

Decision No. 12166

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Investigation
upon the Commission's own motion into
the methods, practices and operations of
FREDERICK ERNSTING, O. D. HADLEY, E. C.
WILLIS, J. O. MOORE, FRANK HAWK, W. H.
UPDEGRAFF, J. O. McCLUNG and C. C. WILLIS.)

CASE NO. 1902.

Robert G. Hill for respondents.
Macdonald and Thompson, by S. W. Thompson,
and Herbert W. Kidd for United Stages, Inc.,
Intervenor.
Warren E. Libby for Pickwick Stages, Inc.,
and Pickwick Stages, Northern Division,
Intervenors.
Fred Watson for Southern Pacific Company.

BY THE COMMISSION:

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

This is a proceeding instituted by the Commission on its own motion to investigate the rates, rules, regulations, service, practices and operation of Frederick Ernsting, O. D. Hadley, E. C. Willis, J. O. Moore, Frank Hawk, W. H. Updegraff, J. O. McClung and C. C. Willis. An order was issued by the Commission on April 9, 1923 directing the respondents, and each of them, to appear at the Los Angeles Court Room of the Commission on April 17, 1923, then and there to show cause why the respondents and each of them should not be restrained from operating as a transportation company as defined in Subsection (c), Section 1, Chapter 213, Statutes of 1917 and amendments thereto.

Public hearings on the order to show cause were conducted by Examiner Handford at Los Angeles on April 17, 18 and 19, 1923, the matter was duly submitted by order of the Commission, and is now ready for decision.

O. D. Hadley, respondent, testified that he was operating a stage line as a common carrier on May 1, 1917 between Brawley and Imperial, Brawley and Calipatria, and Calipatria and Niland. That he continued the operation of such stage line until the early part of the year 1918 when he was transferred ^{to} the Brawley-Niland-Calipatria run by Thos. Morgan, then manager of the United Stages, and continued on such latter run until October, 1918 when he notified Morgan that he "could not make a living" on the line and stopped operating and sold his cars to a second-hand dealer. No permission to suspend service, abandon or relinquish operation was ever applied for or granted by the Railroad Commission. This witness testified that he again began operation on March 24, 1923, over the above-described route by the use of three cars, one owned by the witness and the other two leased from other parties. The schedule and rates under which operation is now conducted are the same as those now filed with the Commission by United Stages, Inc.

Frederick Ernsting, respondent, testified that on May 1, 1917, he was operating a stage line as a common carrier of passengers between El Centro and Calexico and between El Centro and Imperial, and that he continued such operation until March, 1918, when he commenced work as a leased car operator between Los Angeles and San Diego continuing to so operate until March, 1920 and not having been thereafter associated with the stage business until about March 22, 1923, when he commenced the operation of a line between El Centro and Imperial and between El Centro and Calexico by operat-

ing one car leased from Frank Hawk, one of the respondents herein.

E. C. Willis, respondent, testified that on May 1, 1917, he was operating a stage line as a common carrier of passengers between El Centro and Calexico and between Brawley and Imperial and in June, 1917 he sold his car to Mr. Hadley with the understanding that Mr. Hadley would keep up the operation of the route. This witness is now operating between El Centro and Calexico having leased a car from Mr. Lorang. Witness has also leased a car to respondent, Ernsting, which is being operated between El Centro and Calexico. No permission or authority was ever applied for or received from this Commission to discontinue or suspend service between Imperial and Brawley. In October, 1917 this respondent operated between El Centro and San Diego and between San Diego and Los Angeles and continued such operation until September 16, 1920, operating a part of the time as an individual on a commission basis and also as a leased car. No permission to suspend or discontinue service or to abandon operation was ever applied for or granted by the Commission.

Frank Hawk, respondent, testified that he was operating a stage line on May 1, 1917, as a common carrier of passengers between San Diego and El Centro, running one car, and continued such operation until September, 1917, at which time he began operating for the United Stages between Los Angeles and Santa Barbara on a commission basis. This operation continued until January or February, 1918, when respondent commenced operation for the United Stages between Los Angeles and San Diego first on a commission basis and later changing to a leased car basis in the fall of 1918 and continuing on such basis until the fall of 1919 when respondent accepted service with another company. This respondent is now employ-

ed as a driver of a leased car by Frederick Ernsting between El Centro and Calexico and between Calexico and Imperial. No permission to suspend or discontinue service or to abandon operation was ever applied for by this respondent or authorized by the Commission.

W. H. Updegraff, respondent, testified that he was operating one car on May 1, 1917 as a stage line as a common carrier of passengers between Los Angeles and San Diego, the car being operated on a commission basis and such operation continued until September 1, 1917, when respondent sold his car. This respondent is not at present operating cars in stage service and has not since the sale of his car in 1917.

