

ORIGINAL

Decision No. 13540

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

THE WHITE LINES,

Complainant,

-vs-

JOHN D. O. FREED,

Defendant.

CASE NO. 1961.

W. J. Quinn & L. N. Bradshaw, for Complainant.

R. H. McDrew, for Defendant.

Ed. Stern, for American Railway Express Company,
Intervenor.

BY THE COMMISSION:

O P I N I O N

The White Lines, a corporation, complainant above named, complains of defendant John D. O. Freed and alleges in substance and effect that said defendant is now and at all times mentioned in said complaint has been operating automobile trucks in the transportation of eggs, at least twice weekly, on the public highway between Modesto and Oakland; that such operation is being conducted without any certificate of public convenience and necessity having been obtained from this Commission as required by the statutory law. Complainant prays for an order of this Commission directing said defendant to discontinue and refrain from the transportation of said freight and property for compensation between Modesto and Oakland over and along the said public highway between said cities.

John D. O. Freed, said defendant, appeared in said action and denied that he is or was at any time mentioned in the said complaint engaged in the transportation of property as a common carrier for compensation between Modesto and Oakland over the said public highway, and alleges further that he has been operating auto trucks in the transportation of property, to-wit, eggs, under a private contract with the Poultry Producers of Central California, a cooperative marketing organization incorporated under the laws of the State of California; and alleges further that this Commission has no jurisdiction over the said defendant in that the defendant is not carrying on the business of a public utility or a transportation company as contemplated in the Auto Stage and Truck Transportation Act of the State of California; and further that no certificate of public convenience and necessity is required of said defendant by virtue of the provisions of Chapter 510 of the Statutes of 1923 relating to the movement of farm products.

A public hearing was conducted by Examiner Satterwhite at Stockton, the matter was duly submitted following the receipt of briefs by the said Poultry Producers of Central California as intervenor in said proceedings and from counsel for said complainant, and is now ready for decision.

The record in this proceeding shows, both by testimony received at the hearing and by stipulation of said parties, that the defendant, John D. O. Freed, is now and at all times mentioned in said complaint was hauling eggs at least twice weekly from the warehouse of the A. B. Shoemaker Company in Modesto to the warehouse of the said Poultry Producers of Central California in Oakland, by virtue of the terms of a written contract with said Poultry Producers Association, for the transportation of said eggs for the

association and its members. The defendant has never transported any other merchandise to or from Modesto or Oakland during the times mentioned except eggs, which were the property of the various members of the said Poultry Producers association prior to their delivery to said association. It appears that the members of the association, who are mostly farmers, haul their own eggs from their farms to the Shoemaker warehouse at Modesto, where they are picked up by the defendant and carried directly to the warehouse of the association in Oakland. The eggs of the producers, in the haul from their farms to the warehouse at Modesto, are in their possession and control. Upon reaching Modesto the producer obtains a receipt for the eggs delivered and the eggs then pass into the possession and control of the Poultry Producers association. All of the eggs which are hauled by the defendant under his contract with the association are produced by the members of the association and these eggs are brought to the warehouse of the A. B. Shoemaker Company for the purpose of securing a sufficiently large volume of eggs to justify economical transportation. It was shown that the service rendered by Freed under his private contract with the association is a little more satisfactory than the service of said complainant White Lines on account of the smaller breakage in transit and on account of the saving of twenty-four hours time in delivery.

The record shows that the Poultry Producers of Central California, in accordance with its sale agreement with all its members, comes into actual possession and control of the eggs of its members when they are delivered to the warehouse at Modesto and the association acts as the agent of the various members in paying the defendant all the transportation charges.

The White Lines is an authorized common carrier of freight between Modesto and Stockton under certificate from this Commission

and at all times mentioned in the complaint it appears was ready, willing and able to transport the eggs which are being carried by the said defendant under his contract with the Poultry Producers of Central California from the Shoemaker warehouse in Modesto to Oakland.

The Auto Stage and Truck Transportation Act of California, Chapter 213, Statutes of 1917, and amendments thereto, defines a transportation company as follows:

Section 1, sub-section (c), - "The term 'transportation company', when used in this act, means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing, any automobile, jitney bus, auto truck, stage or auto stage used in the business of transportation of persons or property, or as a common carrier, for compensation, over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within the limits of an incorporated city or town or of a city and county: provided, that the term 'transportation Company,' as used in this act, shall not include corporations or persons, their lessees, trustees, receivers or trustees appointed by any court whatsoever, in so far as they own, control, operate or manage taxicabs, hotel busses or sightseeing busses, or any other carrier which does not come within the term 'transportation company' as herein defined."

Section 5 of this Act was amended at the last session of the Legislature (Chapter 310, Statutes 1923) and reads in part as follows:

"Each application for a certificate of public convenience and necessity or for an order authorizing the sale, leasing, assignment or transfer of an existing operative right, privilege, franchise or permit made under the provisions of this section must be accompanied by a fee of fifty dollars; provided, however, the movement of products or implements of husbandry and other farm necessities from farm to farm or from end to farm to end from loading point, warehouse or other initial point shall not be subject to the regulations of this act."

We are clearly of the opinion that under said Sub-section (c) of Section 1 the operations of said defendant constitute those of a transportation company for compensation as defined by this

section. We are also satisfied that in accordance with the provisions of Section 5 above quoted the operations of said defendant as disclosed by the record in this proceeding do not fall within the exemption allowed for the movement of farm products.

After a careful consideration of all the evidence in this case, the Commission is of the opinion and hereby finds as a fact that the transportation of property, to-wit, eggs, by auto truck by said defendant, John D. O. Freed, between Modesto and Oakland over the public highway between said cities is an auto truck operation for compensation over a regular route and between fixed termini, for which no certificate of public convenience and necessity has been applied for or granted by this Commission; and that the operation of said defendant over the highway between Modesto and Oakland is in violation of the provisions of the statutory law.

C R D E R

A public hearing having been held in the above entitled proceeding, the matter having been duly submitted on the filing of briefs by counsel, the Commission being now fully advised in the premises, hereby finds as a fact that said defendant, John D. O. Freed, has been and now is engaged in the operation of auto trucks over the public highway for compensation, between fixed termini and over a regular route; that said defendant has not obtained from this Commission a certificate declaring that public convenience and necessity require such operation; and basing its conclusions upon the said findings of fact and upon the additional findings and statements contained in the foregoing Opinion, the Railroad Commission hereby concludes that the said operation should be discontinued

pending the securing of a certificate as provided by Chapter 213, Statutes of 1917, as amended, and

IT IS HEREBY ORDERED that said defendant, John D. O. Freed, be, and he is hereby directed to discontinue and refrain from the transportation of property, to-wit, eggs, for compensation, between Modesto and Oakland over and along the said public highway between the said cities.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be, and he is hereby directed to serve or cause to be served by registered mail upon said defendant, John D. O. Freed, a duly certified copy of this Order.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be, and he is hereby directed to forward to the District Attorneys of the counties in which such operations have been carried on a duly certified copy of this Order.

Dated at San Francisco, California, this 8th day of May, 1924.

C. Cheaney
H. B. Boudier
Irving Martin
Commissioners.