

Decision No. 33802

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on )  
the Commission's own motion into the ) Case No. 4436.  
operations, rates, charges, contracts, )  
and practices of DANIEL SCOBIE. )

DANIEL SCOBIE, in propria persona

BAKER, COMMISSIONER:

O P I N I O N

The affidavit of JACK WALKER, an inspector in the Commission's transportation department, filed herein on October 30, 1940, set forth that Daniel Scobie, hereinafter called respondent, had violated the Commission's order in its Decision No. 32509 on eight occasions, as more particularly described in said affidavit, and applied for a warrant of attachment to bring respondent before the Commission to answer said charges. Such warrant was issued by order of the Commission on November 2, 1940, and, together with a copy of said affidavit, was served on respondent on November 8, 1940. On November 12, 1940, the return date of said warrant, respondent personally appeared before me at the time and place specified in said warrant, participated in the hearing and testified in his own behalf, and after the taking of evidence the matter was submitted and is now ready for

decision.

Said affidavit alleges, and the record shows, that on October 31, 1939, by its order set forth in its said Decision No. 32509, issued in Case No. 4436, the Commission ordered respondent to cease, desist, and abstain from engaging in the transportation of property for compensation or hire as a business over the public highways in any city or city and county in this State as a "carrier" as defined in Section 1(f) of the City Carrier's Act (Stats. 1935, Ch. 312, as amended), without first securing and holding a permit therefor; that a certified copy of said decision was served on respondent on November 3, 1939, and by its terms became effective twenty days thereafter, to-wit, on November 23, 1939; that said decision and order have never been cancelled, revoked, or annulled, and are now in full force and effect; and that notwithstanding said order and with full knowledge of the contents thereof, and in contempt of the Commission, respondent thereafter engaged in such operations without first having secured and without holding such permit and in violation of said order. Eight separate offenses are alleged.

The evidence shows that respondent engaged in such operations as a city carrier in the City and County of San Francisco without holding such a permit with respect to the offenses set forth in the fourth, fifth, and seventh counts in said affidavit, which violations are more particularly described in Findings (3), (4), and (5), respectively, infra. As to Counts One, ~~Three~~, and Six, the evidence shows that respondent performed the transportation services described therein, but there is no proof that he did so for compensation or hire, and there is accordingly no proper basis for finding him guilty with respect to those particular counts. The evidence shows that

respondent is also guilty of the violations charged in Counts Two and Eight; but, because of slight discrepancies between the allegations in the affidavit and the proof, it is deemed advisable to base the judgment of contempt herein solely on the violations set forth in the fourth, fifth, and seventh counts. Such discrepancies appear to have resulted from mechanical errors in the preparation of the affidavit. In Count Two, for example, the date of the violation is alleged to be July 17, 1940, whereas it actually occurred on June 17, 1940. The points of origin and destination of the shipment described in Count Eight are alleged to be 2870 Sacramento Street and 355 Page Street, respectively, whereas the proof showed them to be 2878 Sacramento Street and 300 Page Street, respectively. In all other respects the allegations in these counts were substantiated by uncontradicted testimony.

Respondent did not dispute any of the evidence referred to above. Furthermore, while testifying in his own behalf, he readily conceded that he had continued to operate as a carrier in the city and county of San Francisco regularly since the revocation of his last permit, which occurred on September 30, 1939, and that he had known such operation to be unlawful. No justification appears for his unlawful conduct, and the only explanation offered by him was that he was seeking to make a living for his family and that he could not afford to carry the public liability and property damage insurance or similar protection required of permit-holders.

Respondent's unfortunate economic circumstances, far from justifying his unlawful conduct, demonstrate more clearly the public evil of condoning his offenses. One of the purposes

of the City Carriers' Act is the protection of the general public against injuries to persons and property resulting from accidents on the public highways caused by financially irresponsible operators. To this end the Act requires carriers to deposit with the Commission evidence of protection against liability for such injuries. To dismiss respondent's unlawful operations lightly would be manifestly unjust to those members of the public whose persons or property he might injure, especially since he himself is apparently without funds with which to redress such injuries.

It further appears that respondent's record of unlawful operations is not such as to call for leniency at this time. In said Decision No. 32509, which, as stated above, was served on respondent personally on November 3, 1939, the Commission, reviewing the many proceedings, both civil and criminal, brought against respondent in an attempt to impress him with the necessity for obeying the law, made the following statement:

"It is evident from the record that neither the sentences for the misdemeanors nor the penalty decreed in the civil action have been sufficiently severe or effective to dissuade respondent from persisting in repeated violations of law by operating without permit and without having in effect public liability and property damage protection. The order to cease and desist unlawful operation to be issued in this proceeding will not, in itself, be more severe, but it will be issued with the expectation that respondent's knowledge of the penalties which the Commission may and will impose on him if that order is subsequently violated, will be sufficient to induce him to desist from operating without having in effect the required permit and liability protection.

