

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

M. G. Fillipponi and P. F. Magoria, co-  
partners transacting business under the  
firm name and style of Cambria Truck  
Company, a co-partnership, Domingo S.  
Rosa, doing business under the name of  
Cambria Stage line and Henry Minetti and  
Dave Vamoni, transacting business under  
the firm name of Coast Truck Company,

Complainants,

vs.

Benjamin Tonini,

Defendant.

Case No. 1812

Benjamin Tonini,

Complainant,

vs.

D. S. Rosa,

Defendant.

Case No. 1832

D. S. Rosa,

Complainant,

vs.

Cambria Truck Company,

Defendant.

Case No. 1969

E. L. McConnel and Joe Genardini,

Complainants,

vs.

D. S. Rosa,

Defendant.

Case No. 2000

In the matter of the application of D. S.  
ROSA, for a certificate declaring that  
public convenience and necessity require  
the operation of an automobile stage line  
carrying passengers and express between  
the towns of Cambria and San Simeon in  
the County of San Luis Obispo, State of  
California.

Application No. 8257



BY THE COMMISSION:

O P I N I O N

In the above entitled proceedings said Case No. 1969, said Case No. 2000, said Application No. 8358 and said Application No. 9670 were consolidated for hearing at San Luis Obispo by Examiner Satterwhite on May 20, 1924, for the reason that the issues involved in each and all of said matters embraced the same territory proposed to be served, and that the only persons involved as the real parties in interest at the time of the hearing were said D. S. Rosa and said E. L. McConnel.

The Railroad Commission by an order duly made on the second day of May, 1924, set aside the submissions in four of the above entitled matters, viz.: Complaint No. 1812, Complaint No. 1832, Application No. 8257 and Application No. 8358, in order that a full and final hearing might be had on all of the above entitled matters and a final order and decision rendered upon all of the issues involved in said matters.

A public hearing on all of said matters was conducted before Examiner Satterwhite at San Luis Obispo, the matters were submitted and are now ready for decision.

In Complaint No. 1812 the original complainants were M. G. Filipponi and P. F. Magori, co-partners under the firm name of Cambria Truck Company, Domingo S. Rosa, doing business under the name of Cambria Stage Line and Henry Minetti and Dave Vanoni transacting business under the firm name of Coast Truck Company.

This case was originally heard by Examiner R. T. Eddy and submitted for decision on October 30, 1922. Since its original submission said E. L. McConnel, by transfer duly authorized by this Commission, has succeeded to the truck service of said Cambria Truck Company and said Coast Truck Company under Decision No. 13000 in Application No. 9577 and Decision No. 11354 in Application No. 8487.

Complainants in this case No. 1812 allege in substance and effect that said defendant Benjamin Tonini has ceased and failed to maintain his authorized service under Decision No. 6807 in Application No. 4097 at all times since June 30, 1922; that as the owner of the mail contract from the United States Government to carry the mail between San Luis Obispo and San Simeon, said defendant transported only such passengers and light freight as he could conveniently carry along with said mail on one automobile; that his said service to the public was incidental to his mail contract and that he consistently refused all baggage and freight, except bread and small packages for stores along his route; that at no time did defendant render service as a common carrier of freight and passengers in good faith; and that his service was entirely subordinated to the carrying of mail. Complainants prayed for an order of the Railroad Commission annulling and revoking the said operative rights of said defendant between San Luis Obispo and San Simeon. Benjamin Tonini, said defendant, in his answer filed herein denies generally and specifically all of the material allegations contained in said complaint.

During the hearing of the above named proceedings no new or additional evidence was presented in support of the said complaint and the matter was submitted by said complainant

Domingo Rosa on the evidence taken and records made at the hearing of said case before Examiner R. T. Eddy on October 30, 1922. Said E. L. McConnel, as legal successor in interest of the other said complainants, moved a dismissal of said complaint.

The evidence and record shows that said defendant Benjamin Tonini was granted a certificate by the Railroad Commission on October 28, 1919, to operate a passenger and freight service between San Luis Obispo and San Simeon. It appears that he had been carrying the United States mail over this route for several years and continued to do so until his mail contract expired on June 30, 1922, at which time he made and executed a power of attorney to said E. L. McConnel to operate said passenger and freight service for him. Said E. L. McConnel has ever since said time continued to operate said service. It appears that said defendant used a Ford car with a delivery body when he began his authorized service and shortly thereafter purchased a Packard car, which was later remodeled by removing the back seat. This change was necessary, in order to make room for the increasing volume of mail.

