Decision No. 32226

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Investigation on the Commission's own motion into the operations, rates, charges, contracts, and practices of F. F. SULLIVAN, doing business as Red Line Express & Truck Co.

Case No. 4457

JOHN F. McNEIL, for Respondent.

BY THE COMMISSION:

O P I N I O N

This proceeding is an investigation by the Commission, instituted on its own motion, into the operations, rates, charges, contracts and practices, of F. F. Sullivan, an individual, doing business as Red Line Express and Truck Co., hereafter called respondent, for the purpose of determining: (1) whether respondent's operations as a highway common carrier under authority of that certain certificate of public convenience and necessity granted to him by the Commission in its Decision No. 27135 have been conducted by means of automotive equipment not owned or leased by him, in violation of Rules 25 (a) or 25 (b) of General Order No. 93 issued by the Railroad Commission on May 3, 1937; and (2) whether respondent should be ordered to cease and desist from such practice and whether his said certificate of public convenience should be revoked or suspended, pursuant to section 50-3/4 of the Public Utilities Act, by reason of his having operated in violation of said Rules 25 (a) and 25 (b).

A public hearing thereon was had before Examiner Paul, at Los Angeles, on March 28, 1940, at which respondent appeared and

was represented by counsel. The matter having been taken under submission is now ready for decision.

There was received in evidence a copy of an agreement, dated January 15, 1939, (Exhibit No. 2) entered into by and between respondent and Carl B. and Estella Trueblood, under the terms of which the Truebloods agreed to furnish, maintain, provide the driver and operate certain automotive equipment for the purpose of providing a highway common carrier service between Los Angeles and Lancaster under the operative rights of respondent. Specifically, the Truebloods agreed that their equipment would make three round trips weekly between Los Angeles and Lancaster for the needs of respondent between such points. They further agreed to furnish and maintain sufficient pickup equipment, with driver or drivers, to perform all necessary pickup service in connection with respondents operation at Los Angeles and to supervise such operation. The consideration to be paid for such services was $650 per month, provided, that in the event that the gross receipts from respondents line haul operation were more than $2,000 a month, during stated six months operating periods, then there was to be paid in addition to the $650 a month a sum equal to 10 per cent of the gross operating receipts in excess of $2,000 a month. It was further agreed between respondent and the Truebloods that the cost of cargo insurance should be equally divided. A significant feature of the agreement was that "All other required forms of insurance will be carried by the Party of the Second Part on his own equipment and men in his employ."(1) Documents were introduced in evidence (Exhibit No. 3) which show that respondent was billed for the services rendered in accordance with the terms of such agreement.

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(1) The second party was Carl B. and Estella Trueblood.

Respondent voluntarily testified and admitted that the agreement, hereinabove referred to, was entered into and executed by him and that operations were conducted by Trueblood in accordance with the terms and conditions thereof for the compensation therein designated.

Respondent further testified that on or about October 27, 1939, he was served with a copy of the Commission's order instituting this proceeding. He thereupon called at the Railroad Commission's Los Angeles office and obtained a copy of the Commission's General Order No. 93, and that thereafter on December 19, 1939, he executed a lease arrangement (Exhibit No. 5) with Carl B. and Estella Trueblood, for the use of certain automotive equipment owned by said Truebloods, in a form designed to comply with the provisions of said General Order No. 93. Among other things, the lease arrangement executed on December 19 contains the following statement:

> "It is mutually agreed between the parties hereto that this lease shall supercede and take the place of a certain agreement entered into between the parties hereto under date of January 15, 1939, a copy of which is on file with the California Railroad Commission, and that the effective date of this lease will be January 1, 1940, subject to the law and the approval of the California Railroad Commission." (2)

Subdivisions (a) and (b) of Rule No. 25 of the Commission's General Order No. 93 are applicable to the situation here presented, the relevant portions of which read as follows:

> "Rule No. 25--Leasing of Equipment
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> "(a) All 'passenger stage corporations' and 'highway common carriers' shall either own their equipment or lease such equipment for a specified amount on a trip, term, or mileage basis. The leasing of equipment shall not include the services of a driver or operator. All employment of

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(2) The certain agreement referred to is Exhibit No. 2.

drivers or operators of leased cars shall be made on the basis of a contract or agreement by which the driver or operator shall bear the relation of an employee to the 'passenger stage corporation' or 'highway common carrier' by which such driver or operator is engaged;* * *"

"(b) The practice of leasing the equipment or employing drivers or operators on a basis of compensation dependent upon receipts per trip or for any other period of time, or per unit of weight of property transported, is hereby prohibited. In every instance where the equipment is leased for a period of ten (10) days or more, every 'passenger stage corporation' and 'highway common carrier' shall execute a written lease covering every unit of equipment not owned by it, which lease shall fully set forth the conditions under which the unit of equipment is acquired, and shall include the term for which such equipment is leased, the compensation to be paid, the conditions regarding cancellation, etc. A true copy of said lease shall immediately be filed with this Commission.* * *"

From the evidence adduced in this proceeding it is so obvious that the agreement (Exhibit No. 2) entered into by respondent is in violation of the provisions of the Commission's rules as above cited that any comment thereon is needless. Suffice it to say that the Commission cannot and will not condone such practice. The respondent and all automotive common carriers operating under this Commission's jurisdiction who are subject to the provisions of the cited rules are expected to comply fully therewith. For many years the Commission has condemned the practice of the employment of drivers or operators of leased equipment who do not bear the relation of an employee to the carrier. It has also condemned the practice of automotive common carriers leasing equipment or employing drivers or operators on a basis of compensation dependent upon receipts.(3)

Respondent will be ordered to abstain from future violation of Rule No. 25 of the Commission's General Order No. 93.

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(3) In re Commission's Investigation, 15 C.R.C. 587, 595.
United Parcel vs Inter-City Parcel Service, 29 C.R.C. 595,600.
In re Baker & Cowan, 31 C.R.C. 231, 237, 238.
In re Investigation of J. K. Hawkins, 33 C.R.C. 868, 873.

An order of the Commission directing one to refrain from an unlawful practice 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 $5,000 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. 371.

FINDING AND ORDER

The Commission having instituted an investigation on its own motion into the operations, rates, contracts, charges and practices of F. F. Sullivan, a public hearing having been had thereon, the Commission now being fully informed, and based upon the evidence adduced herein and the conclusions expressed in the foregoing opinion,

IT IS FOUND that during the period beginning January 15, 1939, and ending January 1, 1940, respondent conducted his highway common carrier operation between Los Angeles and Lancaster and intermediate points in violation of Rule No. 25 of the Commission's General Order No. 93.

Based upon such finding,

IT IS ORDERED that F. F. Sullivan shall hereafter and henceforth refrain from any further violation of Rule No. 25 of the Commission's General Order No. 93, issued May 3, 1937.

The Secretary of the Railroad Commission is hereby directed to serve a certified copy of this order upon respondent F. F. Sullivan.

The effective date of this order shall be twenty (20) days after the date of service of this order upon respondent.

Dated at San Francisco, California, this 3rd day of July, 1940.

COMMISSIONERS