

Decision No. 61995**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Furniture Manufacturers Association )  
of California, a corporation, )

Complainant, )

vs. )

Case No. 6582

Loyd B. Turner, dba  
Blue Truck Lines, )

Defendant. )

Eddy S. Feldman, for complainant.  
Crowell Warner, for defendant.O P I N I O N

This is a complaint filed by the Furniture Manufacturers Association of California against Loyd B. Turner doing business as Blue Truck Lines. The complaint alleges that Turner holds certain operating authority contained in various certificates of public convenience and necessity issued by this Commission; that Turner has never been relieved from his duty of providing service to the public under said certificates; that since March 14, 1960, Turner has failed to transport shipments delivered to his depot; and that "the public, which includes Complainant's members, has thereby been deprived of a needed transportation service to the detriment, damage and inconvenience of the furniture manufacturing and furniture retailing industries of this State, and more particularly to the detriment, damage and inconvenience of Complainant's members."

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis at Los Angeles on December 7, 1960. The matter was submitted subject to the filing of briefs which have been received.

The record discloses that on March 14, 1960, Local 196 of the International Brotherhood of Teamsters placed a picket line around Turner's terminal. Turner testified that his employees did not go on strike; that shippers generally brought their merchandise to the terminal for shipment; that the union threatened furniture manufacturers attempting to bring freight to the terminal for Turner to deliver that it would surround the manufacturers' plants with pickets if they tendered shipments to Turner; that Turner called this threat to the attention of potential customers while holding himself out to render service; that prior to March 14 Turner had approximately 30 people on his payroll, and, including leased equipment approximately 12 tractors and 18 trailers; that after the picket line was established, Turner reduced his force to two office girls and two or three drivers whom he kept on the job for approximately two weeks; that he continued to pay rent on the terminal for three additional months; that, through lease operated tractor drivers he transported in the northern portion of his certificated area until sometime in April of 1960; that he hauled a certain amount of freight until July of 1960; and that he was no longer conducting operations at the time of the hearing.

Turner also testified that as of the date of the hearing he still did not know the reason for the picket line. Turner testified about his efforts to find out the reason for the picket line. There was received in evidence a copy of a registered letter dated May 4, 1960, sent by Turner to the union asking the reason for the picketing, and Turner testified that he never received an answer to this letter. The record indicates that the union withdrew the picket line for a short period of time to permit a competitor of Turner to clear Turner's dock of most of the freight which was on hand when the picket line was established.

Turner testified that he advised various members of the Complainant association of the picket line from its inception, and that on or about May 4, 1960, Complainant's executive secretary was fully advised of the details of the situation. This testimony was not contradicted. Turner further testified that he never intended to abandon his operating rights. Turner stated that as the labor dispute continued it became apparent to him that it probably would not be economically feasible for him to resume operations, if and when it were settled, and that he began contemplating the sale of his operating rights.

On July 1, 1960, Turner and Kleimer Van Lines, Inc., filed with this Commission Application No. 42442 which seeks authority to transfer some of Turner's operating rights to Kleimer. On August 4, 1960, Turner and Kleimer filed Application No. 42543 which seeks authority to transfer the remainder of Turner's operating rights to Kleimer. Each of the applications contains the following allegation: "Seller operated as a highway common carrier ... until the middle of March, 1960. Operations at that time were temporarily discontinued due to a strike which prevented him from operating. Efforts have been made by him to find a solution to the labor problem but he has been unsuccessful."

The Complainant association first contends that discontinuance of service without prior permission of this Commission constitutes abandonment of the operating rights involved; that where operating rights are abandoned this Commission must revoke them; and that Turner has abandoned his operating rights and they must be revoked. Turner's position is that he has not abandoned his operating rights and that his discontinuance of service was involuntary and that, under the circumstances, no authority to discontinue service was needed.

