

McS

Decision No. 14330

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

-oOo-

Bakersfield & Los Angeles East Freight
Company, a corporation,

Complainant,

-vs-

F. M. HODGE, L. E. MERSEON, H. A. ROSE,
Mershon & Rose, a co-partnership, Truck-
portation Company, a co-partnership, and
Hodge Transportation Company, a corpora-
tion,

Defendants.

ORIGINAL

Case No. 1768

George Clark for Complainant

H. N. Blair for all Defendants and San Joaquin
Valley Transportation Company

L. N. Bradshaw for Southern Pacific, Intervenor
on behalf of complainant.

BY THE COMMISSION:

O P I N I O N

Complainant, Bakersfield & Los Angeles East Freight
Company, a corporation, complains of F. M. Hodge, L. E. Mershon,
H. A. Rose, Mershon & Rose, a co-partnership, Truckportation Com-
pany, a co-partnership, and Hodge Transportation Company, a
corporation, and alleges that defendants have operated automobile
truck service to and from points in the City of Bakersfield other
than in accordance with this Commission's Order as contained in
its Decision No. 9460 on Application No. 6217 as decided September
3, 1921, said portion of the order reading as follows:

1.

"THE RAILROAD COMMISSION HEREBY DECLARES that public convenience and necessity require the operation by F. M. Hodge, L. E. Mershon and H. A. Rose of an automobile freight truck service between Los Angeles and that portion of the City of Bakersfield lying beyond a radius of 12 blocks from the present Bakersfield terminal of George W. Duntley, doing business under the fictitious name of Los Angeles and Bakersfield East Freight Truck Line; also between Los Angeles and Jewetta, Lerdo, Famoso, McFarland, Delano, Richgrove, Orris, Ducor, Terra Bella, Plano, Porterville, Strathmore, Lindsay, Exeter, Farmersville, Visalia, Tulare, Goshen, Traver, Kingsburg, Selma, Winedale, Fowler, Gilwa City and Fresno, for the common carriage of property; and that such public convenience and necessity require said applicants to operate automobile freight truck service for the common carriage of property in truck loads at two-thirds of the rates per hundred pounds quoted in Exhibit "A", attached to the above application, between Los Angeles and the territory above described, and also a zone extending five miles on each side of the highway traversed on the route by which the above named towns are served and five miles on each side of the said 12 block radius from the said Duntley terminal in Bakersfield. Public convenience and necessity do not require operation of either of said services between Los Angeles and that portion of Bakersfield within said 12 block radius from said Duntley's Bakersfield terminal, nor do they require any local service between Fresno and Fowler, Selma, Kingsburg, Traver, Goshen, Goshen Junction, Visalia or Tulare, or between any of said points."

Complainant alleges that it was not the intention of this Commission by the foregoing portion of its decision to allow defendants to serve any portion of the territory heretofore, or now, served by complainant, i.e: the territory between Los Angeles and Bakersfield including the incorporated limits of both said cities, but that it was the intention of this Commission to protect the operative rights of complainant by allowing defendants to operate from a point beyond the communities served by the complainant corporation, and that the decision is uncertain and not clear insofar as its language refers to "that portion of the City of Bakersfield lying beyond a radius of 12 blocks from the present terminal of George W. Duntley, doing business under the fictitious name of Los Angeles & Bakersfield East Freight Track

Line;" and alleges, further, that continued operation by defendants in the City of Bakersfield is unfair and unjust to the complainant and will cause great damage to said complainant and seriously affect the service complainant has heretofore rendered to the public. Complainant requests an order of the Commission prohibiting the operation by defendants of an automobile freight track service between Los Angeles and any portion of the incorporated limits of the City of Bakersfield and that a supplemental order be made definitely determining and fixing the territorial operative rights of both complainant and defendants.

Defendants duly filed their verified answer denying the material allegations of the complaint.

A public hearing on this complaint was conducted by Examiner Handford at Los Angeles, at which time the matter was duly submitted for decision.

At the hearing it was stipulated that the complaint as to all defendants hereinabove named might be dismissed and that F. M. Hojge, L. E. Mershon and E. A. Rose, a co-partnership operating under the fictitious name of San Joaquin Valley Transportation Company, be substituted as defendant herein.

Mr. G. M. Duntley, President of complainant corporation, testified regarding the operations of his company and as to its ability to handle more traffic to and from Bakersfield; that defendant company had delivered shipments locally within the municipality of Bakersfield, such shipments originating at Los Angeles; that the Bakersfield terminal of his company was formerly located at 15th and K Streets but since the month of January, 1923, his company has operated its Bakersfield Terminal at the same point as defendant company, at 23d Street and Chester Avenue; that his company had always interpreted the decision in Application

No. 6217 as restricting the partnership of Hodge, Mershon & Rose from handling any shipments between Los Angeles and Bakersfield unless originating at or destined to a point 12 blocks north of the then established terminal of complainant corporation.

No other witnesses were offered at the hearing, and it was stipulated by all counsel that the Bakersfield terminal of the complainant corporation was located at 15th and K Streets on September 3, 1921, which was the date of this Commission's Decision No. 9460 on Application No. 6217 of defendant co-partnership for certificate of public convenience and necessity; that the official maps of the City of Bakersfield on file with the Commission be considered as in evidence in this proceeding; and also the tariffs and rules and regulations governing same of both complainant and defendant.

It is apparent that the only issue to be decided herein is the area in the City of Bakersfield in which the defendant is prohibited from rendering pick-up and delivery service by the restriction in the order as contained in Decision No. 9460 on Application No. 6217.

The decision names the Bakersfield terminus of Geo. W. Duntley as a fixed point and authorizes service in the portion of the City of Bakersfield lying beyond a radius of 12 blocks thereof. The record in the instant proceeding establishes the fact that the terminal of said Duntley was at the time of the Decision (No. 9460 on Application No. 6217 as decided September 3, 1921) at 15th and K Streets in the City of Bakersfield. The decision prohibited operation by the defendant co-partnership in that portion of the City of Bakersfield within a radius of 12 blocks from Duntley's terminal as regards service between Los Angeles and

Bakersfield by a declaration that public convenience and necessity did not require such service. Duntley's terminal was thereby declared the central point and a radius of 12 blocks beyond such central point constituted the prohibited area in which defendant's were not accorded operative rights and such prohibition extended to all the area comprised within a circle the circumference of which was 12 blocks distant from the central point which was Duntley's terminal then at 15th and K Streets. The order in Decision No. 9460 on Application No. 6217 should have specifically set forth the restricted and prohibited area and a supplemental order so defining said restricted and prohibited area as regards operation by defendant herein will be made by this Commission.

O R D E R

A public hearing having been held in the above entitled proceeding, the matter having been duly submitted and the Commission being now fully advised and of the opinion that the issues herein presented are properly disposed of by the issuance of a supplemental order in Decision No. 9460 on Application No. 6217, as decided September 3, 1921, such supplemental order defining specifically the restricted area in the City of Bakersfield wherein defendant co-partnership is prohibited from operating in its service between Los Angeles and Bakersfield, and that the complaint herein should be thereupon dismissed;

IT IS HEREBY ORDERED that this complaint be and

it hereby is, as to all defendants, dismissed.

Dated at San Francisco, California, this 4th
day of December, 1924.

C. Sweeney
H. K. Burdette
Irving Martin
Egerton Shaw
J. T. Whittney
Commissioners