

Decision No. 13418

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

In the Matter of the Application of C. W. TURNEY for a certificate of public convenience and necessity to operate a personal messenger auto service between Los Angeles, Montebello, Whittier and intermediate points.

Application No. 9654

- C. W. Turney, Applicant in propria persona.
- T.A. Woods for American Railway Express, Protestant.
- Herbert W. Kidd and W. O. Schell for Motor Transit Company, Protestant.
- S. B. Cowan for Triangle, Orange County & Santa Ana Express, Protestant.
- R. E. Wedekind for Pacific Electric Railway, Protestant.

BY THE COMMISSION:-

O P I N I O N

C. W. Turney has made application to the Railroad Commission for a certificate of public convenience and necessity to operate a personal messenger auto service between Los Angeles, Montebello, Whittier and intermediate points.

A public hearing was held by Examiner Williams at Whittier.

Applicant proposes a personal messenger service for the transportation of auto accessories and parts exclusively between Los Angeles and Montebello and Whittier and using a three-quarter ton truck operating on a daily schedule leaving Whittier at 9 A.M. arriving at Los Angeles at 10 A.M. and leaving Los Angeles at 3 P.M. and reaching Whittier at 4 P.M. Applicant proposes a rate of 50 cents per 100 pounds with a minimum charge of 35 cents.

In support of his application applicant produced D. S. Green, Bert Leslie, T. L. Estep, C. Jenson, B. W. Harris, F. J. Miller, C. I. Dorn, Paul M. Brown, Charles Saunders, J. S. Monke, J. D. Stall, F. B. Symington and L. S. Moore all dealers in automobile accessories, supplies and garage proprietors in Whittier. Not all of these witnesses testified but it was stipulated by all protestants except the American Railway Express that the testimony of these witnesses would be similar to the several called to the witness stand. Protestant American Railway Express was given the opportunity to call any of the witnesses named but elected not to do so.

The testimony in behalf of applicant seems conclusive that the automobile and garage interests at Whittier and Montebello require a special service of the character offered by applicant. Over a year ago a similar service was maintained without authority of this Commission by E. R. Barnard. When the attention of Barnard was called to the fact that his operation was without valid authority he filed an application with this Commission for a certificate so to do. At the hearing of this application the Independent Truck Company, with headquarters in Whittier, stipulated that if such a service was necessary, as the testimony at the hearing plainly indicated, it would establish the same without delay. Upon this stipulation made by a carrier operating under certificate of this Commission the application of Barnard was denied by Decision No. 12494 on Application No. 9059 dated August 17th, 1923. In this decision the Commission said:

"This Commission cannot condone illegal operation and applicant's attitude throughout has been evasive of his legal duty. It is equally true that existing carriers should heed the reasonable demands of shippers and arrange convenient schedules and service for the public. In the present instance,

protestants should have been more alert to shipper's needs."

The testimony in this proceeding shows that such service was not established by the Independent Truck Company until January 1924 after this applicant had been induced by the dealers of Whittier and Montebello who were present as witnesses to comply with the law and request authority from the Commission to perform service for them. Being unable to procure the establishment of this service by the Independent Truck Company the garage men of Whittier visited the Commission at Los Angeles and represented that the applicant in this proceeding was willing to undertake the service if given the proper legal authority. Thereafter the present application was filed with the Commission.

Witnesses for applicant testified that the service proposed by Turney is indispensable in their business unless each, individually, sends his own stock or repairman to Los Angeles to visit the supply houses and select the accessories or parts needed as has been necessary. They gave assurance that there was enough business of this character to keep applicant busy and that they expected no other service of him than the transportation of automobile accessories and parts and that the rates and schedules he proposes are fair and adequate for the needs.

The application was not protested by the Independent Truck Company which established service in January of like character and had operated the same twenty-six days. C. B. Trueblood, proprietor of the Independent Truck Company, was called to the stand as witness for the Commission and testified that during the period of operation there had been 350 calls for service and that the revenue had paid operating expenses and salary of the driver, but no more. Mr. Trueblood expressed the opinion that

development of the business would make it profitable. He said, however, that he preferred to defer to the wishes of the automobile dealers and garage men of the two places and that he had not known of the Turney application when he established the service. He explained that he had been slow to establish the service because he could not find a suitable man to conduct it.

Protestant Motor Transit Company maintains one-half hourly service to and from Whittier from 6 o'clock in the morning until 11:30 at night with a special express car from Los Angeles about noon each day carrying the heavier packages. Witnesses for applicant did not characterize the service of this protestant as inadequate except that it could not make the selections in stock at Los Angeles and receive the instructions necessary to make the selection at Whittier which are the fundament of the service offered by Turney, as the Motor Transit Company does not provide pick-up or delivery in Los Angeles. Protestant Triangle Orange County Santa Ana Express, according to the testimony of S. B. Cowan its proprietor, attempted to perform similar service over a year ago but failed because of the operation of Barnard. This protestant makes no stop at Whittier except on demand and has no agency at Whittier.

It is apparent from the record in this matter that the service proposed by applicant is necessary for the automobile and garage men of Montebello and Whittier and that the service offered is one that is not offered by any protesting carrier.

The fact that successful service has been established by the Independent Truck Company has proved the demand and use of the service. That there now exists a service maintained by the Independent Truck Company in our judgment ought not to prevent

the granting of the application herein for the reason that the Independent Truck Company had approximately five months in which to establish the service and did not do so. It was surely not "more alert to the shippers needs". In the meantime that portion of the public in need of the service induced the applicant in the present proceeding to undertake the service and the applicant proceeded in good faith to seek legal authorization. We believe, under the circumstances, that he should receive a certificate limited to the commodities incidental to the automobile and garage business in the two places named. In the absence of any proof that points intermediate to Los Angeles and Whittier, except Montebello, require service that portion of the application proposing intermediate service will be denied.

O R D E R

C. W. Turney having made application to the Railroad Commission of the State of California for a certificate of public convenience and necessity to operate auto service between Los Angeles and Montebello and Whittier and intermediate points, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation as a common carrier of auto accessories and parts only as proposed by applicant between Los Angeles, Montebello and Whittier but not between points intermediate over and along the following route,

from Los Angeles via Whittier Boulevard
to Montebello and Whittier

and that a certificate of public convenience and necessity therefor

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

- I - That applicant, C. W. Turney, shall file within fifteen (15) days from date hereof, his written acceptance of the certificate herein granted, and shall file within thirty (30) days of the date hereof, duplicate tariff of rates and time schedules, in accordance with General Order No. 51 of the Railroad Commission, and shall begin service within sixty (60) days from date hereof.
- II - That applicant, C. W. Turney, shall not sell, lease, assign or discontinue the service herein authorized, unless such sale, lease, assignment, or discontinuance shall have been authorized by the Railroad Commission.
- III - That no vehicle shall be operated by applicant unless such vehicles are owned by said applicant, or are leased under an agreement satisfactory to the Railroad Commission.

Dated at San Francisco, California, this 15th
day of April, 1924.

C. Shaver

H. B. Bunnidge

J. H. Whittington