY,)
Defendant.)

Case No. 4469

PHIL JACOBSON, for complainant
LE ROY RESMES, for defendant
CHARLES A. STEVENOT, interested party

CRAEMER, Commissioner

O P I N I O N

This proceeding was instituted by G. F. D. Lines, Inc., a corporation, complainant, against Joseph E. Martin, doing business under the fictitious firm name of Reel Delivery, defendant.

The complaint alleges substantially that G. F. D. Lines, Inc. is a highway common carrier of moving picture film and accessories, operating between various points in Southern California, including Los Angeles, Pasadena and San Diego, pursuant to a certificate of public convenience and necessity issued by the Commission; that defendant is conducting a highway common carrier transportation service

of moving picture films and accessories between Los Angeles, Pasadena and points in San Diego County, in violation of Sections 50-3/4 and 2-3/4 of the Public Utilities Act.

The case came on regularly to be heard on December 29, 1939, at San Diego, California. Complainant and defendant appeared personally and were represented by counsel.

At the beginning of the hearing it was stipulated in effect as follows: That defendant, Joseph E. Martin, is the sole owner of a trucking business which he conducts under the fictitious firm name and style of Reel Service Film Delivery, with its principal office located at 2028 South Vermont Avenue, Los Angeles; that two trucks are used for the transportation of moving picture films and accessories and operate daily. Moving picture films and accessories and lobby displays are picked up at various distribution agencies in the City of Los Angeles and delivered to theaters in Pasadena, San Diego, El Cajon, Chula Vista, La Mesa and Ocean Beach; that said defendant renders said for-hire transportation service in the delivery of shipments to nine theaters in San Diego County located in the cities of San Diego, El Cajon, Chula Vista, La Mesa and Ocean Beach, and two theaters in Pasadena, which pay the transportation charges. Service to theaters in San Diego County was commenced during the first part of November, 1939, to one Pasadena theater in June, 1939, and to the other in November, 1939; that a round trip is made daily from Los Angeles, on the one hand, to Pasadena and San Diego County points, on the other hand.

Defendant testified that he and Fred L. Austin, formerly defendant's partner, had been employed by complainant for approximately nine years. In June of 1939 they both left the employ of complainant, organized a co-partnership, purchased a motor truck and went into the

transportation business for themselves. They immediately began soliciting the business of film and theatrical agencies. This was done by calling on the various film agencies in Los Angeles and informing them of the new fast service that defendant and his partner were inaugurating. A business card and a large display card were left with the agencies with instructions to call the Reel Service Film Delivery when there was need for fast service for the delivery of motion picture films and accessories from Los Angeles, on the one hand, to Pasadena and San Diego County points, on the other hand. The business card and the large card contained the telephone number and business address of defendant and a description of the service. In addition to this the service was advertised in the Christmas issue of the Pacific Showman Magazine.

The operation was commenced in November of 1939 pursuant to verbal arrangements made with shippers. Defendant was unable to give any details of these arrangements except that it was understood that a fast film delivery service was thereafter to be available to shippers at the same rates as those charged by complainant.

The co-partnership was dissolved six or seven weeks prior to the hearing herein and thereafter the business was conducted by defendant as sole owner.

The testimony of the defendant and stipulation of counsel establish that the operation is conducted in the manner hereinafter described. Two trucks are used to handle the business. A pickup truck calls on the agencies in Los Angeles, collects all shipments and then proceeds over the public highways to Pasadena where deliveries are made. The San Diego shipments are carried to Laguna Beach where they are transferred to another truck which delivers them to the theaters

in San Diego County. This operation is conducted daily. Defendant stated, in effect, that more business could be handled by the two trucks and that additional business would be solicited.

It is apparent from the record that defendant renders a trucking service in the delivery of motion picture film and accessories over a regular route and between fixed termini, namely, Los Angeles, on the one hand, and Pasadena and San Diego, El Cajon, Chula Vista, La Mesa and Ocean Beach, on the other hand, and that said service is rendered indiscriminately to any desiring to patronize the same who will pay the transportation charges. It is evident that said transportation service is that of a highway common carrier as defined by Section 2-3/4 of the Public Utilities Act. The defendant does not hold or possess any certificate of public convenience and necessity issued by this Commission or prior right authorizing him to so operate as a highway common carrier, as required by Section 50-3/4 of the Public Utilities Act, and his said operations are therefore unlawful.

Respondent will be required to discontinue such operations. In addition, an appropriate penalty should be sought for the unlawful operations which the record in this case reveals respondent to have been continuously conducting since November of 1939. The attorney for the Commission will therefore be directed to institute proceedings for the imposition for civil penalties under the provisions of the Public Utilities Act.

An order of the Commission directing a suspension or cessation of a trucking operation 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 the 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 contempt, a fine may be imposed in the amount of \$500.00 or he may be imprisoned for five days, or both. (C.C.P. 1218; Motor Freight Terminal Co. v. Gray, 37 C.R.C. 224; re Ball & Hayes, 37 C.R.C. 408; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Co. v. Keller, 33 C.R.C. 571.)

I recommend the following form of order:

O R D E R

A public hearing having been held in the above-entitled matter, evidence having been received, and the matter submitted for decision:

IT IS HEREBY FOUND that defendant, Joseph E. Martin, doing business as Reel Service Film Delivery, is now and since November, 1939, has been operating as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act with common carrier status between fixed termini or over regular routes over public highways between Los Angeles, on the one hand, and Pasadena, San Diego, El Cajon, Chula Vista, La Mesa and Ocean Beach, on the other hand, without first having secured from this Commission a certificate of public convenience and necessity or without prior right authorizing such operation.

IT IS HEREBY ORDERED that defendant, Joseph E. Martin, an individual operating under the fictitious name and style of Reel Service Film Delivery, desist and abstain, directly or indirectly, by any subterfuge or device, from operating as a highway common carrier between any or all of the following points, to-wit: Los Angeles, on the one hand, and Pasadena, San Diego, El Cajon, Chula Vista, La Mesa and Ocean Beach, on the other hand, unless and until he has first obtained from the Commission a certificate of public convenience and necessity authorizing such operation.

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 Secretary of the Railroad Commission is directed to cause a certified copy of this opinion and order to be personally served upon defendant, Joseph E. Martin, and this order shall become effective on the 20th day after the date of such personal service.

Dated at San Francisco, California, this 23rd day of April, 1940.

Ray L. Rice
Francis L. Smith
Raymond A. Brown
W. B. M.
Justin J. Calver

COMMISSIONERS.