J. O. McClung, respondent, testified that he was operating a stage line as a common carrier of passengers on May 1, 1917, operating one car between Los Angeles and San Diego, the car being operated on a commission basis until some time during the year 1918, after which the operation was on a leased car basis until the fall of 1920, when the lease was terminated and the respondent commenced work as a leased car driver for the Pickwick Stages over the same route and continued in such work until March 24, 1923, when he commenced work as a driver for respondent, Hadley, between Imperial and Brawley. Respondent never requested nor received from the Commission any authority to suspend, abandon or discontinue operation over the route between Los Angeles and San Diego upon which service was being given on May 1, 1917 and thereafter until the commencement of operation on a leased car basis in the year 1918.

C.C. Willis, respondent, testified that on May 1, 1917, he was operating a car, jointly with his brother (F. P. Willis) as a common carrier of passengers between San Diego and Los Angeles and that such operation continued until November 4, 1917 when the operation was discontinued by reason of F.P. Willis

being drafted for military service and upon direction of T.E. Morgan to discontinue operation. Respondent has not been since engaged in the operation of auto stages. No authority was requested or received from the Commission to suspend, discontinue or abandon service over the route that was being operated on May 1, 1917.

I. O. Moore, respondent named herein as J.O. Moore, although regularly served with a certified copy of the order to show cause as evidenced by affidavit of service filed herein did not personally appear in response to the order but was represented by counsel. Under date of May 7, 1923, this respondent filed an affidavit alleging that he is not now operating any auto stages in the State of California; that he has not operated any auto stages for approximately four years; that he believes he is interested in the franchise now used by the United Stages, Inc., by virtue of having been operating auto stages on May 1, 1917 and the franchise having been continuously used by the United Stages, Inc., up to the present time and that the operative right of this respondent has thereby been maintained and preserved.

Respondents herein claim individual operative rights over the routes that were being operated by them on May 1, 1917, on the basis that such rights were covered by tariff and time schedule filings made by T. E. Morgan in the name of United Stages, Inc., on March 5, 1917 and supplemented by powers of attorney later filed with the Commission and listed on Supplements Nos. 1 and 2 to Local Passenger Tariff No. 1 of United Stages, Incorporated, said supplements filed with this Commission on April 2nd and May 24th, 1917, respectively. Respondents, Frank Hawk, I. O. Moore, and Frederick Ernsting, each executed power of attorney in favor T. E. Morgan authorizing him to file their passenger fare schedules, and such powers of

attorney were duly filed with the Commission. Respondents, Hadley and Willis, testified that they had executed powers of attorney in favor of T. E. Morgan and respondents, Updegraff, McClung and C. C. Willis, that they did not execute such a document having been informed by Morgan in 1917 that a sufficient number of such documents had been procured and filed with this Commission.

The Commission has heretofore had before it the matter of the status of the operative rights between points served by the respondents in the instant proceeding, and in Case No. 1473; (In the Matter of the Investigation of the operations, rules and practices of UNITED STAGES, INC., and of the MORGAN MOTOR COMPANY, a corporation) after extended hearings issued its Decision No. 9930 on December 27, 1921, the order in such decision containing the following finding:-

THE RAILROAD COMMISSION HEREBY FINDS:

1. That United Stages, Inc., a corporation-- the corporate name of which was formerly Morgan Motor Company-- was, in good faith, on May 1, 1917, actually operating automobiles and auto stages for the transportation of persons, as a common carrier for compensation, on the public highways of this State, between fixed termini and over regular routes, as follows:

1. SANTA BARBARA DIVISION: Between Los Angeles and Santa Barbara, via the following route and serving the following intermediate points: Los Angeles, thence via Cahuenga Pass, Ventura Boulevard, Encino Acres, Calabasas, Newberry Park, Triunfo, Conejo, Camarillo, Oxnard, El Rio, Ventura, Rincon, Carpenteria to Santa Barbara.

2. SANTA PAULA DIVISION: Between Los Angeles and Santa Paula, via the following route and serving the following intermediate points: Los Angeles, thence via Cahuenga Pass, Universal City, Lankershim, San Fernando, Newhall, Saugus, Castic, Piru, Fillmore and to Santa Paula.

3. EL CENTRO DIVISION: Between San Diego and El Centro, via the following route and serving the following intermediate points: San Diego, via Dulzura, Potrero, Campo, Warrens Ranch, Boulevard, Jacumba, Mountain Springs, Coyote Wells, Dixie Land, Seeley to El Centro.

4. IMPERIAL VALLEY LOCAL DIVISION: From El Centro to Calexico, via Heber, and serving all local points and traffic; El Centro to Brawley, via Imperial, and serving all local points and traffic; Brawley to

Calipatria via Rockwood, and serving all local points and traffic.

