

Decision No. 12202.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

S. ARONSON and H.E. BOSWELL,
co-partners doing business under
the firm name and style of
Golden Eagle-Barker Stage Line,

Complainants,

vs.

C. R. SPICKARD and C. J. McFALL,
co-partners,

Defendants.

Case No. 1791.

Sanborn & Roehl & Delancy C. Smith, by
A. B. Roehl; and J. B. Gibson for Complainants.
Harry A. Encell, by James A. Miller; and W.A.
Latta, for Defendants.

BY THE COMMISSION:

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

S. Aronson and H. E. Boswell, co-partners operating under the fictitious name of Golden Eagle-Barker Stage Line, complain of defendants and allege that defendants have not the right to transport local passengers between Sacramento and Roseville in connection with operation regularly conducted by defendants between Sacramento and Auburn; that since July 1, 1920 defendants have engaged in the business of transporting passengers between Sacramento and Roseville and that by reason of such alleged unlawful operation complainants have been greatly injured and damaged. Complainants pray for an order of the Railroad Commission directing defendants to cease operation between Sacramento and Roseville.

Defendants duly filed their answer herein denying the material allegations of the complaint and alleging that the operation of its line insofar as the Sacramento-Roseville service was a part of the through service between Sacramento and Auburn had been acquired lawfully by transfers duly authorized by this Commission and that such operation was being conducted under and in accordance with such authorization.

Public hearings on this complaint were conducted by Examiner Handford at Sacramento, the matter was duly submitted and is ready for decision.

Briefly stated, the issue to be decided in this proceeding is whether defendants have an operative right to do local service between Roseville and Sacramento, either on their through cars operated between Sacramento and Auburn, or by the establishment of purely local service between Sacramento and Roseville. The operative rights of the defendant co-partnership were acquired by transfer duly approved by the Commission, and for a proper determination of the issues involved in this proceeding a review of the status of the operative rights as reflected by the records of the Commission will be necessary and a consideration of the evidence herein as to whether the defendant co-partnership and its predecessors in interest have furnished the service to the public for which they were obligated by their tariffs and time schedules, and consideration and analysis of the status of the defendant co-partnership will hereafter be made in this opinion.

Mr. S. Aronson, one of the complainants, testified that he was one of the partnership now operating stage lines between Sacramento and Roseville, and Roseville and Lincoln, under the authority of this Commission; that he originally was personally engaged in the operation of a stage line between Sacramento and Auburn via Roseville, Rocklin, Loomis, Penryn and intermediate

points and that this operation was conducted by himself individually, although another operator, Thomas Shaves, also operated over this same route as an individual, the status being that this witness protected one run and Thomas Shaves a corresponding run, each operating as individuals, collecting and retaining their own receipts and meeting their own expenses of operation. The witness disposed of his Sacramento-Auburn run prior to May 1, 1917, to a Mr. Nolan. In addition to the Sacramento-Auburn run this witness operated a separate service between Sacramento and Roseville, and by arrangement with the above mentioned Thomas Shaves no local business was carried on the through cars operating between Sacramento and Auburn by either this witness in his operation or by Mr. Shaves, it being the mutual understanding that the business between Sacramento and Roseville should accrue to and be cared for by the local line then owned and operated by this witness. Mr. Nolan, the successor to this witness on the Sacramento-Auburn line, sold his interest to Mr. C. J. McFall who thereafter proceeded to operate as an individual on the Sacramento-Auburn run opposite to Mr. Thomas Shaves, each continuing the same type of operation as was in effect when the witness and Thomas Shaves were covering this route. It is the evidence of this witness that at no time prior to a period of approximately the past year have passengers been carried on the Sacramento-Auburn stages between Roseville and Sacramento.

Mr. Albert Pope, a witness called in behalf of complainants, testified that he had been employed for five years by the stage line now operated by complainants and knew Thomas Shaves at the time he was operating, that refusal had been made by Shaves to take local passengers out of Roseville at times when the witness was personally present.

