

Decision No. 34285

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CERTIFICATED HIGHWAY CARRIERS, INC.,

Complainant

vs.

HERB HILL, doing business as  
SOUTHERN EXPRESS SERVICE,

Respondent

ORIGINAL

Case No. 4549

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CERTIFICATED HIGHWAY CARRIERS, INC.,

Complainant

vs.

M. S. HILL, doing business as  
HILL TRANSPORTATION COMPANY, and  
OTIS HILL,

Respondents.

Case No. 4561

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E. J. Bischoff and H. P. Merry, for complainant

E. T. Luce and William F. Brooks, for The Atchison,  
Topeka & Santa Fe Railway Company,  
interested party

C. G. Anthony, for Pacific Freight Lines, inter-  
ested party

Rowland P. Fontana, for respondents Herb Hill,  
M. S. Hill and Otis Hill

Herb Hill, in propria persona

BY THE COMMISSION:

O P I N I O N

Certificated Highway Carriers, Inc., hereinafter called complainant, filed a complaint on September 3, 1940, charging in effect that Herb Hill, doing business as Southern Express Service, was engaged in transporting property by motor truck as a highway common carrier between Los Angeles and San Diego and intermediate points, in violation of the Public Utilities Act.

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The first hearing was held on October 30, 1940, during which complainant moved for a continuance for the purpose of filing a complaint against M. S. Hill, doing business as Hill Transportation Company, and Otis Hill, and requested that both matters be consolidated for hearing and disposition at a future date. There being no objection the motion was granted.

On November 1, 1940, complaint was filed against M. S. Hill, doing business as Hill Transportation Company, and Otis Hill.

Public hearings were held at Los Angeles on October 30, 1940, and February 4, 1941, and at San Diego on December 27, 1940, before Examiner Herbert Cameron. Respondent Herb Hill entered an appearance in propria persona, and all respondents were represented by counsel. Evidence was received and the matter was submitted and the same is now ready for decision.

Respondents contend that they operate as a highway contract carrier. The material facts are without conflict and may be briefly summarized as follows: During the months of July, August and September, 1940, a for-hire trucking business was conducted at 1703 East Washington Boulevard, Los Angeles. During this time Hill Transportation Company and Southern Express Service maintained offices at this address. M. S. Hill and Otis Hill, wife and father respectively of respondent Herb Hill, appear to have a financial interest in some of the equipment. Comments of respondent Herb Hill at the beginning of the hearing were to the effect that he was the employee of M. S. Hill and Otis Hill. Several witnesses testified that in dealing with both Southern Express Service and Hill Transportation Company they did so through respondent Herb Hill and that they were not acquainted with anyone else connected with either concern. At the hearing in San Diego on February 4, 1941, respondent Herb Hill testified that Hill Transportation Company discontinued business on October 30, 1940, and that the

Commission was so notified. This is the date on which the first hearing in this matter was held. His testimony further showed that he was the owner of a portion of the equipment used in transporting property for both Hill Transportation Company and Southern Express Service and that M. S. Hill and Otis Hill assisted in the conduct of the transportation business. Respondents operated motor vehicle equipment between Los Angeles and San Diego during the months of August and September, 1940, daily, except Sundays. General commodities were transported between these points with the bulk of the shipments moving from Los Angeles to San Diego. Shipments originating in the San Francisco bay area were transported for carriers from Los Angeles to San Diego together with shipments originating in Los Angeles for shippers in this latter area. The exact number of shippers served by respondents during this period was not established. However, the record shows that respondents transported approximately 65 prepaid shipments and 200 collect shipments for approximately 40 different shippers from Los Angeles to San Diego.

