

Decision No. 33043

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on)
the Commission's own motion into the)
operations, rates, charges, contracts,)
classifications, and practices of CELIA)
BLATT, doing business as FURNITURE TRUCK)
LINES.)

Case No. 4381

ORIGINAL

In the Matter of the Investigation on the)
Commission's own motion into the opera-)
tions, rates, charges, contracts, clas-)
sifications, and practices of FURNITURE)
TRUCK LINES, INCORPORATED.)

Case No. 4399

F. W. TURCOTTE, HUGH M. BOLE and CARL STURZENACKER,
for respondent Furniture Truck Lines, Incorp-
orated.

HUGH M. BOLE and CARL STURZENACKER, for respondent
Celia Blatt doing business as Furniture
Truck Lines.

FRED C. COHEN, F. F. MORGAN and A. V. MacDONALD,
for Furniture Manufacturers Association,
Inc., Interested Party.

A. H. VALENTINE, for Los Angeles Traffic Conference,
Interested Party.

PRESTON W. DAVIS, for United Parcel Service, Inter-
ested Party.

H. R. BRASHEAR, for Los Angeles Chamber of Commerce,
Interested Party.

H. P. MERRY, for Southern California Freight Lines,
and Southern California Freight Forwarders,
Inc., Interested Party.

JACKSON W. KENDALL, for Lyon Van & Storage Company,
Interested Party.

BY THE COMMISSION:

O P I N I O N

By its Decision No. 33043 issued in the above-entitled
proceeding on April 30, 1940, the Commission found that Celia Blatt,
respondent in Case No. 4381, had operated as a highway common

carrier as defined in Section 2-3/4 of the Public Utilities Act between fixed termini and over regular routes, to wit, between Los Angeles and territory proximate thereto, on the one hand, and Paso Robles and intermediate points including Ventura and Santa Barbara via the Coast Route and Sacramento and intermediate points including Bakersfield, Fresno, and Stockton via the San Joaquin Valley Route, on the other hand, without a certificate of public convenience and necessity or other operative right and in violation of Section 50-3/4 of the Public Utilities Act. It was further found that Furniture Truck Lines Incorporated, respondent in Case No. 4399, was at the time of the hearing operating between the aforesaid points as a highway common carrier without the necessary authority and in violation of said Public Utilities Act. The Commission's said decision required respondents to desist from such unlawful operations.

Thereafter, respondents petitioned for a rehearing, which was granted by the Commission on August 8, 1940. On rehearing, additional evidence was taken before Examiner Gorman at Los Angeles on September 26th, October 2nd, and October 7th, 1940, when the matter was submitted, and it is now ready for decision.

By the orders of investigation issued in these proceedings the Commission seeks to determine whether or not either of said respondents has been or now is operating an automotive service as a highway common carrier as that term is defined in Section 2-3/4 of the Public Utilities Act between Los Angeles and territory proximate thereto, on the one hand, and Sacramento, Paso Robles, and San Diego, respectively, on the other hand, and between points intermediate to Los Angeles and said termini, respectively, without a certificate of public convenience and necessity or prior operative

right, as required by Section 50-3/4 of said Public Utilities Act.

The records of the Commission show that neither of said respondents hold any certificate of public convenience and necessity nor do they possess a prior operative right authorizing the conduct of a highway common carrier service. However, until October of 1938 respondent Celia Blatt held radial highway common carrier, highway contract carrier, and city carrier permits, and respondent Furniture Truck Lines Incorporated at all times subsequent to October of 1938 held like permits.

The service in question has been continuously operated for a long period of time under different owners. The respondent Celia Blatt purchased the business in November of 1937 and operated it continuously thereafter until October of 1938. It was then purchased by respondent Furniture Truck Lines Incorporated and has been conducted by that respondent continuously since acquisition.

The essential features of the service as conducted by Celia Blatt and by Furniture Truck Lines Incorporated are substantially the same. Trucks are operated regularly between Los Angeles, and Paso Robles and intermediate points including Ventura and Santa Barbara via U. S. Highway No. 101, and between Los Angeles and Sacramento and intermediate points including Bakersfield, Fresno, and Stockton via U. S. Highway No. 99. The record shows that the only commodity transported is new, uncrated furniture. At the time the operation was purchased by Celia Blatt three trucks were used. Due to increased traffic, it was necessary to double this equipment and at the time of the hearing six trucks were in operation.

Since its purchase by Celia Blatt the service has been

under the active management of A. Blatt, first as manager for Celia Blatt and later as manager of Furniture Truck Lines Incorporated. He testified and described the manner in which the business was conducted under the ownership of both Celia Blatt and Furniture Truck Lines Incorporated.

