

Decision No. 15768

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on )  
the Commission's own initiative into ) Case No. 2091  
the methods and practices of operation )  
by David Schmidt and F. K. Emich, co-partners. )

Robert M. Thomas, for Respondents,  
Chas. A. Beck, for Geo. Harms and  
Harold Frasher, Intervenor.

BY THE COMMISSION -

ORDER REVOKING AND ANNULING OPERATIVE RIGHTS

In the above entitled proceeding, an order to show cause why the certificate of public convenience and necessity granted to David Schmidt and F. K. Emich under and by virtue of Decision No. 7973, in Application No. 5904, should not be revoked and annulled, the matter came on regularly for hearing before Examiner Satterwhite at Fresno at 10:00 A.M. on the 13th day of April, 1925.

Said order to show cause was issued and based upon certain evidence introduced in a hearing before this Commission on Application No. 9759, which evidence indicated that by certain practices and methods in the conduct of their operative rights under said Decision No. 7973, said David Schmidt and F. K. Emich were violating and ignoring the orders and provisions of Decision No. 11151 of this Commission in Application No. 8312.

The evidence in this proceeding shows that one James M. Parrish, under Decision No. 7222, in Application No. 4096, dated October 8, 1920, was granted a certificate of public convenience and necessity authorizing the operation of a freight truck line as a common carrier of property for compensation between Fresno,

Reedley, Dinuba, Sultana, Orosi, Cutler and intermediate points, Under Decision No.7973 in Application No.5904, dated August 10, 1920, said operative right was transferred by a formal order of this Commission to a co-partnership consisting of said David Schmidt and said F.K. Emich. Subsequent thereto said Schmidt and said Emich filed a joint application with this Commission, being Application No.8312, in which application it was proposed by the said co-partners by transfer to divide said operative right, thereby creating two certificates in the place of one originally authorized by this Commission. There - after on October 23, 1922, the Commission issued its Decision No.11151 on said Application No.8312, wherein said application was denied, the Commission pointing out and holding in said decision that the operative right originally created was indivisible and that through transfer it could not be enlarged upon, nor more than one operative right created, where only one had heretofore existed. A certified copy of said decision was furnished to the said co-partnership through their attorney of record and moreover said David Schmidt and F. K. Emich admitted at the hearing of this proceeding that they had full knowledge of the contents of said decision.

David Schmidt and F. K. Emich both testified as witnesses during the hearing of this proceeding and their testimony shows that, wholly ignoring and without regard for the orders and provisions of said Decision No.11151, they and each of them did split up or separate their said operative rights between Fresno and Cutler and intermediate points as obtained under said Decision No.7973. The record shows that said David Schmidt operated individually and independently that portion of the partnership route between Fresno and Dinuba and F.K. Emich operated individually and independently that portion of the partnership route between Fresno, Sultana, Orosi and Cutler.

Each of them established separate headquarters and separate depots and kept separate and independent accounts of their individual operating expenses and operating revenues. Each of them conducted his operations under a different fictitious name and all shipments offered Emich at his depot from Fresno to Dinuba were always refused by him and freight offered to Schmidt at his office destined from Fresno to Sultana, Crosi and Cutler was always refused by him. It appears that there never was an accounting or division of profits between them after they separated their operations and all of the equipment used by each of them was separately purchased, owned and maintained in their divided service to the public.

The evidence further shows that F. K. Emich on or about April 10, 1923, sold his operative rights without any authority from this Commission, together with his truck equipment, to one Henry Smith and immediately went into the printing business and the said Henry Smith thereafter for a period of about a year and a half conducted the truck service between Fresno and Cutler under the fictitious name of Crosi Truck Line as sole owner until eight or ten days before the hearing of this proceeding, when it appears F. K. Emich bought back the equipment he had sold to Henry Smith and again resumed the truck operations between Fresno and Cutler and at the time of this hearing was still conducting said operations individually and not in connection with David Schmidt.

After a careful consideration of all the evidence in this proceeding, and

Good Cause appearing therefor,

IT IS HEREBY ORDERED that the certificate of public convenience and necessity obtained by said David Schmidt and F. K. Emich, co-partners, under said Decision No. 7973 in Application No. 5904, be and the same is hereby revoked and

annulled.

IT IS HEREBY FURTHER ORDERED that said David Schmidt be and he is hereby directed to cease and hereafter to desist from the transportation of property by auto truck as a common carrier between Fresno and Dinuba and intermediate points unless and until he shall have secured from this Commission a certificate of public convenience and necessity requiring such operation.

IT IS HEREBY FURTHER ORDERED that said F. K. Emich be and he is hereby directed to cease and hereafter to desist from the transportation of property by auto truck as a common carrier between Fresno and Cutler serving Sultana, Orosi and intermediate points, unless and until he shall have secured from this Commission a certificate that the public convenience and necessity require such operation.

IT IS HEREBY FURTHER ORDERED that said David Schmidt and F. K. Emich be and they and each of them are hereby directed to cease and hereafter to desist from the transportation of property by auto truck as a common carrier either as individuals or co-partners between Fresno and Cutler serving Reedley, Dinuba, Sultana, Orosi and intermediate points unless and until they and each of them shall have secured from this Commission a certificate that the public convenience and necessity require such operation.

IT IS HEREBY 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 David Schmidt and F. K. Emich and each of them a certified copy of this order, and

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be and he is hereby further ordered to forward to

the District Attorney of Fresno County a certified copy of this decision.

The effective date of this order shall be the 20<sup>th</sup> day of July, 1925.

Dated at San Francisco, California, this 10<sup>th</sup> day of July, 1925.

*H. B. ...*

*George W. ...*

*E. ...*

COMMISSIONERS.