

Decision No. 15476

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
HENRY SMITH for certificate of public)
convenience and necessity authorizing)
the operation of an automobile truck) Application No. 11000
line as a common carrier of freight)
between Fresno, Sultana, Orosi, Cutler,)
Yettem and Orange Cove.)

Chas. A. Beck, for Applicant.
A. T. Luce and Norman E. Asp, for Atchison,
Topeka & Santa Fe Railway Co., Protestant.
Robt. N. Thomas, for Schmidt & Emich, Protestants.
H. E. Hardwick, for Fresno, Orange Cove Auto Line,
Protestant.

BY THE COMMISSION:

O P I N I O N

In this proceeding Henry Smith seeks a certificate of public convenience and necessity permitting the operation of an automobile truck line as a common carrier of freight between Fresno, Sultana, Orosi, Cutler, Yettem, Orange Cove and intermediate points. To perform this service applicant will use one 2-1/2-ton Garford truck, and will operate one round trip daily, leaving Fresno at 10:00 a.m. and reaching Orange Cove, the most distant point, at 2:30 p.m. Between Fresno and the points named a rate of 20 cents per 100 pounds is proposed, subject to a minimum charge of 50 cents.

A public hearing was conducted by Examiner Austin at Fresno on July 8, 1925, when evidence was offered, the matter was submitted, and it is now ready for decision.

Applicant testified that in 1923 he purchased the operative right between these points from F. K. Emich, a member of the firm of Schmidt & Emich, who had theretofore operated the line under a certificate from this Commission. Applicant did not seek the Commission's approval of this transfer, he stated, because of Emich's assurance that this was unnecessary, moreover, it was understood that Emich would make any necessary application for such approval. Smith operated the line until April, 1925, when he discontinued upon learning that his operations were unlawful. He stated he had interviewed merchants along the route, who expressed a need for the truck service.

To show a necessity for the service applicant called five merchants from Orange Cove, Yettum and Cutler, all of whom were substantial shippers. In general, they testified that rail shipments from Fresno, the source of their supplies, were delivered about three to five days after the orders had been placed, but during the course of applicant's operations only one day was required to complete deliveries. On many occasions the truck driver took their orders and had them filled at Fresno and delivered immediately. Some of these witnesses testified they would handle such shipments in their own trucks rather than patronize the railroad.

During the fruit season this delay was aggravated by their inability to have shipments promptly transferred from the freight depot, the local draymen being then engaged in hauling fruit and produce. The truck rates, it was stated, are lower than the combined rail and drayage charges. Applicant also called a representative of the Union Truck Terminal at Fresno, who stated frequent inquiries were made by Fresno wholesale dealers for truck service to the points in question.

related principally to the purported transfer to Smith, in 1923, of the operative right between the points involved herein. Mr. Emich stated that Smith and not Emich undertook to obtain the Commission's approval of this transfer. To corroborate this statement he produced an instrument executed at the time by both Emich and Schmidt, purporting to guarantee to Smith "the full rights and privileges to use the truck line to Sultana, Orosi and Cutler," and containing a pencil notation, made by Smith when the document was delivered, providing that "If not transferable, money down refunded." He stated this alteration was made to secure to Smith the return of his money should he be unable to obtain approval for the transfer of the certificate. Protestant's counsel, during his cross-examinations of applicant sought to impeach him by referring to the latter's testimony given upon the hearing of Case 2091, where, it is contended, Smith admitted that he, himself, would secure a permit. But as we read the transcript of that case, Smith testified, as he did in this case, that Emich was to secure the permit. His statement to the effect that "I was to get it," relates merely to his understanding that he was to obtain the operative rights from Emich, not that he was to make application to the Commission. This interpretation is consistent with his previous statement, at that hearing, that Emich was to secure the permit. Under the record in this case, we believe that we must necessarily resolve in favor of applicant the conflict between his testimony and the testimony of Emich.

We believe the evidence discloses a need for the service proposed by applicant. Although we take judicial notice of our order dated July 10, 1925, (Decision No. 15168 in Case No. 2091) cancelling and revoking the operative rights

of Schmidt & Emich and each of them, over the territory in question, nevertheless our decision in the instant proceeding is not predicated on the involuntary withdrawal of these protestants from the field, it being our opinion that the record in this proceeding in itself justifies the granting of the certificate sought.

Upon full consideration of the evidence, we are of the opinion and hereby find as a fact that public convenience and necessity require the operation by Henry Smith of an automotive truck service for the transportation of freight as a common carrier between Fresno, on the one hand, and Sultana, Oroshi, Cutler, Yettam and Orange Cove and intermediate points, on the other hand. An order will be entered accordingly.

ORDER

A public hearing having been held in the above entitled application, the matter having been duly submitted, the Commission being now fully advised, and basing its order on the findings of fact which appear in the opinion preceding this order:

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby declares that public convenience and necessity require the operation by Henry Smith of an automotive truck service for the transportation of freight as a common carrier, between Fresno, on the one hand, and Sultana, Oroshi, Cutler, Yettam and Orange Cove and intermediate points, on the other hand.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to Henry Smith to operate the service hereinabove described, subject, however, to the following conditions:

1. Applicant shall file his written acceptance of

the certificate herein granted within a period of not to exceed ten (10) days from date hereof; shall file, in duplicate, tariff of rates and time schedules within a period of not to exceed twenty (20) days from date hereof, such tariff or rates and time schedules to be identical with those attached to the application herein; and shall commence operation of said service within a period of not to exceed thirty (30) days from date hereof.

2. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

3. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all purposes, other than hereinabove stated, the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 1st day of October, 1925.

H. B. Brundage

George D. Squires

Leon Whitell
Commissioners.