Mr. Thomas Shaves, a witness for complainants, testified that he was operating a stage line prior to May 1, 1917 between Sacramento and Auburn; that he continued such operation individually and as a member of the Star Auto Stage Association until selling out his interest to Mr. C. R. Spickard, one of the defendant co-partnership; that during such time he never solicited Roseville passengers and on many occasions referred inquiring and intending passengers to the Aronson Line; that Mr. McFall ran the opposite schedules to those of the witness and that no co-partnership existed between the witness and McFall; that an agreement existed with complainant Aronson that the witness would not solicit and carry passengers between Sacramento and Roseville provided Aronson would not solicit and carry passengers between such points who might be destined to Auburn or points beyond, and that such agreement was lived up to by the witness up to the time that witness transferred his interest in the stage line to the Star Auto Stage Association and thereafter, while witness was operating the line for the account of the Association until the sale of his membership interest in the Star Auto Stage Association was made to C. R. Spickard, defendant herein; that during the time the association controlled the run that the witness personally operated the car practically all the time; that on some occasions Roseville passengers were hauled, but witness never solicited such passengers, and had refused transportation to such intending passengers on numerous occasions and such refusal was because of the verbal understanding had with complainant Aronson as to the division of the Sacramento - Roseville business as against that of the Sacramento - Auburn business.

Mr. A. E. Gum, a witness for complainant, testified that on one occasion in the latter part of 1919 he was a passenger in a car driven by Mr. Thomas Shaves, and while on such trip observed two passengers desiring to go to Roseville which were re-

fused transportation by Shaves with the explanation that said Shaves did not haul passengers between Sacramento and Roseville.

Mr. James Moran, a witness for complainants, residing at Roseville, testified that he was informed by Thomas Shaves that no local business was done by Shaves from Roseville to Sacramento.

Mr. Gene Antichi, a witness for complainants, testified that he formerly operated a stage line between Sacramento and Roseville and that during such time Thomas Shaves was operating between Sacramento and Auburn; that no passengers were picked up by Shaves at Roseville destined for Sacramento.

Mr. Joseph Palace, a witness for complainants, testified that he was formerly engaged in the auto stage business between Sacramento and Roseville as a co-partner with complainant Aronson; that he was familiar with the operation of the auto stage line operated by Thomas Shaves during the year 1920; that he never saw any passengers carried by Shaves between Sacramento and Roseville and that it was told to him by said Shaves that he would not bother with the Roseville business.

Mr. J. B. Gibson, a witness for complainants residing at Roseville, testified that he was refused transportation by Thomas Shaves between Sacramento and Roseville; that he prevailed upon Shaves to carry him due to his anxiety to reach Roseville quickly and that the excuse offered by Shaves for not transporting the intending passenger was that he had an agreement with complainant Aronson not to carry local passengers between Sacramento and Roseville.

Mrs. F. E. Martin, a witness for complainants, testified that in making the trip between Sacramento and Roseville she purchased a ticket at the Sacramento office on July 29, 1922, and was directed to take the stage operating between Sacramento and Auburn; that she was carried beyond her destination without her knowledge, she having expected the stage to stop at the Barker

Hotel in Roseville, the terminus of the complainant's line; that she was carried past Roseville and was enroute to Rocklin at the time she made objection to the driver. She was advised by the driver that she was only carried as an accommodation and was directed by him as to the nearest road to Roseville to which point she was required to walk.

Mr. B. N. Scribner, a witness for complainants residing at Rocklin, testified that he was always refused transportation on the Sacramento-Auburn stage between Sacramento and Roseville, being advised that the Roseville business was not being taken.

Mr. J. L. Fithian, a witness employed as a driver for complainants, testified that prior to a year and a half ago he had observed no passengers being carried between Sacramento and Roseville by the Sacramento-Auburn Stages and that at the present time he has noticed Roseville passengers proffering themselves for passage at Sacramento being referred to the stage line by which he is employed although does not know whether or not such direction was due to a lack of space on the cars of the Sacramento-Auburn Line.

