

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Investigation on the Commission's own initiative into the methods and practices of operation of automobile truck lines by C. D. RASMUSSEN doing business under the fictitious names and style of Santa Fe Express and Drayage Company and S. & F. Auto Truck Line, and FRED LUDEKINS and C. D. RASMUSSEN, co-partners doing business under the fictitious name and style of Martinez-San Francisco Express.

CASE NO. 1880.

Myron Harris and Henry G. Tardy, for Respondents,
Walter H. Robinson, for S. B. McLenegan and Sons,
Pioneer-Gibson Express, E. J. Mott of Highway
Transport Company, Interveners,
Gwynn H. Baker, for Oakland-San Jose Transportation
Company, Merchants Express and Drayage Company
and Consolidated Motor Freight Lines, Inc., Inter-
venors,
L. N. Bradshaw, for Southern Pacific Company, Inter-
venors.

BY THE COMMISSION:

O-P-I-N-I-O-N

This is a proceeding, initiated by the Railroad Commission on its own motion, requiring respondents to appear and show cause why certificates of public convenience and necessity for the operation of automobile freight and express service as common carriers, now held by respondents as individuals and as co-partners should not be revoked and annulled, and for such other or farther action as the Railroad Commission may deem proper in the premises.

A public hearing was held before Examiner Handford at San Francisco, the matter was duly submitted and is now

ready for decision.

Respondent, C. D. Rasamussen, operates under the fictitious name of Santa Fe Express and Drayage Company between San Francisco, Oakland, Berkeley, Alameda, Piedmont, Emeryville, Fruitvale and Melrose by reason of operation prior to May 1, 1917, the date recognized by the Legislature in Chapter 213, Statutes of 1917, as that upon which operation in good faith did not require a certificate of public convenience and necessity from the Railroad Commission nor permits from the governing bodies of the various political subdivisions through which a route passed. This respondent also holds an operative right, as an individual, between Oakland and San Jose and the intermediate points of San Leandro, Hayward, Hiles, Centerville, Irvington, Warm Springs, Milpitas and Wayne which was secured by the transfer authorized by the decision of this Commission dated August 18, 1921 whereby O.L. Swett transferred his right, title and interest in said operative route to this respondent, (Decision No. 9379 on Application No. 7085).

Respondent, Fred Ludkins, was granted a certificate of public convenience and necessity to operate an automobile truck line as a common carrier of express packages between San Francisco and Martinez and intermediate points by this Commission's Decision No. 6919 on Application No. 4909, as decided December 9, 1919, and the operative right thereby conferred was authorized transferred to a co-partnership consisting of Fred Ludkins and C. D. Rasamussen by this Commission's Decision No. 8758 on Application No. 6634, decided March 17, 1921.

Respondent, C. D. Rasmussen, on October 13, 1922, filed an application with this Commission requesting authority to establish through routes and joint rates over the territory between San Francisco, Oakland and adjacent points as covered by operative rights existing by operation as of May 1, 1917 and thereafter as herein above referred to, on the one hand and between Oakland and San Jose and intermediate points as authorized by the provisions of Decision No. 9379 on Application No. 7085, on the other, the application alleging that the public convenience and necessity required the establishment of the through routes and the joint rates therein applied for, and this application was assigned No. 8330 on the Commission's docket. This application was identical with a former application filed on August 26, 1922 and numbered 8204 which was denied by the Commission's Decision No. 11081 dated October 7, 1922 following a regular hearing on October 6, 1922 of which due notice was sent to all interested parties but at which there was no appearance by or on behalf of the applicant. Decision No. 11081 above referred to contained the following as a portion of the order:-

"IT IS HEREBY FURTHER ORDERED that applicants herein shall immediately discontinue the through operation of automobile trucks engaged in the transportation of property for compensation which trucks are operated to or from points authorized to be served under certificate held by the S and F Auto Truck Line and to or from points authorized to be served under the operative right held by the Santa Fe Express and Drayage Company."

At the hearing on this proceeding it was agreed that the record in Application No. 8204 would be considered in this proceeding. It appears from the testimony of Mr. C. D. Rasmussen in transcript of evidence in Application No. 8330 that the order of the Commission in its Decision No. 11081 on Application 8204 has not been complied with, and in the instant proceeding it appears that rates other than those law-

fully on file with this Commission have been assessed for the transportation of property over the through route under investigation herein.

The testimony of respondent, C. D. Rasmussen, in this proceeding shows that at no time has the operative right or rights herein considered been owned by himself as an individual although this respondent has frequently been before the Commission in formal proceedings and in the filing of tariffs in which he has represented himself as the "owner" of either the S and F Auto Truck Line or the Santa Fe Express and Drayage Company, such being fictitious names under which this respondent operated or proposed to operate.

