

Decision No. 34457

ORIGINAL

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation, on the )  
 Commission's own motion, into the operations, ) Case No. 4487  
 rates, charges, contracts, and practices of )  
 HORTON TRUCK CO. INC., a corporation. )

ROBERT L. BARBOUR, for respondent.  
 E. T. LUCEY, for The Atchison, Topeka & Santa Fe Railway  
 Company.  
 EDWARD STERN, for Railway Express Agency, Inc.

BAKER, COMMISSIONER:

O P I N I O N

This proceeding was instituted on the Commission's own motion for the purpose of determining whether respondent Horton Truck Co., Inc., is operating as a highway common carrier between Los Angeles and San Diego and intermediate points without a certificate of public convenience and necessity or other operative right. Public hearing was held at San Diego, evidence received, and the matter submitted. It is now ready for decision.

Respondent is a corporation organized in the month of June, 1937. It is engaged in the transportation of fresh fish between San Diego, on the one hand, and Seal Beach, San Pedro, and Los Angeles, on the other, operating two pieces of equipment. It holds only a permit as a radial highway common carrier. Operations are not conducted on any fixed schedule but whenever the fishermen's catch provides traffic. The frequency of the operation varies accordingly between two and six trips a week.

The corporation has 450 shares of stock outstanding, of which 112 shares are owned by its president and operator, C. B. Horton; the remainder is divided in unequal proportions among seven wholesale fish dealers in San Diego. These seven constitute virtually the only wholesale fish dealers in San Diego who ship fresh fish to

Los Angeles and vicinity.

The organization of the respondent corporation was motivated by a desire on the part of these dealers for a transportation medium subject to their control, which would provide a sufficiently flexible service to be available at whatever hour the catch might make convenient. The dealers collaborated in working out their plans, in securing the services of Horton to manage the concern, and in organizing the corporation. But although respondent thus has a cooperative background, it is not organized as a cooperative corporation but as an ordinary business corporation. Substantial consideration was paid and received for its outstanding stock, and dividends have been paid to the stockholders, some of whom have frankly acknowledged that the prospect of a profit from the organization was a factor which contributed to their interest in the enterprise. Representatives of all the stockholding wholesale fish dealers testified that their companies chose respondent's service for all possible shipments.

It is the practice of the trade in that locality to sell fish in the wholesale market f.o.b. point of origin, the consignees of the shipments paying the freight charges. Much the larger part of the traffic handled by respondent moves from San Diego to Los Angeles, and consequently only a small part of the respondent's revenue is derived from freight charges paid by its stockholders.

It is evident from the record that substantially all the fresh fish moving between San Diego and Los Angeles, which is not specifically routed via other carriers at the direction of the consignees in Los Angeles, is transported by respondent. A large number of wholesale and retail fish dealers in the Los Angeles vicinity receive respondent's service. One of the San Diego wholesalers alone from time to time ships via respondent to as many as 75

dealers in and about Los Angeles. It is clear that respondent's service is rendered to such of the public in the territory in which it operates as is able and chooses to use the specialized service offered.

I therefore find that respondent is a common carrier owning, controlling, operating, and managing auto trucks used in the business of transportation of property for compensation over public highways in this State between fixed termini, to-wit, Los Angeles and San Diego and intermediate points, and over a regular route, to-wit, U. S. Highway #101, between those termini. It should be ordered to cease and desist from such operations unless and until it shall have obtained from the Railroad Commission a certificate declaring that public convenience and necessity require such operation.

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; Wormuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 571.

I recommend the following form of order.

#### O R D E R

Public hearing having been had in the above-entitled matter, evidence having been received and the matter submitted, and

the Commission now being fully advised,

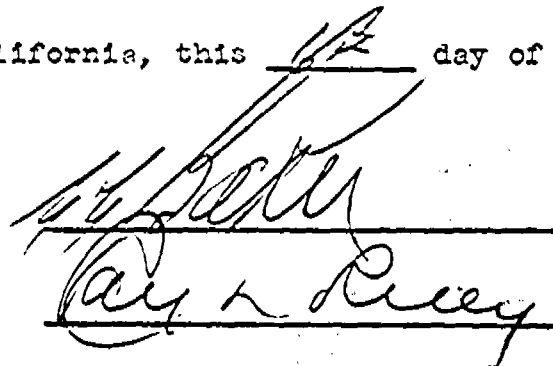
IT IS HEREBY ORDERED that respondent Horton Truck Co., Inc., a corporation, shall immediately cease and desist from conducting or continuing, directly or indirectly or by any subterfuge or device, any and all operation as a highway common carrier between San Diego and Los Angeles and intermediate points unless and until it shall have obtained from the Railroad Commission a certificate declaring that public convenience and necessity require such operation.

The Secretary of the Commission is hereby authorized and directed to cause service of this decision to be made upon respondent.

IT IS HEREBY FURTHER ORDERED that the effective date of this order shall be twenty (20) days from and after service hereof upon respondent.

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 12 day of May, 1941.

  
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Commissioners