5. SAN DIEGO- LOS ANGELES DIVISION: Between San Diego and Los Angeles and the following intermediate points: La Jolla, Del Mar, Cardiff, Encinitas, Carlsbad, Oceanside and Capistrano, as shown and designated on the time schedule and tariff in effect May 1, 1917, via the Coast Highway--San Diego to Santa Ana, thence via the so-called Whittier Road or via the Telegraph Road, as alternate routes between Santa Ana and Los Angeles; also between all points intermediate between Los Angeles and Capistrano on the one hand, and San Diego and other stations above named as shown by said time schedule and tariff between San Diego and Capistrano on the other. "

Respondents herein were intervenors in the above mentioned case, claiming the operative rights then under investigation and the opinion in Decision No. 9930 contains the following:

" At the time auto stage companies were first required to file their schedules and tariffs with the Railroad Commission, Thomas E. Morgan was given power of attorney to file, on behalf of the stage drivers, some of whom appear here as protestants, their tariffs and time schedules. Apparently, the only filing made pursuant to this authorization was the original time schedules and tariffs of the United Stages. No filings were made in the names of the individual operators. Powers of attorney thus given were limited to six months from the date of their execution, and expired in the latter part of the year 1917. Thereafter, none of the stage drivers (including the protestants in this case) filed schedules or tariffs as individual operators, and took no steps to assert their claim to operative rights by reason of operations carried on in good faith on May 1, 1917, until the commencement of this proceeding.

It is clear from the evidence that a stage line was operating in good faith as a transportation company on May 1, 1917, over the routes designated by the tariffs and time schedules on file with the Commission on that date, and that such operations were being carried on under the name of United Stages, and under the management and supervision of Thomas E. Morgan. The management and control of Thomas E. Morgan over United Stages has been continuous and, as time progressed, has become more definite. It appears that he developed and built up the business by inducing the owners of cars to operate these cars as stage drivers under his direction and management, paying their own expenses and, in a large measure, making their own collections, but contributing an agreed amount or percentage of receipts to Mr. Morgan for the privilege of operating on the lines of the United Stages, using its terminal facilities and tickets and sharing the benefits of that management. Both the Morgan Motor Company and the Morgan brothers individually were participating in these operations on May 1, 1917.

" Regardless of whether or not the individual stage operators may now equitably claim a share in the value of the transportation business created under the name, United Stages, or in the profits derived therefrom--which we believe to be a matter for settlement in the civil courts-- it is sufficiently clear from the evidence herein that the Morgan Motor Company, H. H. Morgan and Thomas E. Morgan were actually operating in good faith as a transportation company under the name, United Stages, over the routes indicated in the tariffs and time schedules on file with this Commission on that date. Furthermore, it is shown that operations of the Morgan Motor Company thus established, have not lapsed by subsequent abandonment. The same is not true, however, as to the rights, if any, of the individual stage drivers. The evidence shows that, regardless of whether or not these individuals were operating in their own right, or on behalf of Thomas E. Morgan, or of the Morgan Motor Company on May 1, 1917, they have subsequently abandoned their operations or admittedly become employees of Morgan or the Morgan Motor Company."

Following the decision as above a suit was brought in the Superior Court of Imperial County by the respondents against United Stages, et al, which suit was dismissed by the sustaining of a demurrer filed by defendants. A statement of the presiding judge of the Superior Court of Imperial County at the trial or argument on the demurrer and to the effect that the plaintiffs in the action before the court had each a separate operative right to run a stage over the highways and that defendants had not interfered with plaintiffs, or any of them in the running of a stage, or stages, and that until the right of plaintiffs to run and operate stages was interfered with by defendants there was no cause of action and the case was dismissed without prejudice. Relying, according to the evidence in the instant proceeding, upon a statement made by the judge presiding in the abovementioned suit, respondents Hadley, Ernsting and E. C. Willis commenced operation over the routes hereinabove set forth on or about March 24, 1923, and the Commission being advised of the commencement of such operation thereupon issued its order instituting investigation.