According to the testimony of this respondent the Santa Fe Express and Drayage Company, a fictitious name under which this respondent has by all his representations to the Commission supposedly been operating as an individual, is in reality a co-partnership consisting of C. D. Rasmussen, R. H. Rasmussen and J. C. Svane. The contentions heretofore made before the Commission that an operative right existed and was held by this respondent between San Francisco, Oakland, Berkeley, Alameda, Piedmont, Emeryville, Fruitvale and Melrose by reason of operation in good faith on and subsequent to May 1, 1917, the date fixed by the Legislature in the passage of Chapter 213, Statutes of 1917, as that upon which operators were not required to secure a certificate of public convenience and necessity from the Railroad Commission nor permits from the governing bodies of the various political subdivisions through which a route passed, are eliminated by the testimony of this respondent that on May 1, 1917, the line was owned and operated by F. M. French and that the partnership of which respondent is a member purchased the line and commenced operation in February, 1918. The

statute known as Chapter 213, Laws of 1917, did not contain any provision whereby a sale or transfer of an operative right could be accomplished and a certificate of public convenience and necessity was required from this Commission together with the securing of local permits from the governing bodies of all the political subdivisions through which a route passed, and in accordance with the procedure set forth in the statutory enactment. In the 1919 session of the Legislature, by the passage of Chapter 280, Laws of 1919, an amendment was made to the provisions of Chapter 213, Laws of 1917, whereby transfers of operative rights could be made with the approval of the Railroad Commission. An unauthorized and illegal transfer having been made in the month of February, 1918, neither the respondent nor the co-partnership of which he is a member have any operative rights and all proceedings heretofore had before this Commission in which erroneous representation of the actual facts have resulted in orders and decisions must necessarily be amended by appropriate order.

Respondent, Fred Ludkins, testified that the transfer of the operative right between San Francisco and Martinez and intermediate points as authorized by this Commission's Decision No. 8758 on Application No. 6634, decided March 17, 1921, was not in fact from Fred Ludkins (as an individual holding operative rights under the certificate granted by the Commission in its Decision No. 6919 on Application No. 4909, decided December 9, 1919) to a co-partnership consisting of Fred Ludkins and C. D. Rasmussen but to a co-partnership consisting of Fred Ludkins and Santa Fe Express and Drayage Co. (a co-partnership consisting of C. D. Rasmussen, R. H. Rasmussen and J.C. Svane).

Other testimony in this proceeding fully establishes the fact that there have been practically continuous violations of the Commission's regulations in the matter of tariff filings.

acceptance of shipments and their transportation at rates other than the lawful rates as contained in tariffs on file; transportation of shipments to points not covered by certificate rights; unauthorized carriage of shipments on a percentage basis by truckmen over routes covered by rights authorized to respondents; and combination of individual routes into through routes without authority having been secured from the Commission in accordance with the statutory law. It appears unnecessary to elaborate on the detail of various violations of the regulations of the Commission, application of illegal rates and other matters in view of the fact herein established by the evidence of the respondents, Rasmussen and Ludkins, that the operative rights either as of May 1, 1917 or as subsequently granted or authorized to be transferred by order of this Commission have never been actually vested in respondent, Rasmussen, as an individual or in the case of the route between San Francisco and Martinez and intermediate points in a co-partnership composed of C. D. Rasmussen and Fred Ludkins.

O-R-D-E-R

A public hearing having been held in the above entitled proceeding, respondents having duly appeared in response to the order to show cause, the matter having been duly submitted and the Commission being now fully advised and basing its order on the findings of fact as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED that no further operation of automobile trucks as common carriers of freight and express between San Francisco and Oakland, Berkeley, Alameda, Piedmont, Emeryville, Fruitvale and Melrose, or between Oakland and San Jose and the intermediate points of San Leandro, Hayward, Niles, Centerville, Irvington, Warm Springs, Milpitas and Wayne be

conducted by C. D. Rasmussen or the partnership composed of C. D. Rasmussen, R. H. Rasmussen and J.C. Svane doing business under the fictitious name of Santa Fe Express and Drayage Company.

IT IS HEREBY FURTHER ORDERED that no further operation of automobile trucks as common carriers of freight and express between San Francisco and Martinez and intermediate points be given by Fred H. Ludkins, Fred H. Ludkins and C. D. Rasmussen as co-partners; Fred H. Ludkins and a co-partnership consisting of C. D. Rasmussen, R. H. Rasmussen and J.C. Svane (doing business under the fictitious name of Santa Fe Express and Drayage Company) or either of them.

IT IS HEREBY FURTHER ORDERED that the orders of the Railroad Commission heretofore made in Decision No. 9379 on Application No. 7085 (decided August 18, 1921), Decision No. 8758 on Application No. 6634 (decided March 17, 1921) be and the same hereby are cancelled and annulled; and that the certificates of public convenience and necessity heretofore granted by this Commission in its Decision Nos. 6758 on Application No. 4968 (decided October 18, 1919) and Decision 6919 on Application No. 4909 (decided December 9, 1919) be and the same hereby are revoked, cancelled and annulled.

Dated at San Francisco, California, this 25th day of May, 1923.

W. H. ...
...
James Martin
...
Commissioners.