It is not suggested that Turner has voluntarily abandoned any operating rights. The evidence would compel a contrary conclusion if the point were to be advanced. The Association, however, relies upon cases decided by this Commission which state that an unauthorized suspension of service may be grounds for revoking all or a portion of the operating authority of a public utility, including common carriers.

A common carrier has the duty to conduct operations within the limits of its facilities and may not, as a general rule, voluntarily suspend operations without authority from this Commission. (Furniture Manufacturers Association vs. A. T. L., Inc., 54 Cal. P.U.C. 544, Decision No. 52347 in Case No. 5639; Grover vs. Sharp & Fellows Contracting Co., 82 Cal. App.2d 515, 518.) The unauthorized voluntary suspension of operations by a common carrier constitutes grounds for revoking the carrier's operating rights. (Re Highway Express, 45 C.R.C. 312; Re Vessel Operations, 43 C.R.C. 50,53.)

In each case where the Commission has revoked a carrier's operating authority under this doctrine the suspension of operations was a voluntary act by the carrier which was unauthorized by this Commission. Even where there is a voluntary, unauthorized suspension of operations, there is no mandatory requirement that the operating rights involved be revoked. (Western Consolidated Express, 45 C.R.C. 219, 220.)

Turner's operations have been suspended because of a labor dispute. The suspension is not voluntary. Since strikes and lockouts are lawful provided they are pursued within legal limits, a suspension of operations because of a legitimate labor dispute is not the kind of voluntary unauthorized suspension for which operating rights may be revoked. (Oakland vs. Key System Transit Lines, 52 Cal. P.U.C. 779.) Turner has a duty to take every reasonable and

lawful means to attempt to resume service to the public. Oakland vs. Key System Transit Lines, supra.) However, failure to act in good faith so that a labor dispute is unduly prolonged to the detriment of the public is a voluntary act which may be independent cause for action against employer or employee regardless of the merits of the dispute itself.

Finally, the Association contends that some sanctions should be imposed on Turner for failing to obtain from this Commission an order temporarily suspending his operating rights.

It has already been noted that a common carrier may not voluntarily suspend operations without authority from this Commission. Different principles apply to involuntary suspensions.

In the case of acts of God and labor disputes the suspension is for an unknown duration, and the common carrier is anxious to resume service at the earliest moment. If a common carrier were required to seek an order temporarily suspending its operating rights in these situations, there would be at least a short period of time consumed in vacating the order. This could cause an unnecessary delay in the resumption of service to the detriment of the public and the carrier. There is no statute or rule of this Commission which requires a common carrier to seek an order temporarily suspending operations where there is an involuntary suspension. This does not, of course, prevent a common carrier from seeking such an order if it so desires.

The Commission finds that Turner has not voluntarily suspended operations. The Commission also finds that Turner used all lawful means to resume operations, notwithstanding the existence of said labor dispute. The Commission further finds that under the facts here presented Turner was under no duty to seek an order from this Commission authorizing the temporary suspension of his operations.

The record discloses that there is a possibility that even if the labor dispute is settled, Turner will not have the ability to

operate under his rights. However, the record also indicates that presently pending before this Commission are Applications Nos. 42442 and 42543 in which authority is sought to transfer Turner's operating rights to Kleimer Van Lines, Inc. In view of the action taken this day by the Commission granting these applications with respect to transferring these operating rights, this point appears to have become academic and need not be further considered. If, however, the transfer of operating rights is not effectuated in accordance with the authorizations granted by this Commission, and it appears that Turner would be unable to exercise the rights if the labor dispute were settled, the Commission will entertain another complaint with respect to these rights.

In the circumstances, the complaint should be dismissed.

ORDER

A complaint and answer thereto having been filed, a public hearing having been held, and the Commission fully advised in the premises,

IT IS ORDERED that the complaint of the Furniture Manufacturers Association of California against Loyd B. Turner be and it hereby is dismissed.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 16<sup>th</sup> day of May, 1961.

[Signature]  
President  
[Signature]  
[Signature]  
Frederick B. Holcomb  
Commissioners