

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
O. W. JACKSON, an individual, for)
certificate of public convenience and)
necessity to operate under contract a) Application No. 10868
motor freight service between Imperial)
and El Centro, California, and San Diego,)
California.)

Hardy, Elliott and Aberle, by Fred Aberle, Jr.,
for Applicant.
P. C. Thacker for Pioneer Truck and Transfer Co.,
Protestant,
F. B. Dorsey for San Diego & Arizona Railway
Company, Protestant,
H. J. Bischoff for Borderland Express, Protestant,
E. A. Woods for American Railway Express Company,
Protestant.

BY THE COMMISSION -

O P I N I O N

O. W. Jackson has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by him of an automobile truck line as a contract carrier of freight between Imperial and El Centro in Imperial County on the one hand and San Diego on the other hand.

A public hearing on this application was conducted by Examiner Handford at Los Angeles, the matter was duly submitted on the filing of briefs, and it is now ready for decision.

Applicant proposes to operate in connection with two certain contracts heretofore entered into with Valley Wholesale Grocery Company of El Centro and the Pacific Land and Cattle Company of Imperial. Under these contracts applicant proposes to haul groceries, merchandise and all other commodities for the Valley Wholesale Grocery Company from San Diego to El Centro, and to haul meats and all other articles of merchandise from Imperial to San Diego exclusively for the Pacific Land and Cattle Company. Under the respective contracts, applicant is

obligated to make three trips per week between San Diego and El Centro and Imperial, being guaranteed a capacity load in each direction at rates of forty (40) cents per ton up to a total of 125 tons; and of fifty (50) cents per ton on all tonnage in excess of 125 tons per month; with a guarantee of \$500.00 per month from each of the companies for which hauling has been arranged under contract. Applicant has available for this service one $3\frac{1}{2}$ ton truck of 1925 model, valued at approximately \$5800., and has also arrangements whereby a $3\frac{1}{2}$ ton Moreland Truck can be secured in case of break-down or emergency.

Applicant, testifying in his own behalf, asserts that the desired service is necessary, particularly for the movement of the dressed meats and other products of the Pacific Land and Cattle Company; that he is in a position to give dependable service in the handling of such commodities; that he has had some six years experience in truck transportation; that he was requested to arrange and install the proposed service by the Pacific Land and Cattle Company; that upon securing the contract from the Cattle Company he also secured a contract from the Valley Wholesale Grocery Company thereby providing a capacity load back-haul from San Diego to El Centro, the combination of the capacity loads in both directions making possible the success of the proposed venture. Applicant stated that he would not accept a certificate for a one-way haul, the combination of the hauls arising from both contracts being necessary to provide sufficient revenue.

Witnesses representing the Pacific Land and Cattle Company and appearing in support of the application testified that the service now proposed to be handled under contract was formerly handled by protestant, Borderland Express; that the Cattle Company desired to control and direct by its own methods the transportation of its products and that this desire was one of

the reasons for execution of the contract; that while the Borderland Express Company had handled the shipments to the best of its ability goods were not always delivered in the best of condition, there being some chafing and, in one instance, loss by pilferage; that applicant was considered to have the necessary qualifications to successfully undertake the transportation service and conduct same in a manner in accordance with the Cattle Company's requirements; that the Cattle Company anticipated receiving better and more economical service under the proposed contract than was available from the authorized carriers; and that if the application was not granted it was the attitude of the Cattle Company officials that they would establish their own trucks to be used in the carriage of their products. It was further testified that the Cattle Company would give any carrier a contract for the same class of service as that anticipated from the applicant under the contract already executed. There was no evidence offered in support of the necessity for the transportation of the groceries, supplies and merchandise for the Valley Wholesale Grocery Company other than that given by the applicant.

The granting of the desired certificate is opposed by Borderland Express, San Diego & Arizona Railway Company, Pioneer Truck and Transfer Company and American Railway Express Company.

