

Decision No. 157169

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

COASTSIDE TRANSPORTATION COMPANY, a corporation,)
Complainant.)
vs.) CASE NO. 2054.
CAESAR PELLEGRINI,)
Defendant.)

Harry A. Encoll and James A. Miller,
by James A. Miller, for Complainant,
Sanborn and Roehl and De Lancey C. Smith, by
De Lancey C. Smith, for Defendant.

SEAVEY, Commissioner -

O P I N I O N

Coastside Transportation Company, a corporation, operating and rendering an automobile passenger, freight and express service as authorized by the Railroad Commission between San Francisco and Pigeon Point and intermediate points by way of Salada and Moss Beach, and also between San Francisco and Pigeon Point by way of Colma, San Mateo and Half Moon Bay, makes complaint in which it alleges that Caesar Pellegrini has for some time past been engaged in the business of owning, controlling, operating or managing automobile trucks in the business of transporting property, or as a common carrier, for compensation, over the public highways over a regular route between the City and County of San Francisco and the towns of Moss Beach and Half Moon Bay without first having obtained a certificate of public convenience and necessity from this Commission authorizing said operations. Complainant prays that the Railroad Commission, after due hearing and investigation, issue its order compelling

defendant to cease and desist in his operations as a transportation company, or as a common carrier of property for compensation, and for such further order as may be proper.

Defendant duly filed his answer making general denial of the matters and allegations contained in the complaint.

A public hearing on this complaint was held at San Francisco, the matter was duly submitted following the receipt of briefs, and it is now ready for decision.

The record shows that a firm of importers and wholesale grocers at San Francisco notified defendant Caesar Pellegrini practically every day that goods were to be transported to Moss Beach and Half Moon Bay to one or all of their five or more customers at these places. These goods were sold f.o.b. San Francisco, the customers paying the firm direct or to a solicitor. This procedure has been followed and goods have been so transported by defendant since about 1920.

Testimony of three witnesses who received goods via defendant Pellegrini's trucks showed that the service had been rendered for from two and one half to four years, or for the time they had been in business. Payments had been made to defendant from time to time but none of these witnesses definitely stated that any payment was compensation for transporting goods, though it was admitted that it might have been. One witness testified that he had never been charged for transportation of goods by defendant though he had been in business two and one half years.

The testimony of defendant Pellegrini indicates that he has been engaged in the trucking business since previous to 1917 with the exception of an interval while he was in the United States Army. His equipment at present consists of four trucks. Vegetables, artichokes, sprouts and other products are hauled daily from about sixty ranches in the vicinity of Half Moon Bay to San Francisco markets, though deviations as to routes

traveled are made as required. On the return trips from San Francisco goods are transported to witnesses. It is maintained that no charge is made for this service.

The record is clear that defendant Pellegrini has daily transported farm produce from Half Moon Bay and vicinity to San Francisco and on practically all of the return trips has transported goods to certain stores and a hotel located at Moss Beach and Half Moon Bay. The regularity of this return service was such that I am not convinced that it was continuously rendered free and from such record I am forced to the conclusion that compensation therefor was received by defendant Pellegrini.

The brief on behalf of defendant cites the lack of regular service or schedules and frequent refusal of business, as being grounds for exempting defendant from the provisions of the Auto Stage and Truck Transportation Act. If the views therein presented were sound, then anyone might engage in the transportation of property and by irregularity of operation, or selection of customers or shippers, be relieved from the provisions of that Legislative Act. Each method of operation would lead to discrimination and is at direct variance with sound regulation and with the provisions of the statutory enactment.

Dissatisfaction was expressed by certain witnesses as to the operations, tariffs, and other matters of complainant, Coastside Transportation Company. This can have no bearing in the present proceeding. Alleged failure of an authorized carrier in fulfilling its obligations in any of those matters may be brought to the Commission's attention by appropriate proceedings that are open and available to any complainant.

After careful and complete consideration of the record, including oral argument and briefs filed I am of the opinion and hereby find as a fact that defendant Caesar Pellegrini has been engaged in the transportation of property for compensation over a

regular route and between fixed termini and without having first secured a certificate of public convenience and necessity from the Railroad Commission authorizing such transportation as required by the provisions of Section 5 of Chapter 213, Statutes of 1917, and effective amendments thereto, and that the operations of defendant are unlawful and in violation of the provisions of said Chapter 213, Statutes of 1917, and effective amendments thereto.

I recommend the following form of order:

ORDER

A public hearing having been held upon the foregoing entitled proceeding, evidence having been received, briefs having been filed, the matter having been duly submitted, the Commission being now fully advised and basing its order on the finding of fact as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED, that defendant Caesar Bellogrini be and he is hereby directed to immediately and permanently discontinue service in the transportation of property, for compensation, over the public highways between the City and County of San Francisco and the towns of Moss Beach and Half Moon Bay, in San Mateo County until such time as he shall have secured a certificate of public convenience and necessity in compliance with the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto, and,

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission be and he hereby is directed to forward by registered mail a copy of the within decision to the District Attorney of the City and County of San Francisco, and to the District Attorney of the County of San Mateo, California.

The effective date of the order is hereby fixed as twenty (20) days from the date hereof.

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 13th day of July, 1925.

C. Seaver

George D. Squires

Ernest Cook

COMMISSIONERS.