

Decision No. 33163

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CERTIFICATED HIGHWAY CARRIERS, INC.,

Complainant

vs.

JOSEPH MOISSETT; and J. W. ANDERSON,  
doing business as ANDERSON TRUCK LINE.

Respondents.

ORIGINAL

Case No. 4451

H. J. Bischoff, for complainant

George Grant, for Anderson Truck Lines

Edward Stern, for Railway Express Agency, Inc.,  
interested party

W. K. Downey, for Pacific Freight Lines,  
interested party

Charles A. Stevenot, for Joseph Moisset

BAKER, Commissioner

O P I N I O N

By complaint filed September 28, 1939, Certificated Highway Carriers, Inc., complainant, alleged that defendants, Joseph Moisset, and J. W. Anderson, doing business as Anderson Truck Line, are engaged in for-hire truck transportation services as highway common carriers without possessing certificates of public convenience and necessity.

It is alleged, in substance, that Joseph Moisset is engaged in the business of transporting property by motor vehicle as a highway common carrier, as that term is defined in Section 2-3/4 of the Public Utilities Act (Statutes of 1915, Chapter 91, as amended), between San Diego and El Cajon and intermediate points via La Mesa, without a certificate of public convenience and necessity. Defendant, Joseph Moisset, filed his answer denying

that he was conducting such operations as a highway common carrier and by his Application No. 23107 filed November 8, 1939, applied for a certificate of public convenience and necessity between said points.

It is alleged in substance that said J. W. Anderson is engaged in the business of transporting property by motor vehicle as a highway common carrier, as that term is defined in Section 2-3/4 of the Public Utilities Act, between Los Angeles and San Diego without a certificate of public convenience and necessity. Defendant, J. W. Anderson, filed his answer denying that he was conducting such operations as a highway common carrier.

This Commission on January 16, 1940, by its Decision No. 32741 in Case No. 4451, dismissed the complaint herein in so far as it refers to said Joseph Moisset and by its Decision No. 32742 in said Application No. 23107, dismissed said application for a certificate of public convenience and necessity between San Diego and El Cajon.

No further consideration need be given the matters in said decisions. Attention will therefore be directed solely to the operations of defendant J. W. Anderson between Los Angeles and San Diego.

Public hearing was held in these matters in Los Angeles on November 30, 1939, at which time defendant Anderson and several public witnesses called by complainant testified. The matter has been duly submitted and is now ready for decision.

Since the testimony of shipper witnesses, in nearly every respect, bears out the testimony of defendant Anderson, to avoid repetition their testimony will be treated in but a cursory manner and defendant's testimony will be treated in more detail thereafter.

Anthony Burrel, shipping manager of the United Drug Company of Los Angeles, testified that said company uses several carriers,

including Anderson and members of complainant corporation, on shipments moving from Los Angeles to the San Diego area; that shipments move by Anderson once or twice a week; that his company follows the routing instructions of the consignees; and that the consignees paid the transportation charges on said shipments.

George McInerney, shipping clerk of the Los Angeles office of the General Tire and Rubber Company, testified that said company uses several carriers, including Anderson and members of complainant corporation, on shipments moving from Los Angeles to San Diego; that it uses Anderson's service when so designated by consignees, which occurs about two or three times per week; that practically all transportation charges are paid by the consignees and that his Company has six or eight accounts in San Diego to only one of which Anderson transports merchandise from his company.

Charles L. R. Thorpe of the Federated Metals Company, Los Angeles, testified that said company handles lead and metals and that it sells to two accounts located in San Diego; that his company uses several carriers, including Anderson and members of the complainant corporation, in the transportation of merchandise to said accounts; that his company uses Anderson's service on such shipments about once a month and that his company pays the transportation charges.

Harry Woods, shipping manager of H. E. Horn Company, testified that said Company handles electrical appliances and automotive equipment, etc.; that it has approximately fifty customers in the San Diego area to whom it ships merchandise by several carriers, including members of the complainant corporation; that formerly, and until January 13, 1939, the service of Anderson was likewise utilized in said transportation; and that although said company paid the transportation charges on shipments moved by Anderson, the latter was designated as the carrier by the consignees.