The record shows that since securing a certificate, Tonini has transported only such passengers and light freight as could be conveniently handled along with the mail, and that his service to the public was merely incidental to the mail contract. If more than two passengers presented themselves for a given trip it was the practice of Tonini to turn the extra passengers over to the Cambria Stage Line. At times the mail was so heavy that he declined to handle either freight or passengers. During the three months prior to July 1, 1922,

Tonini because of the large quantities of mail, was compelled to refuse all packages, except some bread and a few small packages for the stores. The freight business handled by him consisted in the main of perishable goods, small machine parts and merchandise requiring prompt delivery.

The record clearly shows that Tonini regarded the passenger and package traffic only as an incident to the mail contract and that at no time has he attempted to render service as a common carrier of freight or passengers as that term is ordinarily used. Having secured the mail contract he applied for and obtained from this Commission a certificate of public convenience and necessity to operate a passenger and freight service. Having secured the certificate he accepted such package freight as could be piled on top of the mail which ordinarily filled the body of his car and at times had to be strapped to the running board. He accepted only such passengers as could be accommodated on the seat beside the driver or who were willing to ride on top of the sacks of mail. He made no effort to accommodate the public by putting on such additional equipment as might be necessary to properly or adequately handle passengers and freight. His service to the public was subordinated to the carrying of the mail and his operations have never been conducted as a common carrier of passengers and freight, and so far as the public is concerned he virtually abandoned his service three months prior to the expiration of the mail contract when the volume of mail became so heavy as to make it necessary for him to decline to receive passengers and freight.

After a careful consideration of the evidence, we are of the opinion and hereby find as a fact that said Benjamin

Tonini, defendant, has not in fact been operating as a common carrier of passengers and freight between San Luis Obispo and San Simeon under the certificate granted him by this Commission on October 28, 1919, and the order herein will annul and revoke said certificate because of defendant's failure to render such service particularly during the three months prior to July 1, 1922.

Case No. 1832 is a complaint by said Benjamin Tonini against Domingo S. Rosa. Complainant alleges in substance and effect that said defendant for a long time prior to the filing of said complaint had been operating a passenger and freight service between San Luis Obispo and San Simeon without any authority from the Railroad Commission so to do; that said defendant has violated the law and the rules of the Railroad Commission in his operation as an authorized common carrier of passengers and freight under the authority of this Commission in the following particulars, to-wit: that defendant has failed on many occasions, without justification, to make regular trips between San Luis Obispo and Cambria as provided under defendant's time schedule on file with the Railroad Commission and has also on many occasions hauled packages of greater weight than 75 pounds, although defendant's tariff of rates provides that no package of more than 75 pounds shall be accepted or carried.

Defendant filed a written answer to said complaint in which he denies specifically each and all of the allegations of said complaint. This case was first heard before Examiner R. T. Eddy on January 16, 1923, and on that date after receipt of some evidence the hearing was adjourned to a date to be fixed. During the hearing of this case before Examiner Satterwhite on May 20, 1924, no further evidence whatever was presented in support of said complaint, but by stipulation of said parties in said proceeding

the matter was submitted upon the records of the former proceedings of said case. We have carefully read and examined the transcript of the testimony and record in this case made before Examiner Eddy on January 16, 1923, and it discloses that complainant at that time offered but scant or no evidence in support of said complaint or the allegations thereof and the record contains no evidence at all to justify the relief sought by said complaint and the order herein will therefore contain a dismissal of said complaint.

Case No. 1969 is a complaint by D. S. Rosa against Cambria Truck Company filed January 2, 1924. Complainant alleges that said defendant Cambria Truck Company had violated the terms of its certificate in that it had entirely abandoned its authorized truck service on and after December 24, 1923, without first securing permission to do so from this Commission. Said E. L. McConnel, as the successor in interest of the said Cambria Truck Company, filed an answer to said complaint, denying each and all of the allegations of said complaint. The record shows that during the interim between the filing of said complaint and the hearing of the instant proceedings this Commission, by its Decision No. 13000 on Application No. 9577, authorized the transfer of the said operative rights of said Cambria Truck Company to said E. L. McConnel. At the time of the filing of said complaint the record shows that the Cambria Truck Company was owned by said M. J. Fillipponi.

