

Decision No. 22809

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

COAST LINE TRUCK SERVICE, INC.,)
a corporation,)
)
Complainant,)
)
v.)
)
V. C. RICHARDSON,)
)
Defendant.)

Case No. 4517

ORIGINAL

CARL R. SCHULZ and HUGH S. CENTER,
for Complainant,

V. C. RICHARDSON, in Propria Persona.

BAKER, Commissioner:

O P I N I O N

By the complaint in this proceeding, the complainant Coast Line Truck Service, Inc., a highway common carrier, has charged the defendant V. C. Richardson with having engaged in the transportation of property by motor vehicles as a common carrier for compensation over public highways from farms, orchards, ranches and packing houses situated in the territory designated therein as (1) the San Gregorio-Greenfield Area, on the one hand, to Los Angeles, on the other hand, without first having secured from the Commission

(1) In the complaint the San Gregorio-Greenfield Area is said to comprise "...points and places on and within three miles laterally of State Highway No. 1 from San Gregorio to Carmel; also points and places on and within three miles laterally of the main road between Castroville and Salinas; also points and places on and within three miles laterally of U. S. Highway No. 101 from Salinas to Watsonville,..." Complainant alleges that it is engaged in the transportation of fresh fruits and vegetables from the San Gregorio-Greenfield Area, as so described, to Los Angeles, pursuant to a certificate of public convenience and necessity granted by this Commission.

a certificate of public convenience and necessity authorizing such operation as required by section 50-3/4, Public Utilities Act. Though defendant filed no answer, he asserted at the hearing that this service had been conducted lawfully under permits which he held authorizing operation as a radial highway common carrier and as a highway contract carrier.

A public hearing was had at Santa Cruz on July 17 and August 28, 1940, when evidence was offered and the matter submitted.

To establish the facts alleged in its complaint, the complainant called the defendant, V. C. Richardson, his sons Hubert F. and Samuel G. Richardson who were associated with him in this business, H. J. Bernard, an inspector on the Commission's staff, and other witnesses. The defendant also testified in his own behalf.

(2)
From the record, it appears that during the seasons of 1938 and 1939 defendant regularly engaged in the transportation of fruit and produce from farms and ranches in the San Gregorio-Greenfield Area to Los Angeles. (3) He now holds highway carrier permits issued by the Commission, (4) but admittedly possesses no certificate authorizing operation as a highway common carrier. During the producing seasons throughout the period involved,

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- (2) The fruit and vegetable producing and shipping seasons extend from June to December of each year.
 - (3) Specifically, the commodities transported comprised apples, pears, cherries, plums, apricots, garlic, peas, artichokes, mushrooms, sprouts and celery.
 - (4) Defendant now holds permits authorizing him to operate as a radial highway common carrier and as a highway contract carrier, being permits No. 44-359 and No. 44-360, respectively.

shipments from this area moved daily, or substantially with that frequency, to Los Angeles.

During the two-year period three trucks were used to provide the service.

A substantial number of shippers was served throughout each of the seasons involved. An examination of the freight bills produced by defendant in response to a subpoena duces tecum discloses that, during 1938, he hauled the products of some forty-four shippers and that, during 1939, the number had grown to sixty-two.⁽⁵⁾

With some of these shippers defendant entered into written contracts, with others oral agreements were negotiated, and with the remainder no contracts appear to have been made other than mere arrangements for the transportation of successive individual shipments as they were tendered. Only the consignors participated in these agreements; no contract was entered into with any of the consignees.

The record discloses that, during 1938, defendant entered into sixteen written and eight oral contracts, and that, during 1939, he executed twelve written and eighteen oral agreements. Thus, in 1938, he served twenty shippers with whom no contracts had been made; in 1939, they had increased to thirty-two. Some of the shippers used the service infrequently. Usually the transportation charges were paid by the consignor; occasionally, however, they were paid by the consignees at the Los Angeles markets and charged

(5) Tabulations offered by complainant, based upon a review of the freight bills, showed that during the seasons of 1938, 1939, and part of 1940, defendant handled a total of 1150 separate shipments, some of which were of substantial volume.

back to the consignors. Defendant, it appears, was aware of these transactions and knew that the consignors ultimately bore the charges.

In 1939, the form of shipping contract previously used was modified and a shorter form substituted. That observed during 1938 obligated the producer to tender defendant, for transportation during the 1938 and 1939 seasons, all fruit or produce raised by the producer which he desired to market at Los Angeles. The shipper expressly undertook to use defendant's service exclusively. The form used in 1939 bound the shipper to deliver to defendant all farm products which he might have occasion to ship from a specified point of origin to Los Angeles, for the period of one year, subject to the right of either party to cancel the agreement upon thirty days' written notice.

The terms of the oral agreements entered into with some of the shippers were not clearly shown. In one instance, the producer bound himself to ship by defendant's trucks all of the fruit he might produce; in another, no specific quantity of produce was mentioned.

On some occasions, shippers who had entered into written contracts with defendant used other means of transportation, including the facilities of the complainant Coast Line Truck Service, Inc., to handle their products to Los Angeles. Though this violated the obligation to use defendant's service exclusively, the latter never complained of these defaults nor did he ever take any steps to enforce the rights secured to him under the agreements. However, it does not appear that knowledge of these breaches of the contracts was actually brought home to him.

The evidence is convincing that, to the extent of his ability to provide facilities, defendant has performed a transportation service from the San Gregorio-Greenfield Area to Los Angeles available to all producers and growers within that area. From some, but not all of the shippers, the execution of a contract was exacted; a substantial number were served without even insisting upon that small formality.

We are of the opinion, therefore, that in the performance of this service defendant has operated as a highway common carrier. Since he holds no certificate or other authority to engage in this business, a cease and desist order must follow. Such an order is appropriate even though defendant, as he testified, will retire from the field upon the expiration of the current producing season.

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.

ORDER

Complaint having been made as above entitled, a public hearing having been held, evidence having been received, the matter having been duly submitted, and the Commission being fully advised,

IT IS FOUND that defendant V. C. Richardson, during the years 1938 and 1939, has been, and now is, operating as a highway common carrier, as defined by section 2-3/4 Public Utilities Act, from the San Gregorio-Greenfield Area, to wit: from points and places on and within three miles laterally of State Highway No. 1 from San Gregorio to Carmel, also points and places on and within three miles laterally of the main road between Castroville and Salinas, also points and places on and within three miles laterally of U. S. Highway No. 101 and connecting state route from Salinas to Watsonville, on the one hand, to Los Angeles, 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 and without other highway common carrier operative rights therefor, in violation of section 50-3/4 of said Public Utilities Act.

IT IS ORDERED that defendant V. C. Richardson shall immediately cease and desist from conducting or continuing directly, or indirectly, or by any subterfuge or device, any and all of such operations as a highway common carrier as set forth in the preceding findings 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 Commission is directed to cause personal service of a certified copy of this decision to be made upon said defendant V. C. Richardson, and to cause certified copies thereof to be mailed to the District Attorneys of San Mateo, Santa Cruz and Monterey Counties, to the Board of Public Utilities and Transportation of the City of Los Angeles, and to the Department of Motor Vehicles, California Highway Patrol, at Sacramento.

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

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 3rd day of December, 1940.

Ray L. Riley
Transportation

H. B. Hall
Justice J. Coenen
COMMISSIONERS