It appears from his testimony that Celia Blatt in the beginning made her service available to the general public. Immediately upon taking charge of the operation, A. Blatt compiled a list of the furniture manufacturers located in Los Angeles and solicited them to use Celia Blatt's service for transportation of uncrated new furniture moving between the points to which service was rendered as hereinbefore stated. In February of 1938 he made a five-day trip along the routes served, called upon as many retail furniture dealers as he could, and requested them to specify the service of Celia Blatt for transportation of their purchases of new furniture from Los Angeles. The service rendered appeared to be satisfactory to shippers and the traffic increased to such an extent that it was necessary to double the original equipment in order to meet the demand.

On October 1, 1938, a contract was entered into between the Furniture Manufacturers Association, a nonprofit corporation of Los Angeles furniture manufacturers, and respondent Celia Blatt. By the terms of said contract respondent was to handle shipments for such members of the association as cared to use the service.

Prior to the time the contract was made, respondent Celia Blatt collected freight charges direct from the retail dealers and they had the right to specify the carrier who was to transport their merchandise. However, after the contract was made, the

Association sent out a circular to its members informing them that if they desired to use the service of Celia Blatt it would be necessary for them to sell their merchandise to retailers at delivered prices. Many of the manufacturers complied with this requirement and in such instances the retailers thereafter purchased f.o.b. their store, paid the freight charges direct to Blatt, and were credited by the manufacturer with the amount of the freight charges so paid on their account.

Examination of said contract discloses that it is of an illusory character. In substance, Celia Blatt agrees to transport furniture for such members of the association as care to have her do so and the association agrees that such members of its membership as desire to have her transport furniture will give the furniture to her to transport. The association's membership comprises a substantial part of the furniture manufacturers of Los Angeles County. Membership is available to anyone who is engaged in such pursuit and has a good ethical standing and credit rating. The record shows that after entering into the contractual arrangement, respondent continued to transport merchandise from the same consignors to the same consignees and secured additional patronage. A. Blatt testified that the contract arrangement had been entered into after an informal investigation had been made by members of the Railroad Commission's staff pursuant to which the carrier had been informed that her operations were those of a highway common carrier and would have to be discontinued unless certificated. It is clear that the contract was made for the purpose of avoiding regulation and is principally an agreement of form and not of substance.

Respondent contends, however, that subsequent to the time the contract was entered into, her service was not available to

the general public inasmuch as it was limited to use by those persons who were members of the Association. The record shows that this contention is entirely without merit. It appears that subsequent to the time the contract was entered into, some shippers continued to sell f.o.b. point of origin, and purchasers paid charges direct to Celia Blatt for transportation thereof. In connection with traffic so handled, the respondent was not serving the manufacturers, but, rather, was presumptively serving retail purchasers who were not members of the Association.

Under all of the circumstances of record it appears that subsequent to the time the contract was entered, respondent Celia Blatt's service was still available to substantially all of those members of the public having use thereof. The contract with the Association certainly worked no substantial change whatsoever and plainly did not restrict the availability of the service to a few particular individuals. After its execution the service remained open to a still indefinite public and the same class was served as before the contract was made.

The operation, then, as conducted by Celia Blatt, was that of a common carrier, and being between fixed termini and over regular routes required a certificate of public convenience and necessity from the Commission or a prior operative right. Since said respondent possessed no such right, her operations were unlawful. An order should issue directing said respondent to refrain from engaging in such unlawful operation.

In October of 1938 the business of Celia Blatt was purchased by Furniture Truck Lines Incorporated. As heretofore stated, the service was thereafter conducted in substantially the same manner as during the prior ownership. At the time the business

was acquired, Furniture Truck Lines Incorporated, entered into a contract with Furniture Manufacturers Association, which contract was the same in form and effect as that heretofore described as having been entered into between Celia Blatt and the Association. The Furniture Truck Lines Incorporated, likewise asserts that its service was limited to members of the Association alone and, therefore, was not available to the general public.

This contention is without merit. The record establishes that Furniture Truck Lines Incorporated, renders service to persons who are not members of the Association. It appears from the record that some members of the Association had affixed their names to the contract only a few days before the rehearing and, therefore, had not sold their products at delivered prices but, rather, at prices f.o.b. the factory, with the shipper paying the freight charges. Traffic of this kind was transported by the Furniture Truck Lines Incorporated. Under such arrangements it was not serving the members of the Association but, presumptively, was serving the retail dealers who purchased from them and paid the charges for the transportation.

