

ORIGINAL

Decision No. 34714

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PACIFIC MOTOR TARIFF BUREAU,)
Complainant,)

vs.)

Case No. 4573

R. H. ROBIDEAUX,)
Defendant.)

E. H. HART and REGINALD L. VAUGHAN, for
Complainant.

R. H. ROBIDEAUX, Defendant, in propria
personam

BY THE COMMISSION:

O P I N I O N

The Pacific Motor Tariff Bureau by a formal complaint alleges that the defendant, R. H. Robideaux, is engaged in unlawful operations as a highway common carrier between San Francisco, on the one hand, and Oakland and other East Bay cities, on the other hand, in violation of Section 50-3/4 of the Public Utilities Act, in that said defendant does not possess a certificate of public convenience and necessity from this Commission authorizing him to perform said operations. The matter was formally heard before Examiner Broz at San Francisco. The defendant appeared at the hearing and conducted his own defense.

Twenty-nine shipper witnesses who avail themselves of defendant's service testified at the hearing in response to

subpoenas duces tecum issued upon them at the complainant's request. They stated that their firms manufacture and sell electrical products and supplies in San Francisco and East Bay cities and ship a substantial quantity of electrical goods between San Francisco, on the one hand, and Oakland, Alameda, Hayward, San Leandro, Piedmont, Emeryville, Berkeley, Albany, El Cerrito and Richmond, on the other hand, ⁽¹⁾ the major portion of the traffic moving from San Francisco to dealers located in Oakland. It was shown that defendant's services have been regularly used on such shipments for the past two or three years and that defendant performs service twice daily, five days a week and charges minimum rates established by the Commission in Decision No. 31606, as amended, in Case No. 4246.

Some shippers stated they have written contracts with ⁽²⁾ the defendant, while others conceded that their transportation

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- (1) The traffic may be roughly segregated into two kinds; first, that which moves from numerous San Francisco wholesale houses to one consignee in the East Bay, under a contract between the defendant and the East Bay consignee, but with no contractual relation between the defendant and the San Francisco shippers; second, traffic which moves from one San Francisco shipper to various East Bay consignees, under a contract between the defendant and the San Francisco shipper, but with no contractual relation between the defendant and the East Bay consignees.
- (2) Copies of written contracts were offered in evidence covering contractual relations between the defendant and the following shippers:

Electrical Corporation	Oakland
State Electric Corporation	Oakland
Gilson Electric Supply Company	Oakland
Westinghouse Electric Supply Company	Oakland
Garnett Young	San Francisco
Triangle Cable & Conduit Company	San Francisco
Nicholas & Cook	San Francisco
Arrow-Hart-Hegeman Electric Company	San Francisco
National Electric Products Company	San Francisco
Allied Industries Company	San Francisco
Harvey-Hubbell Company	San Francisco

(3) arrangements with the defendant are purely verbal. Still other witnesses testified they have no contractual arrangement with defendant but tender him shipments at the request of his contractual consignees in Oakland. (4) It was said to be a rule of the trade that charges on electrical shipments weighing over 100 pounds are regularly prepaid by consignors, while shipments under that weight are billed charges collect. The greater portion of the traffic here involved comprises prepaid shipments upon which, in many instances, the transportation charges were paid by firms with whom the defendant has no contractual relation. The witnesses asserted, in conclusion, that defendant's services are satisfactory and that they patronized his service because he is the only carrier offering same-day delivery to dealers in Oakland

- (3) Verbal contracts assertedly exist between the defendant and the following shippers;

Koemper-Barrett Company	Oakland
Appleton Electric Company	San Francisco
Square Deal Company	San Francisco
Benjamin Electric Manufacturing Co.	San Francisco

- (4) The following firms also use defendant's service but have no contractual relation with the defendant:

Incandescent Supply Company	Oakland
Anaconda Wire & Cable Company	San Francisco
C. J. Gratiot & Sons	San Francisco
Trumbull Electric Manufacturing Co.	San Francisco
General Cable Corporation	San Francisco
Graybar Electric Company	Oakland
H. B. Squires	San Francisco
Maydwell-Hartzell Company	San Francisco
Panama Lamp Company	San Francisco
George A. Gray Company	San Francisco
Bryant Electric Company	San Francisco
Smoot-Holman Company	San Francisco
J. A. Roebling & Sons Co.	San Francisco
Radelfinger Brothers	San Francisco

(5)
prior to 2:00 P.M.

The defendant was called as an adverse witness and testified that he now operates four trucks between San Francisco and East Bay cities; that he has operated as a highway contract carrier for the past five years; and holds a highway contract carrier and city carrier permit from this Commission. Defendant admitted that he handled shipments for consignors or consignees with whom he had no contract either verbal or written, but denied that he solicits traffic or holds his services out to the public as a highway common carrier.

The defendant next testified in his own behalf and stated that he began his operations in 1935 by purchasing a trucking business then engaged in transporting electrical products and supplies between San Francisco and Oakland; that he now picks up San Francisco shipments in the morning and delivers them in Oakland the same day, beginning at 1:00 P.M., and that he operates daily, five days a week. He contended that he has refused to transport traffic for shippers with whom he had no verbal or written contract but no supporting evidence of this assertion appears in the record.