Mr. H. E. Boswell, a witness for complainants, testified that in 1917 he operated as a co-partnership with Mr. Antichi between Roseville and Sacramento and that at such time the Sacramento-Auburn Line of the Star Auto Stage Association operated by Thomas Shaves turned over and directed passengers between Sacramento and Roseville to the Roseville stages; that he, on numerous occasions, talked with Mr. Shaves regarding the matter and was always told that Mr. Shaves did not have anything to do with the Roseville passengers, did not want them and that when any one inquired for the stage to Roseville he would send them to the Roseville stage and that he was not holding himself out to carry passengers between Sacramento and Roseville.

Mr. C. R. Spickard, a witness for defendants, testified that in April 20, 1920 he purchased the membership right of Thomas Shaves in the Star Auto Association; that throughout the operation of the Star Auto Stage Association and since witness had charge of the line - under a power of attorney from Shaves and McFall dated in 1920 - that Roseville was considered as an intermediate point and was served by the Sacramento-Auburn Stages, that such a service had been rendered and had been continued up to the present time.

Mr. W. M. Sanford, a witness for defendants, testified that in his capacity as secretary-treasurer of the Star Auto Stage Association during the period from January 1918 to December 1920 he had occasion to examine ticket stubs showing tickets purported to have been sold covering passage from Sacramento to Roseville from reports rendered to the Star Association by Spickard and McFall or Shaves and McFall.

Mr. Geo. H. Woods, a witness for defendants, testified that from March 1921 to April 1922, he was employed as manager of the ticket office of the Union Stage Depot at 924 Sixth Street, Sacramento; that tickets were sold from such office over the line of the Sacramento-Auburn Stage to passengers destined Roseville; that from April 1922 until July 1922 he sold tickets from the office of the present Union Stage Depot over both the lines of the Sacramento-Roseville stage and the Sacramento-Auburn stage to intending passengers destined Roseville.

Mr. A. W. Hewett, a witness for defendants, testified that he was formerly president and manager of the Star Auto Stage Association from early in the year 1918 until August 20, 1920; that during the time of his incumbence as an official of the Association tickets were sold by the association between Sacramento and Roseville.

Mr. C. J. McFall, a witness for defendants, testified that

early in February 1917 he bought out the interest of Mr. Nolan in the Auburn-Sacramento run and that since such time to approximately June 24, 1920, he drove his own stage between Sacramento and Auburn; that he was a member of the Star Auto Stage Association and in such operation served Roseville as an intermediate point. Since 1920 witness has been operating between Auburn and Nevada City. At no time did this witness refuse service to any passenger between Sacramento and Roseville. This witness testified that during the time he was supposed to be operating as a co-partnership with Thomas Shaves that no actual co-partnership existed, each individual operating his own cars, taking all the receipts accruing from such operation and each operator meeting his own expenses, there being no agreement other than a division of the schedules. Since 1920 when Mr. Spickard purchased the operative rights supposed to be held by Thomas Shaves, a co-partnership was actually formed between Spickard and the witness and since such time a division of receipts and expenses has been made.

The operative rights of complainants between Sacramento and Roseville originate with operation conducted by Sam Aronson personally prior to and on May 1, 1917, the date fixed by the legislature as that upon which operators in good faith were not required to secure certificates of public convenience and necessity from the Railroad Commission nor permits from the governing bodies of the local subdivisions through which a route passed. On September 23, 1920 (Decision No. 8138 on Application No. 6130) S. Aronson was authorized to sell and transfer a half interest in his operative rights between Sacramento and Roseville, and Roseville and Lincoln, to Joseph Palace and on April 29, 1922 (Decision No. 10383 on Application No. 7746) Joseph Palace was authorized to transfer to H. E. Boswell the half interest theretofore held by Palace in the partnership existing between S. Aronson and Joseph Palace and authority for the con-

duct of the line between Sacramento and Roseville was thereby transferred to the partnership of Aronson and Boswell, complainants herein.