Property was transported in some instances on trucks owned by M. S. Hill, and in other instances on trucks owned by Herb Hill. Freight bills of Hill Transportation Company were used in some instances, and in other instances freight bills of Southern Express Service were used. When shipments were picked up or received for transportation any available equipment was used, which practice prevailed in reference to the use of freight bills. Records were maintained showing the equipment used in delivering shipments and there was some method of a settlement on this basis. However, the record does not clearly show how this was done. New business was secured and the shipments moved generally under the guidance of respondent Herb Hill. In addition to handling shipments directly for shippers in Los Angeles,

shipments originating in the San Francisco bay area were handled for several carriers. Shipments for carriers were delivered for Diamond Transportation Company, Snyder Transportation Company, Circle Transportation Company, Charles B. Hart Transportation Company, Atlas Transportation Company, Sterling Transit, Lloyd G. Moser Transportation Service and King Transportation Service. Freight charges on shipments originating in San Francisco were collected by the original carrier, who paid respondents for the delivery of the shipments from Los Angeles to San Diego. In the case of Lloyd G. Moser Transportation Service, one-third of the freight charges collected were paid to respondents. In the case of shipments received from carriers, respondents had no special arrangements with, and in fact, never saw, the shippers. In many instances said shipments were consolidated on the same equipment with shipments received directly from shippers in Los Angeles.

Respondent Herb Hill called on various shippers in response to telephone calls. Several shipper witnesses stated in effect that they had knowledge from one source or another that Herb Hill was making daily trips between Los Angeles and San Diego and contacted him to do their hauling. In most instances the shippers were ignorant as to whether Herb Hill was doing business as Southern Express Service or Hill Transportation Company. Many of the shipper witnesses stated there was an oral understanding with respondent Herb Hill as to rates, and to employ respondents as long as the service was satisfactory. There were two or three written contracts, however, they were not produced.

A few shipper witnesses testified in effect that they had received notice that Hill Transportation Company was discontinuing business and that the transportation service was to be operated as Southern Express Service. The evidence shows

that subsequent to the receipt of said notices shipments moved on freight bills of the Hill Transportation Company. Several consignee witnesses in San Diego testified in effect that when ordering merchandise, either in Los Angeles or San Francisco instructions were placed on the order blanks to route said shipments from Los Angeles to San Diego by way of Southern Express Service or Hill Transportation Company and that in most instances shipments were routed in accordance with their instructions.

The record discloses that said respondents did not, nor did any of them have a certificate of public convenience and necessity authorizing any of said transportation, nor did said respondents or any of them have a prior operative right therefor. Respondents, Herb Hill, M. S. Hill and Otis Hill owned, operated and controlled motor vehicles used in the business of transporting property as a common carrier for compensation over the public highways of the State of California between fixed termini, to-wit, Los Angeles and San Diego, California.

An order of the Commission directing the suspension of an operating right and directing an illegal practice to cease and desist 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 party is adjudged guilty of contempt, a fine may be imposed 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. 224;  
Wermuth v. Stamper, 36 C.R.C. 458;  
Re Ball & Hayes, 37 C.R.C. 407;  
Pioneer Express Company v. Keller, 33 C.R.C. 571.

Upon a full consideration of all the facts, it is hereby found that respondents Herb Hill, M. S. Hill and Otis Hill, doing business as Hill Transportation Company and Southern Express Service, owned, controlled, operated and managed motor vehicles used in the business of transporting property as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, for compensation over the public highways of the State of California between fixed termini, to-wit: Los Angeles and San Diego, California, during the months of July, August and September, 1940, without having obtained from the Railroad Commission a certificate of public convenience and necessity therefor and without other operative rights, in violation of Section 50-3/4 of said Act.

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 ORDERED that respondents Herb Hill, M. S. Hill and Otis Hill, and each of them, cease and desist from conducting, directly or indirectly, or by any subterfuge or device, any trucking operations as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, for compensation over the public highways of the State of California between fixed termini, to-wit: Los Angeles and San Diego, California, unless and until said Herb Hill, M. S. Hill and Otis Hill, or each of them, shall have obtained from the Railroad Commission a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED that the Secretary of the Railroad Commission shall cause a certified copy of this decision to be served upon said respondents.

Dated at San Francisco, California, this 7<sup>th</sup> day of June, 1941,

Ray L. Rice  
Justice J. Cassin  
Francis L. Havenner  
Richard L. Jackson

COMMISSIONERS