From a review of the evidence in this proceeding we hereby find the following facts:-

- I. That the operation now being conducted by respondent, O. D. Hadley, between Brawley and Imperial, between Brawley and Calipatria, and between Calipatria and Niland, such operation having been commenced on or about March 24, 1923 is operation as a transportation company as defined in Chapter 213, Statutes of 1917 and amendments thereto, and for which no certificate of public convenience and necessity has been obtained from this Commission as required by Section 5 of the abovementioned statutory enactment. That this respondent discontinued service and operation over routes between Brawley and Imperial, Brawley and Calipatria, and Calipatria and Niland in the year 1918 without having requested or received from this Commission authority so to do.
- II. That the operation now being conducted by respondent, Frederick Ernsting between El Centro and Imperial and between El Centro and Calexico, such operation having been commenced on or about March 24, 1923, is operation as a transportation company as defined in Chapter 213, Statutes of 1917 and amendments thereto, and for which no certificate of public convenience and necessity has been obtained from this Commission as required by Section 5 of the abovementioned statutory enactment. That this respondent discontinued service and operation over routes between El Centro and Calexico, and between El Centro and Imperial, in March, 1918, without having requested or received from this Commission authority so to do.
- III. That the operation now being conducted by respondent, E. C. Willis, between El Centro and Calexico, such operation having been commenced on or about March 24, 1923, is operation as a transportation company as defined in Chapter 213, Statutes of 1917 and amendments thereto, and for which no certificate of public convenience and necessity has been obtained from this Commission as required by Section 5 of the abovementioned statutory enactment. That this respondent discontinued service and operation over routes between El Centro and Calexico, and between Brawley and Imperial in June, 1917, without having requested or received from this Commission authority so to do.
- IV. That respondent, Frenk Hawk, discontinued service and operation over routes between San Diego and El Centro in September, 1917, without having requested or received from this Commission authority so to do.
- V. That respondent, W. E. Updegraff, discontinued service and operation over routes between Los Angeles and San Diego in September, 1917, without having requested or received from this Commission authority so to do.

VI. That respondent, J. O. McClung, discontinued service and operation over routes between Los Angeles and San Diego during the year 1918 without having requested or received from this Commission authority so to do.

VII. That respondent, C. C. Willis, discontinued service and operation given jointly with his brother (F. P. Willis) over routes between San Diego and Los Angeles on or about November 4, 1917, without having requested or received from this Commission authority so to do.

VIII. That respondent, I. O. Moore, although alleging to have been operating auto stages as of May 1, 1917, is not now so operating; that he alleges he has not so operated stages for approximately four years. That the discontinuance of service and operation over any routes covered by this respondent on or subsequent to May 1, 1917, was without having requested or received from this Commission authority so to do.

IX. That the status of the operations and practices of the United Stages, Inc., and the Morgan Motor Company, a corporation, have heretofore been determined by this Commission in its order contained in Decision No. 9930 on Case No. 1473, as decided December 27, 1921, and as hereinabove referred to.

X. That the claim of any individual stage operators including the respondents herein, to any portion of the value of the transportation business conducted by the United Stages, Inc., is a matter not under the jurisdiction of this Commission, as such jurisdiction is prescribed by the statutory law, but is a matter to be adjudicated by the civil courts in a proper proceeding.

O-R-D-E-R

Public hearings having been held in the above entitled proceeding, respondents having appeared in person or by attorney in response to the order to show cause, the matter having been duly submitted by order of the Commission, 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 the operation of automobile stages for the carriage of passengers for compensation over regular routes and between fixed termini as now conducted by

respondent O. D. Hadley between Brawley and Imperial, between Brawley and Calipatria, and between Calipatria and Niland be immediately discontinued and not resumed unless and until a certificate of public convenience and necessity will have been applied for and granted by this Commission after proper application and decision thereon. That the operation of automobile stages for the carriage of passengers for compensation over regular routes and between fixed termini as now conducted by respondent Frederick Ernsting between El Centro and Imperial, and between El Centro and Calexico, be immediately discontinued and not resumed unless and until a certificate of public convenience and necessity will have been applied for and granted by this Commission after proper application and decision thereon. That the operation of automobile stages for the carriage of passengers for compensation over regular routes and between fixed termini as now conducted by respondent E.C. Willis between El Centro and Calexico be immediately discontinued and not resumed unless and until a certificate of public convenience and necessity will have been applied for and granted by this Commission after proper application and decision thereon.

IT IS HEREBY FURTHER ORDERED that no operation of automobile stages for the carriage of passengers for compensation over regular routes or between fixed termini be commenced by respondents, Frank Hawk, W. H. Updegraff, J. O. McClung, C.C. Willis and I. O. Moore (sometimes referred to as J. O. Moore), or either of them unless and until said respondents, or either of them will have applied for and have been granted certificate or certificates of public convenience and necessity by this Commission after proper application and decision thereon.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be and he is hereby directed to serve a certified

copy of the foregoing opinion and order, by registered mail,
upon each respondent herein and also upon the District Attorneys
of the Counties of Imperial, San Diego, Orange and Los Angeles.

The effective date of this order is hereby fixed as
June 11th, 1923.

Dated at San Francisco, California, this 1st
day of June, 1923.

Irving Martin
Egerton Shore

J. C. Whittley
Commissioners.