The operative rights of defendants, Spickard and McFall, originate with the operation being conducted prior to and on May 1, 1917 by the Star Auto Stage Association, such operation being conducted for the association by Thomas Shaves and C. J. McFall, each in their individual capacity as members of the association. The status of the Star Auto Stage Association as regards this and other operative rights has heretofore been determined by this Commission in its decision No. 7712 in Case 1202, as decided June 16, 1920, in which the Commission concluded "that the Star Auto Stage Association as such is the transportation company operating the routes as set forth in the tariffs and schedules on file with the Commission and that the association and not the individual members thereof are deemed by this Commission to be amenable to the above mentioned order". By the provisions of Decision No. 7795 on Application No. 5162 dated June 24, 1920, a transfer of the operative rights between Sacramento and Auburn was granted to C. J. McFall and Thomas Shaves, a co-partnership operating under the name of Shaves and McFall and the transferees as individuals were required to immediately file tariffs and schedules with the Railroad Commission, such tariffs and schedules and rules and regulations governing same to be in accordance with those previously filed with the Commission by the Star Auto Stage Association and covering such route, and the Star Auto Stage Association was therein directed to cancel tariffs and time schedules covering the particular route then ordered transferred to Shaves and McFall, a co-partnership.

On July 21, 1922, this Commission, by its Decision No. 10750 on Application 7659, authorized a transfer of an undivided

interest in all the property of the partnership stated to have therefore existed between Thomas Shaves and C. J. McFall and used in connection with the operation of a stage line between Sacramento and Auburn, and a stage line between Auburn and Nevada City, including an undivided interest in the rights of said partnership to operate said stage line. This order contained the following provision:

"Provided, however, that nothing herein contained shall be construed as enlarging or increasing or dividing operative rights above referred to, it being distinctly understood that said rights are indivisible."

The records of the Railroad Commission regarding the filing of tariffs and time schedules covering the Sacramento-Auburn route show, as regards rate schedules, that the Star Auto Stage Association, by its Local Passenger Tariff No. 1, issued February 1917, and Effective March 1, 1917, indicate Roseville as an intermediate tariff point on the line between Sacramento and Auburn. These rates were continued in subsequent tariffs and supplements until cancelled by the Star Auto Stage Association by its cancellation of all tariff and scheduled filings "relating to or affecting the route from Sacramento to Auburn via the state highway, which route has been transferred to C. J. McFall and Thomas Shaves", said cancellation duly verified by a notary public in and for San Joaquin County on October 9, 1920, and duly filed with the Railroad Commission in accordance with the requirement in Decision No. 7795 on Application No. 5162 dated June 24, 1920.

Shaves and McFall filed their tariff C.R.C. No. 2 (issued August 19, 1921 and effective August 20, 1921) purporting to operate under the fictitious name of Placer Auto Stage Company, such tariff being practically a re-statement of the tariff of the Star Auto Stage Association and in substitution therefor under the provisions of the Commission's order. This tariff was can-

celled by C.R.C. No.1 of Sacramento-Auburn-Nevada City Stage Company as issued by C. J. McFall and C. R. Spickard, co-partners and owners, under date August 14, 1922 to be effective August 19, 1922 and this is the present effective tariff covering the Sacramento-Auburn route herein discussed.

As regards time schedules:- Timetable No.1 of the Star Auto Stage Association effective June 1, 1917, contains the station of Roseville as an intermediate point on the Sacramento-Auburn route. Subsequent issues of time tables also carried Roseville as an intermediate point until the cancellation of all time schedules by the Star Auto Association affecting this route in accordance with the cancellation hereinabove referred to as regards tariff filings. On March 26, 1921, the Commission received from the Placer Auto Stage Company a fictitious name under which Thomas Shaves and C. J. McFall were operating, Time Schedule No.1 in which Roseville was shown as an intermediate point on the route between Sacramento and Auburn. On August 14, 1922 the Sacramento-Auburn-Nevada City Stage Company, the fictitious name under which C.R. Spickard and C. J. McFall, co-partners, were operating, filed its Time Schedule No.1 to be effective August 19, 1922, such schedule showing Roseville as an intermediate point between Sacramento and Auburn and Roseville also appearing in Schedule No.3 issued by the present operators, defendants herein, on January 25, 1923, to be effective February 1, 1923, Time Schedule No.3 being the present effective schedule as of record with this Commission.