"Therefore let respondent plainly understand that an order of this Commission directing that an unlawful operation cease and desist is in effect not unlike an injunction by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution, the Public Utilities Act, and the City Carriers' 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 party is adjudged guilty of contempt, he may be fined in the amount of \$500.00, 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. 244; re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 37 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 571. Each day's unlawful operation constitutes a separate violation of such order and a separate contempt for which a separate and additional penalty may be imposed."

It further appears that on October 3, 1940, the Commission issued an order to show cause directing respondent to appear before the Commission on October 15, 1940, and to show cause why he should not be punished for contempt for violating the orders contained in said Decision No. 32509; that such order to show cause was duly served on respondent; but that he failed to respond thereto. His explanation at the hearing herein for such failure to appear was that he was ill on October 15th. However, his continuance, even after that date, in violating Decision No. 32509, as appears from Findings (3), (4), and (5), infra, can indicate only a complete indifference to and contempt for the requirements of the City Carriers' Act and the orders of the Commission. I therefore see no proper alternative but to exercise the powers given the Commission to impose punishment for contempt of its order.

#### F I N D I N G S

Upon consideration of the record in this proceeding, it is hereby found as follows:

(1) That the Commission in its Decision No. 32509, issued on October 31, 1939, in a proceeding designated as Case No. 4436, found that Daniel Scobie had engaged in the transportation of property for compensation or hire as a business over the public highways in the City and County of San Francisco, State of

California, by means of a motor vehicle, as a "carrier" as that term is defined in Section 1(f) of the City Carriers' Act, without first having obtained and without holding a permit authorizing such operation, in violation of Section 3 of said Act, and ordered him to cease and desist and thereafter abstain from engaging in such operation unless he first obtained and held such a permit; that said decision was personally served upon said Daniel Scobie on November 3, 1939, became effective on November 23, 1939, has never been revoked, annulled, or stayed, and was at all times thereafter and is now in full force and effect; and that said Daniel Scobie on and after November 3, 1939, had personal knowledge and notice of said decision and of the contents thereof, and was at all times thereafter able to comply with said order.

(2) That on October 30, 1940, there was filed with the Commission the Affidavit and Application for Warrant of Attachment to Answer for Contempt of Jack Walker, in which it was alleged in substance that said Daniel Scobie, notwithstanding the order contained in said Decision No. 32509 and with full knowledge of the contents thereof and subsequent to its effective date, had failed and refused to comply with said order in that he had transported property for compensation by means of a motor vehicle over the public highways in the City and County of San Francisco; that on November 2, 1940, the Commission issued its order directing the issuance of a warrant of attachment to bring said Daniel Scobie before Commissioner Baker on November 12, 1940, to answer the charges of contempt contained in said affidavit; that such warrant of attachment was issued on November 2, 1940, and was executed on November 8, 1940, at which latter time said affidavit was

served on said Daniel Scobie; that upon the return date of said warrant, to-wit, on November 12, 1940, at 1:30 o'clock P.M., said Daniel Scobie appeared in person before me in Room 540, State Building, San Francisco, California, at which time and place evidence was received relative to the charges contained in said affidavit.

(3) That notwithstanding said order contained in said Decision No. 32509, said Daniel Scobie, on October 24, 1940, in the course of his business as a "carrier" as defined in Section 1(f) of the City Carriers' Act, transported a shipment of property consisting of one studio couch for Associated Household Supply Company from 1459 Powell Street, San Francisco, California, to 1313 Fillmore Street, San Francisco, California, over the public highways in the City and County of San Francisco, California, by means of a motor vehicle, and charged and collected from said Associated Household Supply Company for such transportation compensation in the sum of \$1.50.

(4) That notwithstanding said order contained in said Decision No. 32509, said Daniel Scobie, on October 24, 1940, in the course of his business as a "carrier" as defined in Section 1(f) of the City Carriers' Act, transported a shipment of property consisting of one electric washing machine for Associated Household Supply Company from 1313 Fillmore Street, San Francisco, California, to 840-22nd Street, San Francisco, California, over the public highways in the City and County of San Francisco by means of a motor vehicle and charged and collected from said Associated Household Supply Company for such transportation compensation in the sum of \$1.50.

(5) That notwithstanding said order contained in said Decision No. 32509, said Daniel Scobie, on October 28, 1940, in the course of his business as a "carrier" as defined in Section 1(f) of the City Carriers' Act, transported a shipment of property consisting of household goods and effects for G. Thompson from 1460 Turk Street, San Francisco, California, to 1635 Pierce Street, San Francisco, California, over the public highways in the City and County of San Francisco by means of a motor vehicle and charged and collected from said G. Thompson for such transportation compensation in the sum of \$1.00.

