

Decision No. 32143

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,)
classifications, and practices of)
CELIA BLATT, doing business as)
FURNITURE TRUCK LINES.)

Case No. 4381

In the Matter of the Investigation, on)
the Commission's own motion, into the)
operations, rates, charges, contracts,)
classifications, and practices of)
FURNITURE TRUCK LINES, INCORPORATED.)

Case No. 4399

EUGH M. BOLE and CARL STURZENACKER, for respondents
Celia Blatt, doing business as Furniture Truck
Lines, and Furniture Truck Lines, Incorporated.

BEN C. COHEN, F. F. MORGAN and A. V. MacDONALD, for
Furniture Manufacturers' Association, Inc.,
interested party.

BY THE COMMISSION:

O P I N I O N

Those proceedings were instituted by the Commission on its own motion for the purpose of determining whether or not Celia Blatt, doing business as Furniture Truck Lines, respondent in Case No. 4381, and Furniture Truck Lines, Incorporated, a corporation, respondent in Case 4399 (hereinafter sometimes called respondent corporation), were operating as highway common carriers as defined in Section 2-3/4 of the Public Utilities Act (Stats. 1915, Ch. 91, as amended), without first having secured a certificate of public convenience and necessity; or whether or not as highway carriers other than highway common carriers they engaged in transportation of property at rates less than minimum rates established by the Commission; also whether or not operating permits held by respondents should be revoked or suspended for such violations. The orders instituting investigation in the two cases are substantially identical and relate to operations between the same points,

to-wit, between Los Angeles and territory proximate thereto, on the one hand, and points north on the Coast Route to Paso Robles via Ventura and Santa Barbara, points north on the San Joaquin Valley Route to Sacramento via Eakersfield, Fresno, and Stockton, and points south on the Coast Route to San Diego via Santa Ana, Long Beach, and San Bernardino, on the other hand.

Public hearings were held before Examiner Cameron in Los Angeles on April 24 and 25 and May 8 and 9, 1939, the two cases were consolidated by stipulation, evidence was received, and the matter was submitted and is now ready for decision.

The record shows that in November, 1937, respondent Blatt purchased the trucking business of one Michael Mills and, on January 17, 1938, secured a permit from the Commission to operate as a highway contract carrier. The Articles of Incorporation of respondent corporation were executed in October, 1938, and the corporation thereafter succeeded to the business of respondent Blatt and took over the operations previously conducted by her. The latter contends that the proceeding should be dismissed as to her, since the business has been transferred to the corporation, and the corporation takes the position that all of its transportation services are performed under a single contract with Furniture Manufacturers Association, Inc. (hereinafter sometimes referred to as the association), that it does not hold itself out to serve anyone except members of the association, and that it therefore cannot be regarded as a highway common carrier.

The trucking business purchased by respondent Blatt from Mills in 1937 included a warehouse, office equipment, and three trucks each equipped with pads and blankets. Three of Mills' employees were retained on the payroll. A. Blatt, brother of respondent Blatt, took over the management of the business, which for a time was conducted in the same manner as under Mills, who had been operating chiefly

between Los Angeles and the vicinity thereof, on the one hand, and points north along the Coast Route to Santa Paula via Ventura and Santa Barbara, north through the San Joaquin Valley to Sacramento via Bakersfield, Fresno, and Stockton, east to San Bernardino, and south to San Diego via Long Beach and Santa Ana, on the other hand. The service of both Mills and Blatt consisted, with few exceptions, of the transportation of new uncrated household furniture from manufacturers to dealers.

During November and December, 1937, A. Blatt compiled a list of furniture manufacturers from the Los Angeles classified telephone directory, informed them of the change in management and of the inauguration of rapid transportation with quick pick-up and delivery service, and solicited new business from non-patrons and additional traffic from those already being served. He contacted at least twenty-five manufacturers in this way and followed up such contacts with telephone calls and correspondence in January, 1938. Additional leads were secured from the drivers, who reported the names of shippers who had formerly patronized Mills but had discontinued doing so because of dissatisfaction with the service, and these shippers were also contacted from time to time and informed of the new service. In February, 1938, A. Blatt made a five-day trip to contact furniture dealers along the coast and in the San Joaquin Valley, and on another occasion, the exact date of which does not appear, made a trip to San Diego for the same purpose. On these trips he explained the change of management and the inauguration of a new service to approximately 75 dealers in the San Joaquin Valley, 6 or 7 along the Coast, and over 60% of all the furniture dealers in San Diego, and encouraged them to instruct the manufacturers to ship by way of Furniture Truck Lines.

