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Decision No. 11868

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of)
 CARSON-TAHOE TRANSPORTATION COMPANY)
 for certificate of public convenience :
 and necessity to operate passenger) Application No. 8649
 automobile service between Lakeside)
 (State line) California, and Tahoe)
 City, California. :

In the Matter of the Application of)
 A. L. RICHARDSON, doing business)
 under the fictitious name and style :
 of Pierce Arrow Stage, for a certi-)
 ficate of public convenience and neces-)
 sity to operate an automobile passenger) Application No. 8675
 stage line as a transportation company :
 between Tallac, Lakeside, Fallen Leaf,)
 Tahoe City, California, and inter-)
 mediate points in conjunction with as)
 part of and as an extension to the pas-)
 senger service now being rendered by)
 said applicant between Sacramento, Placer-)
 ville, Tallac, Lakeside and Fallen Leaf,)
 California, and intermediate points. :

W. D. Alexander for Applicant in Application No. 8649

Harry A. Encell, by James A. Miller, for Applicant in Application No. 8675

J. M. Fulton, for Southern Pacific Company, Protestant.

C. W. Nelson, for Lake Tahoe Railway and Transportation Company, Protestant.

Harry A. Encell, by James A. Miller, for Pierce Arrow Stage, Protestant against Application No. 8649

BY THE COMMISSION,

O P I N I O N

These two applications, heard before Examiner Eddy at Truckee on February 20th, 1923, were consolidated for hearing and will be disposed of in one report.

Both applications seek a certificate of public convenience and necessity to operate an automobile stage service during the summer season for the transportation of passengers, baggage and express between Lakeside, Tallac, Tahoe City and intermediate points on Lake Tahoe.

The applicant Richardson is, and for several years past has been, operating the Pierce-Arrow Stage Line between Sacramento and Tallac via Placerville, in the course of which Lakeside is served although it is not directly intermediate but is located off the main highway. The application of the Carson-Tahoe Transportation Company seeks permission to operate a passenger service between Lakeside and Tahoe City via Tallac in connection with a mail stage now operated by it between Carson City, Nevada and Bijou and Al Tahoe on Lake Tahoe just across the California State line.

The hearing developed certain facts of an astonishing nature and a situation so serious as to require a complete discussion thereof. It appears from Richardson's own testimony that for the past three years, at least, he has been actually operating over the route in question, conducting a service in the manner now applied for and as an extension of his line from Sacramento to Tallac. His operations beyond Tallac during this entire period have been conducted without authority from this Commission and were, therefore, in violation of the statutes. The facts merit plain speaking and warrant our most severe condemnation. Occasionally we are called upon to deal with situations in which it is alleged that a common carrier service by automobile is being conducted without the necessary authority from us. Our investigation not infrequently discloses that the operations complained of have been carried on without knowledge of the requirements ~~needed~~ of the statutes and with no intention to

violate the law. These unlawful operations are ordinarily not extensive and occur in more or less remote districts in the State. Where such conditions have been shown to exist we have, in the exercise of the discretion permitted under the statutes, been as lenient as the facts of record seemed to warrant. No circumstances exist here, however, which require the showing of any leniency toward this applicant. The operations of Richardson beyond Tallac have been conducted with full knowledge on his part that they were unlawful and in absolute defiance of the law. Knowing full well, both the requirements and penalties of the statutes, he has nevertheless continued for some years to conduct a transportation service beyond Tallac, openly and in willful disregard of the law. The illegal operations were not occasional or sporadic in character and were not even masked under the thin disguise of a rent car service. According to his own testimony, which testimony was substantiated by one of his witnesses who had lived at Tallac for several years, he has operated a car from that point to resorts on Lake Tahoe in the direction of Tahoe City "practically every night". In order to be in a position successfully to compete for the passenger traffic to resorts on Lake Tahoe between Tallac and Tahoe City, the applicant has permitted the impression to prevail in the office of his agents, the Peck-Judah Company at San Francisco and the Stage office at Sacramento, that passengers would be handled beyond Tallac, and the public has been so informed. Richardson testified that perhaps one-third of the passengers ticketed over his Pierce-Arrow Line to Tallac were actually destined to resorts beyond Tallac and that during the past three seasons he has transported from Tallac to four resorts on the west side of the Lake, more than 4500 passengers. Had he not held himself out to perform this service beyond Tallac

he would not have been able to secure the large volume of passenger traffic he has handled to Lake Tahoe resorts. In the performance of this service not covered by his operative rights he was unwilling, however, to assume the obligations of a common carrier if those obligations could be avoided. In other words, if but one or two passengers desired transportation beyond Tallac, Richardson was under no legal obligation to transport them and could do so or not as he saw fit, but if the number of passengers made it worth while financially he would transport them to their destinations beyond Tallac at a fixed charge per passenger. To state the situation plainly, his operations have been conducted in a manner to meet his own wishes and with the expectation of continuing this form of operation just so long as he could "get away" with it. The filing of an application by the Carson-Tahoe Company to operate a service over this route imperiled the successful continuance of Richardson's unlawful operations and eight days after the filing of that application Richardson himself filed an application seeking a certificate covering the route over which he has operated unlawfully for at least three years.