O. Rogers, an employee in the Shipping Department of the Republic Water Heater Company of Huntington Park, testified that said company manufactures water heaters and has four or five customers in San Diego; that it utilizes the service of various carriers, including Anderson and members of the complainant corporation, in shipments moving to said customers; and that it uses Anderson's service about once a month.

Melvin Flansburg, plant foreman of Boyle & Company, Los Angeles, chemical manufacturer, testified that said company has approximately twenty customers in San Diego County and that although its larger shipments are moved by its own trucks, on smaller shipments it uses the services of various carriers, including Anderson and members of the complainant corporation; and that said company pays the transportation charges on shipments moved by Anderson. From the records produced at the hearing by this witness, it is apparent that the above company utilized the service of Anderson about two or three times a month.

From the testimony of J. W. Anderson, defendant herein, the following facts are apparent:

Defendant was formerly employed as a part-time driver by C. A. Stevenot, doing business as Oppenheimer Truck Line, between Los Angeles and San Diego. In September, 1938, the latter discontinued his trucking business and sold his 1935 Dodge truck to defendant, who succeeded to that portion of Stevenot's business conducted between Los Angeles on the one hand and San Diego, El Cajon and La Mesa on the other hand. Defendant's physical movements, however, are only between Los Angeles and San Diego and the intermediate points of Fullerton, Oceanside and Encinitas, although freight may be destined to, or may occasionally originate at El Cajon and La Mesa.

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Defendant operates but one truck, a 1935 Dodge, with a factory rating of one and one-half tons and a maximum load capacity of five tons. This truck is not only used for the line haul, but for local pick-ups as well, and at times other truckers are hired to assist in the latter service. He has a phone and a dock in Los Angeles but has no dock or place of business in San Diego. The principal commodities transported by said defendant are rubber goods, drug supplies, electrical supplies, radios, paper products, food supplies and metals. However, there is no particular commodity restriction.

Upon commencing business, defendant Anderson contacted the customers of Stevenot (about fifteen in number) to arrange for continuation of the service by himself. He informed them that his business would only be to the extent of the capacity of his truck and that the service would not necessarily be on a daily basis. These customers formed the nucleus of defendant's business; however, some have since ceased patronizing him while on the other hand he has commenced serving others. Considering the person who pays the transportation charges to be the customer of the carrier, irrespective of whether that person is a consignor or consignee of the shipment, it appears that defendant has approximately twenty to twenty-five customers. The approximate number of merchants either shipping or receiving freight and their respective locations is as follows: Los Angeles, twenty to twenty-five consignors, ten consignees; San Diego, forty to forty-five consignors and consignees; La Mesa and El Cajon, six to eight consignors and consignees; Fullerton, one consignee; Oceanside, three consignees; Encinitas, one consignee. Of these merchants, approximately fifteen are druggists

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<sup>1</sup> This truck apparently is the one purchased from Stevenot.

and from fifteen to twenty handle electrical supplies.

Although defendant stated that in reference to the above merchants there exists approximately six or eight written contracts and ten or twelve oral contracts for transportation service, service is also rendered to other shippers with whom he has no such arrangement. The purported contracts, whether written or oral, are all similar and seem to be no more than an understanding that defendant will transport such merchandise as is tendered to him for transportation, and that the shipper, if a consignor, is "supposed" to tender him all freight moving prepaid. Defendant stated that no customer ever refused to enter into such an arrangement. He admitted that he has contacted additional merchants for the purpose of arranging transportation service of the above nature, although the general practice is that shippers contact him for service.

It is clear that defendant's service is conducted usually and ordinarily between the fixed termini of Los Angeles and San Diego and is that of a highway common carrier, being open and available, limited only by the capacity of his equipment, to those shippers who desire to use it. Defendant should therefore be ordered to cease and desist such operations in the absence of a certificate of public convenience and necessity.

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 defendant, J. W. Anderson, doing business as Anderson Truck Line, 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 San Diego 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.

IT IS HEREBY ORDERED, by reason of such offense, that defendant, J. W. Anderson, 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.

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 4<sup>th</sup> day of June, 1940.

Ray L. Riley  
Grant Allen  
Ray [unclear]  
W. [unclear]  
Justin V. Cullen  
Commissioners