Mr. F. B. Dorsey, Traffic Manager of San Diego & Arizona Railway Company, testified as to the investment in property and facilities by his company; that daily express service was available between El Centro and San Diego; that tri-weekly local freight service was given and that prior to the advent of authorized truck lines a daily local freight service had been available; and that the granting of the application was protested on the basis that adequate facilities were offered and at reasonable rates, and against which service and rates there had been no complaint by the public.

W. H. Gibson, proprietor of the Borderland Express - an authorized motor freight carrier, testified as to the equipment available for the public over his route; that two or three trucks moved each way daily; that empty equipment was always available for the movement of additional freight in both directions; and that he was ready, able and willing to provide all service necessary in the hauling of commodities between San Diego and El Centro over which route he held a certificate. Exhibits filed by this protestant showed an unused tonnage capacity during the period, March 2nd to April 9th, both dates inclusive, of 623 tons westbound and of 412 tons eastbound between Imperial Valley and San Diego.

After full consideration of all the evidence and exhibits in this proceeding, we are of the opinion and hereby find as a fact that there has been no showing made by applicant that public convenience and necessity require the establishment of the proposed service. The only necessity, if such there be, is that of the Pacific Land and Cattle Company who desire to more closely supervise the handling of their dress^{ed}/meats and other products from the packing house in Imperial to the cold storage warehouse in San Diego. This company has not shipments in sufficient volume to justify their handling in carload lots, under refrigeration, by railroad and has therefore been compelled to use motor trucks to compete with their products in the San Diego market. There is no showing that the handling of these commodities by the authorized carrier has been unsatisfactory, other than that it is the desire of the Cattle Company to so closely and intimately control their shipments that they desire to practically select the employee that is to handle them, and for such reason they have persuaded applicant to seek authority for the carriage of their goods. To enable the applicant to successfully undertake the proposed service it has been necessary to secure a capacity

load back-haul and to such end a contract has been negotiated with the Valley Wholesale Grocery Company for the movement of its shipments from San Diego to El Centro. These shipments consist of commodities such as are usually handled by wholesale grocery firms and are not perishable in their nature and there is nothing in the record which indicates, other than that a contract has been executed with the applicant, that there is any complaint as to the service of the authorized rail and truck carriers, either as to rates, time schedules or service.

Under the conditions presented in this proceeding the Commission is asked to issue a certificate of public convenience and necessity to authorize the carriage of the products of a particular shipper and to do so when there is no showing that the facilities, service and rates of the authorized carriers are the subject of complaint, either as to their being inadequate, discriminatory or unreasonable. Such a premise is not justification for the granting of a certificate and if the shipper desiring absolute control over its freight movements cares to transport its products in its own trucks, there is no certificate required nor is the matter one within the jurisdiction of the Commission under the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto, and, from the testimony herein, in no other manner will the shipper secure the intimate personal supervision which it is seeking, and which apparently was the underlying reason for the execution of the contract. The application herein asks that a certificate of public convenience and necessity be issued; the evidence shows that private convenience and necessity is to be served and such for but one shipper. Under such a state of facts the Commission, in the interest of public policy, cannot issue the certificate as prayed for and the application will be denied.

O R D E R

A public hearing having been held in the above entitled proceeding, the matter having been duly submitted following the receipt of briefs, the Commission being now fully advised and basing its order on the finding of fact as set forth in the preceding opinion,

THE RAILROAD COMMISSION HEREBY DECLARES that public convenience and necessity do not require the operation by O. W. Jackson of an automobile truck line as a contract carrier of freight between Imperial and El Centro on the one hand and San Diego on the other hand, and

IT IS HEREBY ORDERED that this application be and the same hereby is denied.

Dated at San Francisco, California, this 15th day of June, 1925.

H. B. Brundage
Chairman

George D. Iguine

Emmuel J. ...
COMMISSIONERS.