D. S. Rosa testified in support of his complaint and called one other witness. The testimony of complainant was substantially to the effect that said defendant abandoned and did not operate his truck service for about a week or ten days during the period between December 27th, 1923, and January 3, 1924; by reason of the fact



that the Bank of Cambria had taken possession of Fillipini's truck, which was used in the service, under the terms of a certain chattel mortgage held by the said bank and that after the seizure of this truck, said defendant had never again operated his service. E. L. McConnel, as successor in interest of the said defendant Cambria Truck Company, offered oral and documentary evidence in support of his answer to said complaint, which shows clearly and without contradiction that said McConnel and said M. G. Fillipponi filed a joint application with this Commission for an order authorizing Fillipponi to sell and McConnel to purchase the operative rights granted to said Fillipponi between San Luis Obispo and San Simeon under Decision No. 10511 in Application No. 9877, which is the operative right said complainant asks to have revoked in this complaint. On January 9, 1924, this Commission authorized the proposed transfer in its decision No. 13000, in Application No. 9577. The record also shows that almost simultaneously with the seizure by the Cambria Bank of Fillipponi's truck, E. L. McConnel by written authority from Fillipponi continued to operate this truck service for Fillipponi until January 9, 1924 when this Commission authorized, as above indicated, the proposed transfer of said truck service. The record further shows that E. L. McConnel, as the authorized purchaser, has ever since said date operated a very satisfactory service over said route.

A careful consideration of the evidence in this proceeding convinces us that there is no merit in said complaint and the order herein will contain a dismissal of the same.

Case 2000 is a complaint by said E. L. McConnel and Joe Genardini against D. S. Rosa. Complainants allege in substance

and effect that said defendant D. S. Rosa is and had been continuously for a period of about a year prior to the filing of said complaint violating the law, and the rules and regulations of the Railroad Commission in the conduct of his operative rights as a common carrier between San Luis Obispo and Cambria by transporting freight and packages in excess of the weight authorized by defendant's certificate of public convenience and necessity as shown by his tariffs on file with the Railroad Commission; that he has frequently charged less than the rates set out in his said tariffs for the transportation of both passengers and freight and for each of them; and that said defendant has carried passengers and freight beyond Cambria, to-wit: between Cambria and San Simeon in excess of his operative rights as such common carrier. Complainant prays for an order of this Commission directing said defendant to discontinue all of said alleged unlawful operations and that his said operative rights between San Luis Obispo and Cambria as a common carrier be annulled and revoked.

Defendant, D. S. Rosa, filed his answer to said complaint denying generally and specifically each and every allegation of said complaint and also set out in said answer a further defense thereto, alleging in substance and effect that he had been operating a passenger and freight service for hire between San Luis Obispo and San Simeon prior to May 1, 1917, and that said service has been a continuous daily operation on a fixed schedule from June 8, 1916, to date of filing his answer herein; that on or about the 30th day of September, 1922, said defendant filed with this Commission his Application No. 8257 for a certificate of public convenience and necessity to operate an automobile passenger and express service between Cambria and San Simeon and that thereafter, to-wit, on October 30, 1922, a hearing was regularly heard thereon by this Commission and that said defendant verily believed and understood that



often weighed as much as 100 lbs. and over. These various shipments consisted mainly of groceries, hardware, meats, potatoes, flour, ice cream, cream and milk. Complainant also showed by several witnesses that defendant had frequently charged rates and fares for both passengers and freight at variance with his approved tariff on file with this Commission. It was shown that defendant had transported from time to time various shipments between San Luis Obispo and Cambria for 40 cents per cwt. and had also frequently carried cream from Cambria to San Luis Obispo for 30 cents per cwt. and cream cans for 15 cents per 50 lbs. and from Cayucas to San Luis Obispo for 20 cents per cwt., all of which charges are below his scheduled rates as above set out. The record shows that applicant has also carried passengers between San Luis Obispo and Cambria for \$2.50 which is below his approved tariff. It is also shown that defendant has for the past year operated his stages more or less regularly and carried passengers and freight to San Simeon, which town is nine miles beyond Cambria, without any authority from this Commission.