In addition, some shippers who were not members of the Association testified that they had been served and in some instances were being regularly served by Furniture Truck Lines Incorporated. Floyd F. Martin, Manager of Martin's Manufacturing Corporation, testified that his firm was not a member of the Association, but that it had shipped by Furniture Truck Lines Incorporated. F. H. Powers, Traffic Manager for Sears-Roebuck & Company, testified that Sears-Roebuck & Company was not a member of the Association but that it constantly shipped via Furniture Truck Lines Incorporated, to all points along the San Joaquin Valley and Coast

Routes. This witness further testified that such shipments move under contract with Furniture Truck Lines Incorporated. A copy of this contract was placed in evidence. It merely provides that respondent would transport such furniture as Sears-Roebuck cared to have it transport. It is clear that such a contract fixes no binding obligation on Sears-Roebuck & Company or the carrier. Representatives of the Fifth Street Stores and Famous Department Stores likewise testified that traffic of their concerns moving to towns along the Coast and San Joaquin Valley Routes were transported by Furniture Truck Lines Incorporated. They further stated that they had no contractual arrangement whatsoever with the carrier.

It thus appears that the service of Furniture Truck Lines, Incorporated, has not been limited to a few particular individuals, or in fact even to any particular group of individuals. The record shows that it was available to all persons who desired to have new, uncrated furniture transported between the points or along the routes served by said respondent. Clearly, then, the operation as conducted by Furniture Truck Lines Incorporated, was that of a common carrier.

Since the record establishes that the service is regularly rendered between the fixed termini and along the regular routes hereinbefore identified, said respondent's operations are those of a highway common carrier. Respondent has no certificate of public convenience and necessity or prior operative right authorizing such operation, as required by section 50-3/4 of the Public Utilities Act, and such operation is therefore unlawful. A cease and desist order should accordingly issue.

An order of this Commission finding an operation to be unlawful and directing that it be discontinued is in effect not

unlike an injunction by a court. A violation of such order constitutes a contempt of this Commission. The California Constitution and the Public Utilities Act vest the Commission with power 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 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 Co. v. Keller, 33 C.R.C. 571.

It should also be noted that under section 79 of the Public Utilities Act a person who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding \$1,000, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

O R D E R

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 respondent Celia Blatt, doing business as Furniture Truck Lines, during the first nine months of 1938 was operating as a highway common carrier as defined in section 2-3/4 of the Public Utilities Act, between fixed termini and over a regular route, to wit, between Los Angeles and Paso Robles and intermediate points including Ventura and Santa Barbara, via U. S. Highway No. 101, and between Los Angeles and Sacramento and intermediate points including Bakersfield, Fresno, and Stockton,

via U. S. Highway No. 99, without having obtained from the Commission a certificate of public convenience and necessity therefor and without other operative right, in violation of section 50-3/4 of said Act.

IT IS HEREBY FURTHER FOUND that respondent Furniture Truck Lines Incorporated, has been and now is operating as a highway common carrier as defined in section 2-3/4 of the Public Utilities Act, between fixed termini and over regular routes, to wit, between Los Angeles and Paso Robles and intermediate points including Ventura and Santa Barbara, via U. S. Highway No. 101, and between Los Angeles and Sacramento and intermediate points including Bakersfield, Fresno, and Stockton, via U. S. Highway No. 99, without first having obtained from the Commission a certificate of public convenience and necessity therefor and without other operative rights, in violation of section 50-3/4 of said Act.

IT IS HEREBY ORDERED that respondent Celia Blatt refrain, directly or indirectly, or by any subterfuge or device, from conducting operations as a highway common carrier as hereinabove described, unless and until she first shall have obtained from the Railroad Commission a certificate of public convenience and necessity therefor.

IT IS HEREBY FURTHER ORDERED that respondent Furniture Truck Lines Incorporated, immediately cease and desist from conducting, directly or indirectly or by any subterfuge or device, and thereafter refrain from conducting or continuing any and all operations as a highway common carrier as hereinabove set forth, unless and until it shall have obtained from the Railroad Commission a certificate of public convenience and necessity therefor.

IT IS HEREBY FURTHER ORDERED that in all other respects these proceedings be, and they are and each of them hereby is, dismissed.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Commission cause service of this order to be made upon respondents and each of them.

IT IS HEREBY FURTHER ORDERED that the effective date of this order as to each of said respondents shall be twenty (20) days from the date of service hereof upon said respondents.

Dated at San Francisco, California, this 18th day of January, 1941.

[Signature]
[Signature]
[Signature]
Justin J. Cascher
Francis X. Havenor
COMMISSIONERS