

Decision No. 16783

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
J. R. MARTIN and ADAM A. MOORE for
permission to transfer operative
rights.

)
) Application No. 11706
)

ORIGINAL

Charles Kasch, for Applicant.

Crawford & Crawford, and Chas. A. Beck, for
Charles Kuppinger, Protestant.

BY THE COMMISSION:

O P I N I O N

In this proceeding J. R. Martin has applied to the Railroad Commission for permission to sell, and Adam A. Moore has applied for permission to purchase, the operative rights granted to J. R. Martin by Decision No. 6175, dated March 4, 1919, in Application No. 3614, authorizing the operation of an automotive passenger and freight service between Lakeport and Upper Lake and Ukiah and a passenger service between Lakeport and Ukiah for such travel only as may originate at points between Lakeport and Laurel Dell. Under the terms of a contract executed by the parties, subject to the Commission's approval, Moore has agreed to pay Martin in consideration of the transfer of such operative rights the sum of \$500.00, and an additional sum of \$1000.00, as the purchase price of Martin's one 1-ton Ford truck, making a total consideration of \$1500.

1.

After the filing of the application an informal objection to the transfer was filed by Charles Kuppinger, a certificated freight truck operator between Lakeport and Hopland, upon the ground that Martin had abandoned that portion of his operative right covering the route between Lakeport and Upper Lake. A formal answer and a supplemental answer to this objection were filed by applicant Martin, alleging there had been a temporary discontinuance of the Upper Lake route, due to the fact that one W. O. Ruddick had been hauling cream under contract for certain shippers from Upper Lake to Ukiah, thereby rendering applicant's operations in this territory unprofitable, but that such discontinuance was not permanent in character. It is conceded that Martin has conducted a regular service over the remainder of his route.

A public hearing was held before Examiner Austin at Lakeport on February 17, 1926, when evidence was offered, the matter was submitted and it is now ready for decision.

Applicant Martin testified he had continuously conducted a freight service between Lakeport and Upper Lake, operating twice a week, under a time schedule so providing, until August, 1924, when Ruddick commenced hauling milk and cream from Upper Lake to Ukiah under contract with certain shippers. Because of this competition, further operations over this part of the route became unprofitable. It was then agreed that Ruddick should serve this territory until other arrangements could be perfected, but Martin, so he testified, has since been unable to meet this situation. He denied that he had discontinued this service entirely, stating he had hauled certain commodities, such as fruit,

poultry and eggs, whenever requested by shippers, but he admitted that for a year following August, 1924, no regular service to Upper Lake was maintained, trips being made intermittently on call. Since September, 1925, applicant Moore has been operating the service regularly between Lakeport and Upper Lake, acting as an employe of Martin in so doing.

Applicant Moore testified that since September, 1925, he has been employed by Martin, operating regularly to Upper Lake under a bi-weekly schedule and handling all traffic offered. On direct examination he stated he had no knowledge of the discontinuance of the Upper Lake service, but on re-direct examination, admitted he knew that for a time Martin was not running regularly to Upper Lake, there being a period of about a year prior to September, 1925, when Martin operated about twice a month on call. Testimony was introduced by applicants relative to the substantial volume of traffic originating at Upper Lake and Scotts Valley, indicating a demand for the service. Witnesses were called by applicants to describe Martin's operations, but their testimony in this regard is indefinite and uncertain. George N. Bushnell, a hardware merchant of Upper Lake, stated he had observed Martin in Upper Lake hauling cream, chickens and eggs, but could not recall how frequently he was there. E. R. Keil, manager of the resort at Saratoga Springs, testified that Martin might have served his resort, but he had never seen him there. H. W. Kemp, conducting a resort at Blue Lakes, testified he had observed Martin's trucks operating from Lakeport via Scotts Valley as frequently as two or three times a week and sometimes daily. However, he observed

no such operations from Upper Lake. Elmer Sanborn of Upper Lake testified that during the past two years he could not recall having seen Martin operating any trucks, but he had observed Moore regularly. L. A. Mann, a farmer living near Tule Lake between Upper Lake and Saratoga Springs, stated that in the past two years he had seen Martin on the Upper Lake route several times, but had not patronized him while Ruddick was hauling cream. Furthermore, he stated, Martin would not serve him in any event, since his farm was one mile from the highway. M. M. Foster, a ranch foreman near Upper Lake, testified he had seen Martin hauling, but could not say how frequently. His ranch is situated about three miles from Upper Lake on the main Ukiah highway.

