

Decision No. 12867

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of M. Bernardo for Certificate of)
Public Convenience and Necessity)
to Operate Passenger and Express)
Service between Chico and Redding)
via Red Bluff, including all Inter-)
mediate Stations, said Express)
Business to be limited to Packages)
under 150 pounds in weight.)

ORIGINAL

APPLICATION NO. 9276.

Dunn & Brand, by Chauncey Dunn, For Applicant
C. E. Spear, For Southern Pacific Company, Protestant
Harry A. Encell, For Shasta Transit Company, a Corporation
A. L. Dillon, For American Railway Express Company, Protestant.

BY THE COMMISSION:

O P I N I O N

The applicant herein seeks a certificate of public convenience and necessity to operate an automobile service for the transportation of passengers and express between Chico and Redding via Red Bluff, including all intermediate stations.

At the hearing, held before Examiner Coary at Sacramento September 14, 1923, request was made to amend the application so as to provide for the transportation of express in packages weighing not in excess of 150 pounds each.

The application, received July 30, 1923, sets forth that the service is now being rendered between Chico and Red Bluff

based upon the purchase of a supposed operative right from O. Patton. There is attached to the application Exhibit A, being a tariff of fares; Exhibit B, an operating time schedule, and Exhibit C, a statement of the equipment employed in rendering the service.

There was testimony to the effect that the applicant, on behalf of himself and C.F. Crews, in December, 1922, entered into a contract with O. Patton agreeing to pay \$4750.00 for two (2) automobiles, certain other minor equipment, and for the claimed operative rights for a passenger service between Red Bluff and Chico. The automobiles secured consisted of one (1) Pierce Arrow, with a seating capacity of 15 passengers, and one (1) White Truck, with a seating capacity of 20 passengers. C.F. Crews has since retired from the partnership and the testimony showed that the greater part of the purchase price has been paid.

After the retirement of Patton and securing the automobiles, the passenger services were maintained between Red Bluff and Chico until August 15, 1923, when the service was extended to Redding, thus covering the entire route between Redding and Chico originally held by Crews and Morss (Chico-Redding Stage Company), granted by our Decision No. 7494 in Application No. 5316, April 9, 1920. The complete details of the unlawful transfer of the rights secured by Application No. 5316 are recited in our Decision in connection with Application No. 7367.

Briefly, the transfers were from Crews and Morss to Shasta Transit Company of the entire rights Redding to Chico, from Shasta Transit Company to J.M. Mauer, to O. Patton, to Crews and Bernardo and, finally, to M. Bernardo, this applicant; the transfer to Mauer and subsequent thereto covered only the operations between Red Bluff and Chico. At the time this application was filed the service was being rendered by the Shasta Transit Company Redding to Red Bluff, and by M. Bernardo Red Bluff to Chico, but on August 15,

1923, as heretofore stated, the applicant commenced through operation between Redding and Chico, thus going beyond the limits of the rights purchased from O. Patton, which only covered the route Red Bluff to Chico.

The testimony of the witnesses was to the effect that there was a positive public necessity for the passenger and express service between Redding and Chico. An exhibit was presented showing that from August 15 to September 10, 1923 a total of 1796 passengers used the stages between Chico and Redding; of that number 527½ travelled between Red Bluff and Redding and the intermediate points. The balance, 1268½, traveled between Red Bluff and Chico.

The testimony presented to the Commission in this and the companion applications - Nos. 7367 and 9319 - clearly showed that M. Bernardo, the applicant herein, had knowledge of the purchase made by the Shasta Transit Company, a copartnership, of the operating rights between Redding and Chico held originally by Crews and Morss, and the testimony also clearly showed that Bernardo's purchase covered only the rights claimed by Patton, from Red Bluff to Chico.

Exhibits were presented in opposition by the Southern Pacific Company and the American Railway Express Company. These have been given consideration.

This application is really a proceeding to put the stamp of legality upon the unlawful operations, for the Statute does not permit the transfer of certificates without the approval of this Commission. Unlawful performance in the past would, under certain conditions, be sufficient justification for denial of a certificate, but on this record we find that the applicant has been operating a satisfactory service in good faith, is financially able to continue

the same and that the operations of the past were without knowledge of the law requirements.

Giving consideration to the equities of the situation, we believe a certificate of public convenience and necessity should issue to the applicant for the operation of a passenger and express service between Red Bluff and Chico, this being the route purchased from Patton in December, 1922.

The right to operate in the territory between Red Bluff and Redding will be disposed of in connection with Application No. 9319.

Under date September 22, 1923 a petition to set aside submission of this proceeding was filed by applicant, the plea being for an opportunity to present the testimony of other witnesses. This petition is denied.

Applicant will discontinue the stage service between Red Bluff and Redding within ten (10) days from the date of this decision.

O R D E R

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

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by M. Bernardo of an automobile stage line as a common carrier of passengers and express between Red Bluff and Chico, and

IT IS HEREBY ORDERED that a certificate of public con-

venience and necessity be and the same is hereby granted, subject to the following conditions:

Express matter which may be handled by applicant under the certificate herein granted shall be limited to shipments which can be handled on the passenger cars, not to exceed one hundred (100) pounds in weight, with the exception of ice cream and its containers.

Applicant herein shall file within a period not to exceed ten (10) days from date hereof his written acceptance of the certificate herein granted and shall file within a period not to exceed twenty (20) days from date hereof tariff of rates and time schedules to be in conformity with the exhibits attached to and made a part of the application, and applicant shall commence operation of the service herein authorized within a period of not to exceed thirty (30) days from date hereof.

The rights and privileges herein granted shall 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 unless such vehicle is owned by him or leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

Dated at San Francisco, California, this 26th day of November, 1923.

C. Shaver
H. B. Bunting
Egerton Shore

Commissioners.