(6) That said Daniel Scobie performed each and all of the operations described in Findings (3), (4), and (5), supra, respectively, with full knowledge and notice of said order contained in said Decision No. 32509 and of the contents thereof, and subsequent to the effective date thereof, without first having obtained from the Commission and without holding a permit authorizing such operations; that the failure and refusal of said Daniel Scobie to cease, desist, and abstain from performing the operations set out in said Findings (3), (4), and (5), respectively, and in each of them, was and is in violation and disobedience of said Decision No. 32509; that at all times since said effective date of said Decision No. 32509, said Daniel Scobie has been, and was at the time of said violations described in said Findings (3), (4), and (5), respectively, able to comply with the terms of said Decision No. 32509; that the said failure and refusal of said Daniel Scobie to comply with the terms of said Decision No. 32509 is in contempt of the Commission and of its said decision and order.

The following form of judgment is recommended:



J U D G M E N T

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that said Daniel Scobie is guilty of contempt of the Railroad Commission of the State of California in disobeying its order made on October 31, 1939, in its Decision No. 32509, by failing and refusing to cease, desist, and abstain from engaging in the transportation of property for compensation over the public highways in the City and County of San Francisco as a "carrier" as defined in the City Carriers' Act without first having obtained from the Railroad Commission and without holding a permit as required by Section 3 of said Act.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that for said contempt of the Railroad Commission and its order as shown in Findings (3), (4), and (5), respectively, herein, said Daniel Scobie shall be punished by a fine of One Hundred and Fifty Dollars (150.00), said fine of One Hundred and Fifty Dollars to be paid to the Secretary of the Railroad Commission of the State of California within ten (10) days after the effective date of this opinion, findings, and judgment.

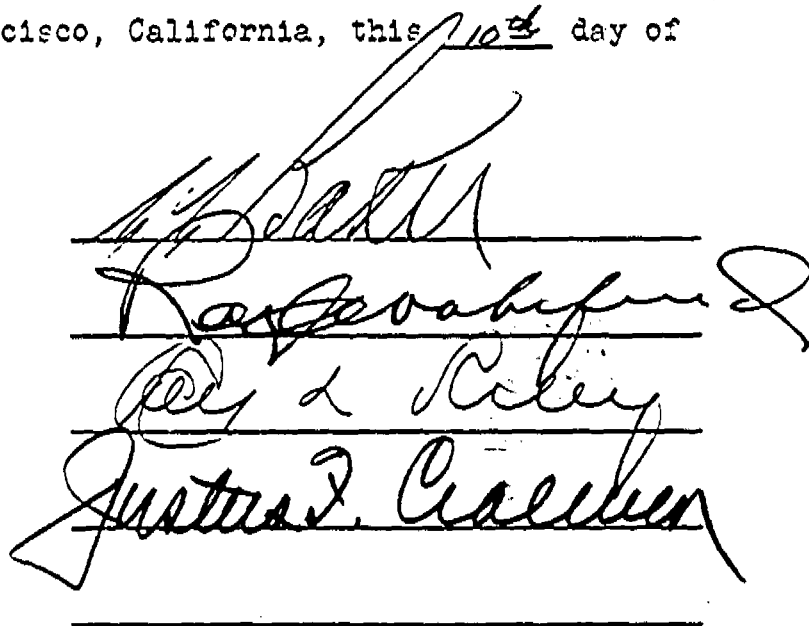
IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that in default of the payment of the aforesaid fine said Daniel Scobie be committed to the County Jail of the City and County of San Francisco, State of California, until such fine be paid or satisfied in the proportion of one day's imprisonment for each Five Dollars (\$5.00) of said fine that shall so remain unpaid; and if said fine or any part thereof shall not be paid within the time specified above, the Secretary of the Commission is hereby ordered and directed to prepare an appropriate order or orders

of arrest and commitment in the name of the Railroad Commission of the State of California, directed to the Sheriff of the City and County of San Francisco, to which shall be attached and made a part thereof a certified copy of this opinion, findings, and judgment.

IT IS HEREBY FURTHER ORDERED that this opinion, findings, and judgment shall become effective twenty (20) days after personal service of a certified copy thereof upon said Daniel Scobie.

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

Dated at San Francisco, California, this 10<sup>th</sup> day of January 1941  
~~December, 1940.~~

  
The block contains three handwritten signatures, each written over a horizontal line. The signatures are in cursive and appear to be: 1. A signature starting with 'W. B. ...'. 2. A signature starting with 'D. ...'. 3. A signature starting with 'J. ...'.

Commissioners.