

Decision No. 40641

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PACIFIC FREIGHT LINES, a
 corporation)
 Complainant,)
 vs.)
 CHRIS DUARTE, doing business
 as OXNARD TRANSPORTATION,
 FIRST DOE and SECOND DOE,)
 Defendants.)

CASE NO. 4838

ORIGINAL

Wallace K. Downey for complainant Pacific Freight Lines, a corporation; F. W. Turcotte for defendant Chris Duarte, dba Oxnard Transportation.

O P I N I O N

Complainant, Pacific Freight Lines, is a corporation organized under the laws of the State of California and is engaged in the business of transporting property as a highway common carrier, as defined in Section 2 3/4 of the Public Utilities Act of the State of California, between Los Angeles and Oxnard, and intermediate points. Complainant is also authorized to operate as a highway common carrier between other points within this State, not material in the consideration of this complaint.

Complainant charges that Chris Duarte, doing business as Oxnard Transportation, defendant herein, is engaged in the business of transporting property by auto truck as a highway common carrier, between Los Angeles and Oxnard, and intermediate points, in

violation of the Public Utilities Act of this State; that said defendant does not have a certificate of public convenience and necessity, issued by this Commission, authorizing him to transport property as a highway common carrier, and that said operation by defendant is detrimental to complainant.

Complainant requests that defendant be ordered to cease and desist from transporting property as a highway common carrier until such time as he has procured a certificate of public convenience and necessity.

Defendant, having duly filed his answer, denies that he has rendered, or is rendering, any transportation service as a highway common carrier or that any service performed by him is, or will be, detrimental to complainant.

The issues having been joined, a public hearing was held at Oxnard, California, before Examiner Chiesa. Evidence, oral and documentary, having been adduced, the matter was duly submitted for decision.

The evidence shows that Chris Duarte maintains his principal place of business, operated under the fictitious firm name of Oxnard Transportation, in the City of Oxnard, California; that he has no certificate of public convenience and necessity nor any prescriptive rights authorizing him to transport property by auto truck as a highway common carrier in the State of California; that he is permitted to transport property as a radial highway common carrier, city carrier, and contract carrier; that he owns real property in Oxnard, used in his business of transporting property by auto truck, upon which there is a small office building,

and a loading and unloading platform; that defendant also maintains a place of business in Los Angeles, consisting of an office and "small dock" used in the handling of freight; that defendant has one regular and one part-time employee at his Los Angeles place of business whose duties consist of answering telephones, performing pickup and delivery services, loading and unloading shipments, and doing "anything that comes up to do" or "whatever has to be done" in connection with defendant's transportation business; that defendant owns and operates "about five or six" trucks, tractors, and semi-trailers and, in addition, leases approximately five more trucks which he uses in his business of transporting property; that in 1946, prior to July 27, and particularly in the months of May, June, and July, defendant operated his auto truck equipment regularly between Los Angeles and Oxnard, usually over routes U. S. Highways 101 or Alternate 101, transporting general commodities for the following persons or firms: Plaza Hardware Co., A. J. Dingeman Ford Tractor Sales Co., Coast Truck Sales and Service Company, Allis-Chalmers Mfg. Co., Oxnard Bottlers, Cox Plumbing Co., Al Schreimer, Oxnard Plumbing Co., and Oxnard Hardware Co.; that defendant had no agreement with any of said firms to transport their property as a contract carrier, nor were any of said transportation services rendered by defendant for said firms performed as a contract, city, or radial highway common carrier;

Defendant testified that he operated between Los Angeles and Oxnard whenever he could get a load, and that his operations were conducted more or less regularly, but usually three, four, and sometimes five days a week. Representatives of all the firms

hereinabove named testified that Duarte transported commodities for their respective firms between Los Angeles and Oxnard whenever they needed his service which, in some instances, was only once or twice a month but in most instances several times each week. Each of said witnesses testified that his respective firm had no contract with Duarte for said transportation service, the oral understanding being that Duarte's service would be used as long as it was satisfactory.

It is significant that, upon examination by complainant's counsel, defendant testified as follows:

"Q (by Downey) What were you a contract carrier of during that period of time, January 1, 1946, to July 27, 1946?" "A (by Duarte) I don't know what I was."

"Q Do you know any of the commodities that you handled as--" "A No."

"Q Just a minute. Do you know any of the commodities that you handled as a contract carrier during that time?" "A I don't know."
(Tr. p. 124, lines 18 to 25)

* * * * *

"Q (by Downey) Do you consider that you did any business as a contract carrier between January 1, 1946, and July 27, 1946?" "A (by Duarte) I don't know." (Tr. p. 125, lines 11 to 13)

Complainant's charge that defendant is engaged in the business of transporting property as a highway common carrier, between Los Angeles and Oxnard, is substantiated by the evidence of record in this proceeding. We find that Chris Duarte, doing business as Oxnard Transportation, operated auto trucks 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; between Los Angeles and Oxnard, California, between January 1, 1946, and July 27, 1946, without having obtained from the Public Utilities Commission a certificate of public convenience and necessity therefor, in violation of Section 50 3/4 of said Act.

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, or he may be imprisoned for five (5) days, or both.

Public Utilities Act, Section 81.
Code of Civil Procedure, Sections 1209, 1218.

O R D E R

A public hearing having been held in the above-entitled proceeding, evidence having been received, the matter having been duly submitted, and the Commission being fully advised,

IT IS ORDERED that defendant Chris Duarte, doing business as Oxnard Transportation, cease and desist from operating, directly or indirectly, or by any subterfuge or device, any auto truck 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; between Los Angeles and Oxnard, California, unless and until said Chris Duarte shall have obtained from the Public Utilities Commission a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED that the Secretary of the Commission cause service of this Order to be made upon the defendant, Chris Duarte.

The effective date of this Order shall be twenty (20) days from the date of service hereof upon said defendant.

Dated at San Francisco, California, this 26th day of August, 1947.

Harold P. Kula
Justin F. Green
Just Powell
R. F. ...
... ..
COMMISSIONERS