We have consistently refused to issue certificates of public convenience and necessity where the applicant therefor is shown to have continuously operated in an illegal manner over the desired route, with full knowledge that his operations were illegal. On July 25, 1922, Richardson filed with us a formal complaint alleging that certain parties were transporting passengers to Sacramento from Placerville and points beyond on his route. That case was heard at Placerville on September 19th, 1922, and decided by us on November 23rd, 1922, Decision No. 11268. The unlawful operations there complained of were defended on the

ground that the defendants were conducting a rent car service only and as such were not subject to our jurisdiction. That case is of importance here because it shows conclusively guilty knowledge by Richardson of the illegality of his operations. In other words, Richardson, while seeking our affirmative relief from encroachment by others upon his operative rights, was at the same time himself in willful, open and brazen defiance of the law and to a degree that by comparison makes insignificant the violations of the law complained of by him. In order to secure passenger traffic destined to points beyond Tallac the necessities of the situation required that the service be performed upon the arrival at Tallac of the Sacramento stage so that not only was he operating between fixed termini over a regular route but he was also operating on a regular schedule.

Protests were filed by the Southern Pacific Company and the Lake Tahoe Railway and Navigation Company to both applications, but at the close of the testimony given by the manager of the Carson-Tahoe company, the protest of the Southern Pacific to that application was withdrawn. This application proposes to leave Lakeside at 8:30 A. M. daily arriving at Tahoe Tavern, 36 miles distant, at 12:15 noon; on the return journey the stage will leave the Tavern at 1:45 P. M. and reach Lakeside at 5:30 P. M. The proposed service is somewhat in the nature of a sight-seeing trip, the object being to enable those living at Lakeside, Bijou, Al Tahoe and Tallac to go by auto from their camping places to Tahoe Tavern and return the same day.

The record contains a number of telegrams from certain resort owners on Lake Tahoe asking that the certificate be granted to Richardson; other resort owners have signed a petition in favor of the Carson-Tahoe Company. It is clear from the testimony submitted in support of the Richardson application that the service

if available, would be used by many persons during the summer season, and that Richardson's present equipment is sufficient to enable him to handle all the traffic offered. It is equally clear, in view of his continued unlawful operations, that the certificate should not, under the circumstances, be granted to him. If we were to pursue this course, in the light of the facts of record, it would place us in the position of abetting and encouraging violations of the law.

The application of Richardson will be denied, and a certificate of public convenience and necessity to operate an automobile stage line for the transportation of passengers and baggage between Lakeside and Tahoe Tavern via Tallac, serving intermediate points, will be granted to the Carson-Tahoe Transportation Company.

ORDER

A public hearing having been held in the above entitled applications, evidence submitted and the Commission being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity does not require the operation by A. L. Richardson, doing business under the fictitious name and style of Pierce Arrow Stage Line, of an automobile stage line as a common carrier of passengers between Tallac, Lakeside, Fallen Leaf and Tahoe City, California, and intermediate points, and

IT IS HEREBY ORDERED that Application No. 8675 be, and the same hereby is denied.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FURTHER DECLARES that public convenience and necessity require the operation by W. D. Alexander, doing business under the

fictitious name and style of Carson-Tahoe Transportation Company, of an automobile stage line as a common carrier of passengers between Lakeside and Homewood, California, serving as intermediate Bijou, Al Tahoe, Grove, Tallac, Emerald Bay, Meeks Bay, Pomin's, Moana Villa, and McKinney's, during the period of each year that the above named resorts are open, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be, and the same hereby is granted, subject to the following conditions:

Applicant W. D. Alexander, doing business under the fictitious name and style of Carson-Tahoe Transportation Company, shall file his written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof; shall file in duplicate, tariff of rates and time schedules within a period of not to exceed twenty (20) days from date hereof, such tariff of rates and time schedules to be identical with those filed as Exhibits "A" and "B" attached to the application herein; and shall commence operation of the service herein authorized with the opening of the 1923 season.

The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

No vehicle may be operated by applicant Alexander unless such vehicle is owned by him or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

Dated at San Francisco, California, this 30th day of March, 1923.

W. D. Alexander
W. D. Alexander
W. D. Alexander

Commissioners