Defendant, D. S. Rosa, offered no testimony which contradicts to any extent the foregoing facts, as shown by the evidence of said complainant. As the sole witness in his own behalf defendant admitted his entire lack of knowledge and ignorance of the rules and regulations of the Railroad Commission. His testimony shows that he has had no understanding or appreciation of the difference between an approved tariff or a proposed tariff and it appears that he has believed in good faith that a proposed tariff was as effective and valid as an approved tariff. The record shows that during the several years that defendant has operated a stage service between San Luis Obispo and Cambria by authority of this Commission under

Decision No. 5476 in Application No. 3573, and without any right or authority beyond Cambria to San Simeon, only one tariff has ever been filed by him and accepted by this Commission, said tariff being defendant's Local Tariff No. 1, filed on June 1, 1920, under authority of the certificate issued in the above Decision No. 5476. It appears that defendant has offered two proposed tariffs since his approved tariff was filed, each in connection with his two above entitled applications, viz.- Application No. 8257 and Application No. 9670. He testified that after filing said Application No. 8257 he began charging rates substantially as proposed in that application and continued to do so until he filed said Application No. 9670, when he began charging rates as proposed in that application and has continued to do so ever since. These proposed rates in both of said defendant's last mentioned applications are at variance with and in the main lower than his established or legal tariffs on file with the Commission.

The evidence clearly shows that defendant has never maintained a continuous or regular service since May 1, 1917, between San Luis Obispo and San Simeon or between Cambria and San Simeon or has ever presented or filed for approval, or otherwise, any rates or time schedules in connection with any service he may have carried on over that particular route. The record further discloses that defendant at the time he filed his verified Application No. 8257 admitted therein and alleged definitely that there was no automobile stage service entitled to carry passengers to and from San Simeon and moreover the record further shows that at the hearing of said application before Examiner Richard T. Eddy at Cayucas on October 30, 1922, defendant stipulated that he had no such operative rights.

We have carefully considered all the evidence in this case and find as a fact that defendant has no operative rights between San Luis Obispo and San Simeon or between Cambria and San Simeon and his service between these points is unlawful and should be immediately discontinued and the order herein will direct said defendant to cease such service.

The Commission is not disposed to revoke the present operative rights of defendant between San Luis Obispo and Cambria, as prayed for by said complainant, for the reason that it clearly appears that the violations of the law and the rules and regulations of this Commission, as shown by the evidence as above set out, were the result of ignorance on the part of the defendant, together with his belief, in good faith that he had the right to operate his service at variance with his filed tariffs, and in accordance with his proposed tariffs, as soon as filed. While the Commission, however, will look with disfavor hereafter upon any further violations by defendant of the rules and regulations of this Commission in the future conduct of his stage service, the said complaint will be dismissed in so far as it seeks the revocation of defendant's existing operative rights between San Luis Obispo and Cambria.

We now come to the consideration of the evidence in support of the above entitled applications. During the hearing of the instant proceedings, Application No. 8257 was dismissed without prejudice by said D. S. Rosa in lieu of his subsequent Application No. 9670, filed January 5, 1924, which proposes substantially the same service sought in his former application No. 8257. This application, therefore, will be dismissed without prejudice to his said Application No. 9670.

D. S. Rosa in Application No. 9670 has petitioned the Railroad Commission for an order, declaring that public con-

venience and necessity require the operation by him of an automobile stage service as a common carrier of passengers and freight between San Luis Obispo and San Simeon and intermediate points. Applicant proposes to charge rates and to operate on a time schedule in accordance with amended Exhibit A and Exhibit B, attached to said application and to use the equipment described in Exhibit C. This proposed service would be an extension of applicant's present authorized service between San Luis Obispo and Cambria.

E. L. McConnel in Application No. 8358 has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by him of an automobile stage line as a common carrier of passengers, freight and express between San Luis Obispo and San Simeon and intermediate points. Applicant proposes to charge rates and to operate on a time schedule in accordance with Exhibits A and B, attached to said application and to use the equipment described in Exhibit C thereof. Applicant stipulated at the hearing that the proposed service was not sought as a separate service from his present authorized freight service between San Luis Obispo and San Simeon, but indicated his desire and willingness to have such proposed service, if authorized by the Commission, granted in lieu of his present existing operative rights between San Luis Obispo and San Simeon. As above indicated, the applications were consolidated at the hearing at San Luis Obispo for the purpose of receiving evidence and for decision.

Applicants E. L. McConnel and D. S. Rosa each protested the granting of the application of the other.

The evidence shows that the territory proposed to be served lies between San Luis Obispo and San Simeon, a distance of about fifty miles through a mountainous section devoted mainly to dairying and agricultural pursuits and having a population of about 2000 people. This territory is entirely dependent upon motor transportation for outbound and inbound freight shipments and for passenger travel, with the exception of a small steamer service from San Francisco into San Simeon, the Coast terminal. The main outgoing shipments consist of milk and cream and other miscellaneous farm products. San Luis Obispo is the chief buying center for the general merchandise and other stores located in the several towns and for the adjacent rural population.