Respondent Blatt's business steadily increased, with the result that three new trucks were purchased during 1938, and another

driver and two warehouse employes were added to the payroll. A. Blatt testified that these additions in equipment and personnel were necessitated by the increased business, which resulted in part from the extension of the service to new shippers and in part from a greater utilization of the service by old shippers.

As stated above, the Articles of Incorporation of respondent corporation were executed in October, 1938, and it thereafter succeeded to the business of respondent Blatt. The exact date of such transfer was not shown, but it appears that the corporation secured a highway contract carrier permit from the Commission on February 2, 1939. The incorporators were A. Blatt, Mina Blatt, Stanley Balik, and Eilda Balik. Stanley Balik was elected President and A. Blatt, Secretary. The latter continued as manager, and the transfer of the business apparently was not accompanied by any material change in the manner in which it was conducted. Several witnesses representing furniture manufacturers who had been using the service continuously since A. Blatt had taken over the management of it observed no change at any time either in the service or in the manner of handling the shipments.

Although these proceedings involve the entire operation of respondents, the testimony dealing with the physical transportation operations was limited to those between Los Angeles and territory proximate thereto, on the one hand, and Paso Robles and intermediate points, via the Coast Route, and Sacramento and intermediate points, via the San Joaquin Valley Route, on the other hand. The evidence shows that shipments were picked up by respondents from various manufacturers in the Los Angeles area and taken to the warehouse to be accumulated until sufficient for a line-haul van load. The line-haul van was used for delivering directly to the consignees along each route. Such deliveries were made along the Coast and San Joaquin Valley routes approximately every other day. All shipments were protected by cargo insurance furnished by respondents. In the event shipments were destined to points beyond the area served, respondents made arrangements with certificated carriers to complete the deliveries.

During the period from April 1 to 28, 1939, inclusive, respondent corporation made 17 trips over the San Joaquin Valley Route and 13 along the Coast Route north from Los Angeles to Paso Robles. The property transported on these trips consisted of new uncrated furniture shipped by 50 consignors in the Los Angeles area to 39 consignees along said Coast Route and 108 consignees located along the San Joaquin Valley Route to and including Sacramento. Eleven of the consignors prepaid the charges on 99 shipments; the remaining shipments, numbering 681, moved "freight collect" and the consignees paid the charges. The transportation charges were the same to all shippers for the same items and between the same points.

All of these operations are said to have been conducted under a contract between respondent corporation and Furniture Manufacturers Association. The latter, a non-profit corporation, was organized in April, 1928, under Division First, Part IV, Title XX, of the Civil Code of the State of California. Its powers and purposes, as set forth in its Articles, are, briefly, to promote constructive ideas, create confidence between the members, exchange credit information, avoid fraudulent settlements and duplication of members' patterns, and, in general, promote the welfare of the members and of the furniture industry. No reference is made to transportation. The Association is controlled by a board of ten directors or trustees elected by the members. No mention is made in the Articles of qualifications for membership, but A. V. McDonald, the Association's secretary, testified that all furniture manufacturers in good standing in the industry are eligible for membership, if approved by a majority of the Board of Directors, and could not recall any instance when an application was denied. The membership fee is \$25.00, and all members have equal rights. One hundred forty-four of the 207 furniture manu-

facturers in the Los Angeles area are members of the Association.

On October 1, 1938, a contract was entered into between the Association and Celia Blatt purporting to authorize or require the latter to handle all shipments of members of the Association to points north and east of Los Angeles. The contract between the Association and the respondent corporation is dated January 1, 1939, and purports to provide for similar service by the corporation, the contract to run from week to week until terminated on one week's notice. Attached to the contract is a schedule of rates and a list of 28 names headed "Members of Furniture Manufacturers Association Using Furniture Truck Lines, Inc. Uncrated Truck Service."

Respondent corporation's manager, A. Blatt, stated that the service of the corporation was restricted to members of the Association and that service was refused to non-members, who were advised to join the Association to obtain service.