It is obvious that no transfer of any operative rights could be made to the co-partnership now claiming same beyond the extent to which their predecessors in interest had fully complied with the holding out to the public of service and rendition of such service strictly in accordance with time schedules and tariffs of rates as properly filed with this Commission.

The time schedules and rates set up the contract between the traveling public using the facilities of the stage line and represent the holding out to the public of definite schedules and rates under which the public will be transported between stations named in tariffs and time schedules.

In this proceeding there is before the Commission definite evidence that the public demand for transportation between Roseville and Sacramento during the period this route was operated by the Star Auto Stage Association through Thomas Shaves and C. J. McFall was not met in accordance with the tariffs and time schedules lawfully filed with this Commission in that transportation was frequently refused and the Commission cannot at this time approve and confirm the right of defendants to engage or continue in the local service between Sacramento and Roseville either by the operation of local cars or by the acceptance and transportation of local passengers between Sacramento and Roseville on through cars which may be operated by defendants between Sacramento and the northerly terminus of defendants line at Auburn or Nevada City.

The present holders of the operative rights under the decisions of the Commission as hereinabove set forth cannot acquire a greater operative right than was possessed and legitimately exercised by their predecessors. It clearly appears from the evidence herein that the predecessors of defendants co-partnership did not exercise their operative rights between Sacramento and Auburn as regards the Sacramento-Roseville business in accordance with their voluntary holding out to the public of an offer of service between such intermediate points and that provisions of tariffs and time schedules were violated whenever and as often as passengers were refused who might offer themselves for transportation between Sacramento and Roseville. The matter is not one where in a few instances have the predecessors of defendant corporation failed to observe their contractur-

al relations with the public as defined in their tariffs and schedules but the evidence indicates that it was a matter of common knowledge that the predecessors of defendants would not carry the public offering for transportation between Sacramento and Roseville pursuant to some verbal agreement existing whereby such passengers were not to be carried but were to be referred to the local stage line operating between Sacramento and Roseville provided that no passengers would be carried between Sacramento and Roseville by the local line operating between such points when such passengers were destined to or from points north of Roseville and served by the Sacramento-Auburn Stage Line.

We have carefully reviewed and considered all the evidence in this proceeding and have checked the records of the Commission herein referred to and in evidence and from such consideration and review we are of the opinion and hereby find as a fact that defendants herein are not entitled to transport passengers between Sacramento and Roseville either on local cars operated between such points or on through cars operated between Sacramento-Auburn or Nevada City. The operative right heretofore existing to carry such local passengers was forfeited by the predecessors of defendant co-partnership when refusal was made by such predecessors to carry on its Sacramento-Auburn Stage Line such passengers as might have offered themselves for transportation locally between Sacramento and Roseville and the transfers of operative rights hereinbefore authorized by this Commission and resulting in the operative rights now possessed by C. R. Spickard and C. J. McFall as co-partners, operating under the fictitious name of Sacramento-Auburn-Nevada City Stage Line, cannot and do not include greater operative rights than were enjoyed by and available for the public at all times since the effective date of regulation by this Commission over the character of transportation companies as contained in

the legislative enactment (Chapter 213, Statutes of 1917, and amendments thereto).

O-R-D-E-R

Public hearings having been held on the above entitled complaint, the matter having been duly submitted and the Commission being now fully advised and basing its order on the finding of fact as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED that C.R. Spickard and C. J. McFall, co-partners operating under the fictitious name of Sacramento-Auburn-Nevada City Stage Company, immediately discontinue the transportation of passengers between Sacramento and Roseville, either on local cars operated by such co-partnership between such points or on through cars operated by said co-partnership between Sacramento and Auburn or Nevada City.

IT IS HEREBY FURTHER ORDERED that defendants, C. R. Spickard and C. J. McFall, co-partners, immediately file with the Railroad Commission cancellation of all rates and time schedules now on file with this Commission insofar as said rates and schedules and rules and regulations relating thereto refer to the transportation of local passengers between Sacramento and Roseville.

Dated at San Francisco, California, this 12th day of June 1923.

C. A. Seaver
H. B. Brundage

14. J. T. Whittaker
Commissioners