

Decision No. 33648

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA MILK TRANSPORT, INC.,
a corporation,

Complainant

vs.

STANDARD TRUCKING COMPANY, INC.,
FIRST DOE, SECOND DOE, THIRD DOE,
FIRST DOE CORPORATION, SECOND DOE
CORPORATION and THIRD DOE COR-
PORATION,

Defendants.

ORIGINAL

Case No. 4373

REGINALD L. VAUGHAN, CHARLES C. STRATTON and
FRANK C. CHARVOTT, for Complainant.

GERALD WILLIS MYERS, G. B. HUGHES and TENNY
& HALVA, by Allen Keith Halva, for
Defendants.

CRAEMER, Commissioner:

OPINION ON REHEARING

California Milk Transport, Inc., referred to herein as complainant, brought this action on November 2nd, 1938, charging in effect that the Standard Trucking Company, Inc., referred to herein as defendant, was conducting a trucking business as a highway common carrier over certain highways and between certain points in the County of Los Angeles in violation of law. ⁽¹⁾ The Standard Trucking Company, Inc. answered the charges by stating that the transportation services were performed as a private carrier and not as a highway common carrier.

(1)

Between Huntington Park, Bell, Southgate, Lynwood, Compton, Long Beach, Downey, Clearwater, Bellflower, Rivera, Santa Fe Springs, Norwalk, Artesia, Buena Park, Cypress, Stanton, Westminster and Garden Grove, and the vicinity thereof, on the one hand, and the City of Los Angeles, on the other hand.

A public hearing was held, the case was duly submitted and after the briefs were filed, the Commission issued its findings and decision, ⁽²⁾ which found defendant to be operating as a highway common carrier in violation of the Public Utilities Act, as charged generally in said complaint, and ordered said defendant to cease and desist said unlawful operations. Thereafter, a petition for rehearing was granted ⁽³⁾ and an additional public hearing was held thereon before Commissioner Craemer at Los Angeles on May 29, 1940, when the matter was resubmitted.

The evidence shows defendant has been conducting a regular service for the transportation of milk between certain points named in the complaint, as hereinafter specified. The milk is transported to creameries at Los Angeles from producers located at the other points mentioned. The service commenced in January, 1938. Patronage was obtained by defendant by direct and active solicitation of some producers and through requests for service made by others to which defendant acceded. Much of the milk moved to Standard Creamery, which appears to have no connection with defendant despite the similarity in names. One Paul Gentle, who is a milk buyer for Standard Creamery, is also a representative of defendant, and the evidence shows that on several occasions when Gentle bought milk from producers he arranged at the same time to have these producers ship it by defendant. Several shippers who testified could not clearly state just how defendant obtained their patronage but merely recalled that when an association of producers which had previously hauled their milk discontinued its service, defendant's trucks started hauling for them.

(2) Decision No. 32798, dated February 6, 1940.

(3) April 2nd, 1940.

There is no evidence that defendant ever refused to transport any shipments tendered it, or restricted its service to any particular individuals. The only defense offered was that since the month of August, 1938, all of defendant's hauling has been performed under written contracts with eight shippers and that defendant is therefore a contract carrier and not a common carrier. This contention, however, cannot be sustained. The evidence shows defendant's service has not been limited to the shippers who signed such contracts, but has also been rendered, since the month mentioned, for numerous others without such written contracts. The contracts were entered into, moreover, only after defendant learned from an inspector for the Railroad Commission that an asserted oral contract with Standard Creamery was of no effect as the hauling was not, properly speaking, being performed for the creamery but for the producers who owned the milk while in course of transportation. Thereupon said Gentle had a blank form of contract prepared, took copies to five shippers he was then serving, and had the shippers sign them, saying he must have the contracts if defendant was to continue the hauling. Thereafter, the other three contracts were signed when Gentle's solicitation was successful in gaining the patronage of other shippers. The contracts purport to provide for transportation of milk at "the prevailing rate for hauling said milk or dairy products as established and fixed by the Railroad Commission of the State of California....," but no rates for such transportation in that territory have ever been established or fixed by the Commission.

The evidence shows that defendant has but posed as a contract carrier while actually offering service to and performing it for the public indiscriminately. The service is performed regularly twice a day, and is clearly operated between fixed termini and over a regular route.

In view of the nature of defendant's operations it is apparent that said defendant is conducting a highway common carrier transportation service as defined by Section 2-3/4 of the Public Utilities Act, in violation of law, and must be ordered to cease and desist.

Immediately prior to submission of this proceeding, counsel for defendant moved that the Commission dismiss the complaint contending that complainant's showing was wholly insufficient to support said complainant's charges. After due consideration it appears that such motion is without merit and it is, therefore, denied.

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. 571.

I recommend the following form of finding and order.

FINDING AND ORDER

Public rehearing 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 defendant, Standard Trucking Company, Inc., a corporation, 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, on the one hand, and Long Beach, Cypress, Buena Park, Artesia, Bellflower, Norwalk, Clearwater, Compton, and points in the vicinity thereof and intermediate thereto, on the other hand, without first having obtained from the Railroad Commission of the State of California a certificate of public convenience and necessity authorizing such operations, or without other highway common carrier operative rights therefor, in violation of Section 50-3/4 of said Public Utilities Act.

IT IS ORDERED that said defendant, Standard Trucking Company, Inc., a corporation, 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 said defendant shall have obtained from the Railroad Commission a certificate of public convenience and necessity therefor.

The Secretary of the Railroad Commission is directed to cause a certified copy of this decision to be served upon defendant and to cause certified copies thereof to be mailed to the District Attorney of Los Angeles County and to the Department of Motor Vehicles, Highway Patrol, at Sacramento.

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

The foregoing opinion, finding and order are hereby approved and ordered filed as the opinion, finding and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 29th day of October, 1940.

Ray & Riley
Frank Austin
Robert [unclear]
[unclear]
Justin F. Caseman
COMMISSIONERS