It is manifest, however, that respondents' service was in no proper sense controlled by these contracts, or either of them. The shipments were received from the consignor-members, not the Association, and the Association had no interest in them. Freight charges were not billed to the Association but to the consignors or consignees, and were paid by them. If the contracts purported to bind the individual members in any manner, it is not clear from the record that the Association had any authority to do so. The Association, moreover, included in its membership most of the furniture manufacturers in the Los Angeles basin area shipping new uncrated household goods, and its membership was open to those others who were not members. Furthermore, as indicated by the fact that most of the shipments moved "collect" and by Blatt's vigorous solicitation among the receivers, the largest part of the service was performed for the consignees and not for the member consignors.

We see nothing in these contracts or in any of the other circumstances of the case indicative of any restriction or limitation of service as a private or contract carrier; on the contrary, it is evident from the record that the respondent corporation and respondent Celia Blatt, in their operations between Los Angeles and points north along the Coast and San Joaquin Valley Routes, held themselves out to the public generally to transport new uncrated furniture as common carriers between fixed termini and over regular routes, as highway common carriers as defined in Section 2-3/4 of said Act. Section 50-3/4 of said Act prohibits such operations unless they were conducted on July 26, 1917, and continuously thereafter or are authorized by a certificate of public convenience and necessity issued by the Commission. Neither respondent possesses such authority, and a cease and desist order will be issued against each of them. Revocation or suspension of the operating permit of respondent corporation would be unduly harsh under the circumstances. A reasonable penalty for the violation should be imposed, however, and the attorney for the Commission will be directed to institute proceedings for that purpose.

An order of this Commission finding an operation to be unlawful and directing that it be discontinued is in effect not unlike an injunction issued by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution, the Public Utilities Act, the Highway Carriers' Act, and the City Carriers' Act vest the Commission with power 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 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., or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

O R D E R

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

IT IS HEREBY FOUND that respondent Celia Blatt, doing business as Furniture Truck Lines, during the first nine months of 1938 and until she transferred her business to respondent Furniture Truck Lines, Inc., was operating as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, between fixed termini and over regular routes, to-wit, between Los Angeles and territory proximate thereto, on the one hand, and Paso Robles and intermediate points, including Ventura and Santa Barbara, via the Coast Route, and Sacramento and intermediate points, including Bakersfield, Fresno, and Stockton, via the San Joaquin Valley Route, on the one hand, without first having obtained from the Commission a certificate of public convenience and necessity therefor, and without other operative rights therefor, in violation of Section 50-3/4 of said Act and of the provisions of highway contract carrier permit No. 19-6911 issued to respondent Blatt by the Commission.

IT IS HEREBY FURTHER FOUND that respondent FURNITURE TRUCK LINES, INC., a corporation, has been and now is operating as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, between fixed termini and over regular routes, to-wit, between Los Angeles and territory proximate thereto, on the one hand, and Paso Robles and intermediate points, including Ventura and Santa Barbara, via the Coast Route, and Sacramento and intermediate points,

including Bakersfield, Fresno, and Stockton, via the San Joaquin Valley Route, on the other hand, without first having obtained from the Commission a certificate of public convenience and necessity therefor, and without other operative rights therefor, in violation of Section 50-3/4 of said Act and of the provisions of highway contract carrier permit No. 19-8976 issued to respondent corporation by the Commission.

IT IS HEREBY ORDERED that respondent CELIA BLATT, doing business as Furniture Truck Lines, and respondent FURNITURE TRUCK LINES, INC., a corporation, and each of them, immediately cease and desist from conducting or continuing, directly or indirectly or by any subterfuge or device, any and all said operations as a highway common carrier as hereinabove set forth, unless and until they shall have secured from the Commission a proper certificate of public convenience and necessity therefor.

IT IS HEREBY FURTHER ORDERED that in all other respects these proceedings be and they are, and each of them is, hereby dismissed.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Commission cause service of this order to be made upon respondents, and each of them.

IT IS HEREBY FURTHER ORDERED that the effective date of this order as to each respondent shall be twenty (20) days from the date of service hereof upon said respondent.

Dated at San Francisco, California, this 30th day of
April, 1940.

Ray L. Riley
James C. Blum
Robert W. ...
James J. ...
Commissioners.