

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the operation by)
CALIFORNIA TRANSIT COMPANY of a through) Case No. 2107
service between Oakland and Sacramento.)

Jesse H. Steinhart, for Complainant,
W. E. Travis and Earl A. Bagby, for Defendant.

SEAVEY, Commissioner -

O P I N I O N

The above entitled proceeding is a matter instituted by San Francisco-Sacramento Railroad Company, a corporation, operating a railroad and engaged in the carrying of passengers for hire between Oakland and Sacramento.

Complainant alleges that defendant, California Transit Company, is a corporation owning, controlling, managing and operating automobile stages and is engaged in the transportation of persons for compensation over the public highways; that operative rights have been acquired by purchase between Oakland and Rodeo and between Vallejo and Sacramento, but no operative right is held between Oakland and Sacramento; and that said defendant corporation has advertised and charged a through fare at less than a combination of its local fares between Oakland and Rodeo and between Vallejo and Sacramento, and has also advertised and operated a through service from Oakland to Sacramento.

It is further alleged that these through fares and the through service from Oakland to Sacramento are illegal operations, wherefore complainant prays for an order of this Commission compelling defendant, California Transit Company, to cease and desist in its illegal operations and that it be found in and be punished for contempt of the Commission and for such further orders as may be proper.

Defendant in its answer, in general, denies the allegations and maintains that in the conduct of its business it has the right to transfer its equipment from one operative right to another as it sees fit and that its acts have not been illegal or contrary to the orders of this Commission.

A public hearing was held in this matter at San Francisco, the matter was submitted after oral argument and is now ready for decision.

The record discloses that California Transit Company in Application No.7693, Decision No.10813, decided August 1, 1922, desired a certificate of public convenience and necessity authorizing it to transport persons and property for compensation by means of automobile busses between Oakland and Sacramento. The order in said decision denied the application for the operation of through service between Oakland and Sacramento and further order was made that within ten days after the effective date of the order made in Decision No.9892 (wherein the right to operate a through service by Western Motor Transportation Company, predecessors in interest to defendant company, was under consideration), "California Transit Company shall cancel tariff of rates and time schedules in effect, covering through service between points south of Vallejo to and including Oakland, to points north of Vallejo, to and including Sacramento, to points south of Vallejo, to and including Oakland."

No dispute exists as to the facts in this case. In accordance with the above paragraph defendant made correction as to the passenger fares but the old tariffs of fares and rates continued to apply for packages, baggage, commutation, express and more specifically referred to as tariffs of Western Motor Transport Company's C.R.C. No.9, and supplements, and California Transit Company's C.R.C.No.11. Rates No.1, 2 and 3; also with the possible exception of a short interval of time a through bus was operated from Oakland to

Sacramento, there being about a five minute lay-over at Vallejo. Through service was advertised from Oakland to Sacramento and with the exception of making the passenger fare a combination of the local fares it does not appear that Decision No.10813 was considered by California Transit Company in its operations.

Mr. W. E. Travis; President of defendant company, and testifying in its behalf, stated that orders had been given to comply with Decision No.10813 by changes in the tariffs of fares and discontinuance of the operation of a through bus. This latter change increased costs of operation and former method of operation was reverted to. The argument of witness was that if "the exigencies of the occasion, either daily or intermittently, require me to send the car through, why, it is my car, I can send it where I please, and whose business is it if I send it on through?"

If witness' viewpoint be correct, then the powers of the Commission vested in it by legislative act to "supervise and regulate" transportation companies would be of no effect.

Regular assignment of a vehicle on its arrival at Vallejo from Oakland to the run from Vallejo to Sacramento would make the Commission's order in its Decision No.10813 of no effect and such practice indicates evasion and subterfuge.

This phase of operation has been considered previously as the following from Decision No.9442 indicates,-

"*****on several occasions, through cars were operated, that such operation was claimed by applicants to be necessitated through the fact that cars had broken down and connection could not be made at McKittrick, which required one of such applicants to lease the car and employ a driver of the other applicant for the purpose of finishing such portion of the trip required over the operative right held by the other applicant. The frequency of these through trips alleged to be necessary by reason of mechanical failure of cars is looked upon by the Commission as a subterfuge and such methods of operation should not occur in the future."

That decision further stated that where an application was made to

"consolidate two connecting lines, applicants will be required to show, and to the satisfaction of the Commission, that a public necessity clearly exists for the through service which they propose to establish by such consolidation, particularly when the proposed through service will be in direct competition with existing lines *****."

In Case No.1640, Decision No.10538, complaint was brought against Coast Truck Line for the operation of through service. That company had connecting operating rights but no certificate of public convenience and necessity for a through service from points covered in one right to points covered in an adjoining right. The following extract from that decision is of special significance in the instant case:

"Shipments which may be consigned from Los Angeles to Oceanside, there to be taken over the other portion of the route to San Diego, can be handled but cannot be transported in the same vehicle, must be transferred at Oceanside and the through rate must be a combination of the local rates as formerly existing when the lines were operated as separate entities, unless proper authority has been secured from this Commission after formal application and the action of the Commission thereon."

This decision on appeal was affirmed by the Supreme Court of the State of California (191, Cal.257).

The Commission's Decision No.9892 was in accordance with the foregoing. Reference is also made to Decision No.9065 in which on appeal to the Supreme Court (Case S.F. No.10099, 189 Cal.573) was sustained.

The Auto Stage and Truck Transportation Act clearly vests the Commission with power and authority "to supervise and regulate transportation companies, issue certificates of public convenience and necessity, and may attach to the exercise of the rights granted --- such terms and conditions as, in its judgment, may require." It also may for good cause suspend and revoke, alter or amend a certificate.

In the exercise of the duties with which the Railroad Commission is charged as contained in the provisions of the above Act, the matter of through rates and the "linking up" of certificates to enable the operation of through service has been considered and it has been consistently held that such changes resulting in extension of rights can only be legally accomplished by a formal order of the Commission. The decisions cited leave no doubt as to the principles heretofore promulgated by the Commission and that these principles are sound must be accepted in view of the affirmations by the Supreme Court of the State of California, as hereinabove noted.

I am of the opinion and hereby find as a fact that defendant has sought to obtain by indirection an operative right which was specifically denied by Decision No. 10813 and defendant's operations are contrary to orders of this Commission and should be discontinued forthwith, together with all necessary changes in its tariff .

I submit the following form of order:

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 basing its order on the findings of fact as appear in the opinion which precedes this order,

IT IS HEREBY ORDERED, that defendant, California Transit Company, shall within five (5) days from the date of this order cease and desist in the operation of its vehicles between Oakland and Sacramento via Vallejo as a through vehicle and hereafter operate separate busses or vehicles between Oakland and Vallejo and between Vallejo and Sacramento, in accordance

with the opinion which precedes this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of July 1925.

H. B. Brundage

C. L. Seaver

George D. Squires

Emmett C. ...
COMMISSIONERS.