On cross-examination the defendant admitted that his business was developed under the following circumstances; he was advised by certain shippers for whom he was hauling, that other electrical shippers in San Francisco would like to use his service. In some instances, the defendant contacted such

(5) It will be shown later that highway common carriers regularly pick up shipments in San Francisco in the morning but deliver in Oakland after 2:00 P.M. Shipments delivered prior to 2:00 P.M. are subject to an additional charge of 20 per cent of the applicable tariff rate.

new prospects and in other cases, they approached him. In either event, through negotiations and agreement, the defendant agreed to haul and did thereafter haul for such new accounts. Some of the new shippers executed written or verbal contracts, while others did not. But regardless of contract, the defendant thereafter hauled their shipments. (6)

A rebuttal witness for complainant testified that it is a practice of all highway carriers, except the defendant, to pick up shipments in San Francisco in the morning, carry them to Oakland and commence making deliveries to consignees along "Electric Row" beginning at 2:00 P.M. daily. This uniform practice, he said, is the result of an agreement adopted by all highway carriers several years ago when it was found necessary to reduce excessive operating costs incurred in making earlier trans-bay deliveries. As a result of the agreement shipments delivered to Oakland before 2:00 P.M. are charged the applicable rate plus 20 per cent for earlier service and shippers regularly pay the additional charge to obtain earlier delivery. By virtue of defendant's practice of making deliveries prior to 2:00 P.M. without a penalty charge, he has been able to gradually secure

(6) After making allowances for a normal increase in business due to better business conditions, the following gross revenues from defendant's operations, as reported to the Commission, appear to reflect the increase in new business due to the addition of new accounts from time to time:

<u>Year</u>	<u>Gross Revenue</u>
1936	\$ 3,600
1937	4,800
1938	5,300
1939	7,800
1940	17,000
1941 (6 months)	10,000

most, if not all, the traffic in electrical goods now transported between San Francisco and East Bay points, he said. At the conclusion of this witness' testimony the matter was submitted on the record.

The record shows that the defendant is engaged in operating motor vehicles regularly over the public highway between San Francisco and East Bay cities, twice daily, five days a week; that he regularly transports shipments of electrical products and supplies between San Francisco and East Bay cities for numerous shippers and consignees under written or verbal contracts and for other shippers or consignees without a contract, all of said shipments being subject to pickup or delivery service at origin or destination; that for said service the defendant charges and receives compensation from non-contractual as well as contractual shippers; and finally, that the defendant does not possess a certificate of public convenience and necessity from this Commission to operate as a highway common carrier between the points here involved.

While the defendant testified that he does not hold himself out to serve all shippers or solicit business or advertise his service as a highway common carrier, there is no doubt that, responsive to shippers' requests, he now serves a substantial portion, if not all, of the wholesale dealers in electrical supplies in the San Francisco Bay area. Some 29 major shippers of electrical goods in the Bay region, representing all, or substantially all, of the shippers engaged in the wholesale merchandizing of electrical products in San Francisco and the East Bay area, testified that they use his service. The defendant, therefore, is not operating as a bona fide highway contract carrier but as a highway common carrier. The fact that he has executed written or verbal contracts with certain shippers

is immaterial and does not affect our conclusion, particularly since the evidence shows that he has performed and is now performing service for patrons with whom he has no contractual connection whatever.

The Commission is of the opinion and finds that the defendant, R. H. Robideaux, does not possess a certificate of public convenience and necessity to operate as a highway common carrier and that, for approximately two years preceding the filing of the complaint herein, he has been regularly engaged in the transportation of property between San Francisco and East Bay cities, as a highway common carrier, in violation of Section 50-3/4 of the Public Utilities Act of the State of California, and that an order to cease and desist from said unlawful operations should issue herein.

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 and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 571.

O R D E R

A public hearing having been held in the above-entitled proceeding, in which evidence and testimony were received, the

defendant being present and it appearing from the foregoing opinion that an order should issue against said defendant to cease and desist from unlawful operation as a highway common carrier,

IT IS ORDERED that R. H. Robideaux be and he is hereby ordered to cease and desist from operating as a highway common carrier of electrical goods and supplies between San Francisco, on the one hand, and Oakland, Alameda, Hayward, San Leandro, Piedmont, Berkeley, Albany, El Cerrito and Richmond, on the other hand, unless and until he shall have obtained a certificate of public convenience and necessity to so operate under the provisions of Section 50-3/4 of the Public Utilities Act of the State of California.

IT IS FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be served upon said defendant, R. H. Robideaux, and to cause certified copies thereof to be mailed to the District Attorneys of San Francisco and Alameda Counties and to the Department of Motor Vehicles, Highway Patrol at Sacramento.

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

Dated at Los Angeles, California, this 28th day of October, 1941.

[Signature]
[Signature]
Arthur J. Quinn
Francis J. Haven
[Signature]
COMMISSIONERS