Many witnesses, consisting of wholesale and retail merchants and business men and others doing business all along the route, appeared at the hearings and endorsed the service of both applicants. The record shows that E. L. McConnel, as the successor in interest and authorized operator of the freight services formerly conducted by the Cambria Truck Company and Coast Truck Company, has not only rendered a satisfactory, but also a much improved service over this route. The evidence shows that ever since McConnel took over the passenger and freight service under a power of attorney from Benjamin Tonino on July 1, 1922, as the record shows herein, he has operated a very satisfactory passenger service between the points proposed to be served. The testimony clearly indicates that the people along the route and all of McConnel's patrons desire a continuance of his passenger service. Although the Commission, as hereinabove indicated, has expressed its determination to revoke the operative rights of Benjamin Tonini in the above entitled complaint



No. 1812, it is satisfied by the evidence in these proceedings that E. L. McConnel has at all times acted in good faith in his efforts to purchase said operative rights of Benjamin Tonini, as shown by his prompt application to this Commission for an approval of said transfer and his rendition of an adequate service after taking it over. The record shows that the passenger and freight traffic beyond Cambria to San Simeon from San Luis Obispo is rather limited and that one carrier can adequately take care of it all. It appears that D. S. Rosa has always operated a limited freight and package service between San Luis Obispo and Cambria, as shown by his tariff above set out, the maximum weight being 75 lbs. and his instant application only proposes an increase to 100 lbs. E. L. McDonnell operates an unlimited freight service between these points and is fully equipped to adequately conduct such a service, the evidence showing that his financial ability and resources are far better than are those of D. S. Rosa and that he has ample equipment to conduct an adequate and satisfactory service between the points he proposes to serve.

After a careful consideration of all the evidence in these proceedings, we are of the opinion and hereby find as a fact that public convenience and necessity require the proposed service of E. L. McConnel and that his application should be granted and we are also of the opinion and hereby find as a fact that the public convenience and necessity do not require the proposed service of said D. S. Rosa and that his application should be denied.

O R D E R

Public hearings having been held in all of the foregoing entitled proceedings, the matters having been consolidated for the purpose of receiving evidence and for decision, and having been duly submitted following the filing of briefs, the Commission being now fully advised and basing its order on the findings of fact as appearing in the opinion which precedes this order;

IT IS HEREBY ORDERED that the certificate of public convenience and necessity obtained by said Benjamin Tonini under Decision No. 6807, in Application No. 4097, be and the same is hereby revoked and annulled.

IT IS HEREBY ORDERED that said Complaint No. 1832 be and the same is hereby dismissed.

IT IS HEREBY ORDERED that said Complaint No. 1969 be and the same is hereby dismissed.

IT IS HEREBY ORDERED that said defendant D. S. Rosa in Complaint No. 2000 be and he is hereby directed to immediately discontinue all passenger and freight service between San Luis Obispo and San Simeon and between Cambria and San Simeon.

IT IS FURTHER ORDERED that said Complaint No. 2000 be and the same is hereby dismissed as to all other matters contained therein.

IT IS HEREBY ORDERED that said application of D.S. Rosa No. 8257 be and the same is hereby dismissed.

IT IS HEREBY ORDERED that the said application of D.S. Rosa No. 9670 be and the same is hereby denied.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby declares that public convenience and necessity require the oper-

ation by E. L. Mc Connel of an automobile stage line as a common carrier of passengers, freight and express between San Luis Obispo and San Simeon, serving the intermediate points of Morro, Cayucas, Cambria and intermediate points, provided however, that the authority hereby granted shall be limited to packages not exceeding 50 pounds per unit as regards transportation between San Luis Obispo and Morro.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for the foregoing service be and the same is hereby granted, provided however, that the freight and express service hereby granted is not a separate or additional freight and express service, but is in lieu of applicant's present auto freight and express operative rights between said points and subject 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 of 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 other purposes, except as hereinabove stated, the effective date of this order shall be twenty (20) days from the date hereof.

IT IS HEREBY ORDERED that the secretary of this Commission be and he is hereby directed to serve by registered mail upon said Benjamin Tonini and D. S. Rosa and each of them a certified copy of this order;

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 San Luis Obispo a certified copy of this order.

Dated at San Francisco, California, this 28<sup>th</sup> day of May, 1926.

H. B. ...

C. ...

E. ...

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Commissioners.