The granting of this application was protested by Charles Kuppinger Company, a freight truck operator between Lakeport and Hopland.

On behalf of protestant, W. O. Ruddick testified that since April, 1924, he had been operating trucks between Upper Lake and Ukiah, hauling milk, and that during this time he had not observed Martin operating any trucks over the Upper Lake-Ukiah Highway from its junction with the Scotts Valley road. He admitted, on cross-examination, that Martin might possibly have conducted such operations, but not within his observation.

In this case we have the admission of both applicants that there has been a virtual abandonment of service between Lakeport and Upper Lake for a period of one year subsequent to August, 1924, when Martin ran only occasionally and at the special request of shippers. Furthermore the testimony of applicants' witnesses falls far short of proving any regularity

of service over this route. In our judgment the evidence shows that Martin deliberately abandoned the operation of a substantial part of his route without first obtaining the consent of the Commission.

An operative right is to be regarded as a distinct entity and as such is indivisible. In granting a certificate the Commission acts upon evidence showing the necessity for service to be conducted over the entire route, as distinguished from its constituent parts; consequently, the obligation rests upon an operator to give continuous and adequate service over the whole route embraced within his certificate, until he has been authorized by the Commission to discontinue service over such route or a part of it.

In re California Transit Co.,

Dec. 10073, 21 R.R.C., 211, 215;

In re Schmidt & Emich,

Dec. 11151, 22 R.R.C., 443;

In re Schmidt & Emich,

Dec. 15168, 26 R.R.C., 794.

We have repeatedly held that where an operator willfully and without our consent abandons the operation of an automobile stage or truck service, his rights are subject to forfeiture and his certificate may be revoked.

In re De Luxe Transportation Co.

Dec. 6933, 17 R.R.C., 565.

Nelson, et al. vs. Haley, et al.,

Dec. 10098, 21 R.R.C., 226.

In re M. Haydis, Dec. 11555, 22 R.R.C. 944,

In re Monzie, Dec. 11103, 22 R.R.C. 412.

Since a certificate is indivisible the same penalty may

be imposed for the unauthorized abandonment of a substantial part of an operative right.

In re California Transit Co.,

Dec. 10073, 21 R.R.C. 211, 215.

In view of what we have said applicant Martin's operative rights are subject to forfeiture and revocation, because of his abandonment of service between Lakeport and Upper Lake. These rights are by no means restored by the subsequent resumption of operations in this territory by applicant Moore. When the abandonment occurred, Martin's rights became immediately subject to forfeiture, and are not revived by the mere resumption of service.

Pickwick Stages v. Craig, Dec. 7828,

18 R.R.C. 516, 522.

While we cannot declare a forfeiture of Martin's operative rights in this proceeding, this application having been filed for an entirely different purpose, nevertheless, we believe we should not be placed in the position of having tacitly approved applicant's actions by granting our consent to the proposed transfer. Under similar circumstances the Commission has previously declined to approve transfers of operative rights:

In re California National Bank of Modesto, Dec. 8858,

19 R.R.C. 702;

In re De Luxe Transportation Co., Dec. 6933,

17 R.R.C. 565;

In re California Transit Co., Dec. 10073,

21 R.R.C. 211.

The matter of revoking applicants' rights can be disposed of either upon a complaint filed for that purpose or upon a proceeding initiated by the Commission on its own motion.

Upon full consideration of the evidence, we are of the opinion and hereby find as a fact that applicant, J. R. Martin, has willfully and without the consent of this Commission abandoned the operation of that portion of the operative right heretofore granted him by Decision No. 6175, dated March 4, 1919, in Application No. 3614, covering the route between Lakeport and Upper Lake. In view of such finding the application must be denied.

An order will be entered denying the application.

O R D E R

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 finding of fact and on the statements which appear in the opinion preceding this order:

IT IS HEREBY ORDERED that the application of J. R. Martin to transfer to Adam A. Moore, and of Adam A. Moore to acquire and thereafter operate all of the rights and privileges granted to J. R. Martin by this Commission's Decision No. 6175, dated March 4, 1919, in Application No. 3614, be and the same is hereby denied.

Dated at San Francisco, California, this 28th day of May, 1926.

H. B. Brundage
C. C. Leary
Frank Prescott

Commissioners.