

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
A. WAINRIGHT, under the fictitious)
name of VALLEY TRANSPORTATION COMPANY,)
for a certificate of public convenience)
and necessity to establish and operate) Application
an automobile truck line for the trans-) No.10839
portation of freight and express between)
San Francisco, Oakland, Turlock, and Los)
Banos, and intermediate points as shown.)

- Harry A. Encoll and James A. Miller, for Applicant,
- W. H. Murray for Modesto & Empire Traction Co.,
and The Atchison, Topeka & Santa Fe Railway Co.,
- T. H. Kewin, for Modesto Chamber of Commerce,
- L. N. Bradshaw for Southern Pacific Company,
- C. W. Dooling for Western Pacific & Tidewater Southern
Railway,
- Earl A. Bagby for California Transit Co.,
- M. G. Lichteig for American Railway Express Co.,
- W. J. Quinn for White Lines and California Navigation
& Improvement Company,
- G. A. Bahler for Oakland Chamber of Commerce,
- E. W. Sullivan for Sullivan's Transfer,
- A. W. Linn for Merced Chamber of Commerce,
- Fred Pettit for Pettit's Line.

BY THE COMMISSION -

OPINION

ORIGINAL

In this proceeding A. Wainright, doing business under the fictitious name of Valley Transportation Company, seeks a certificate of public convenience and necessity authorizing the establishment of an automobile truck line (a) for the transportation of freight and express between San Francisco, Oakland, Turlock and Los Banos and intermediate points over the route via Hayward's, Dublin, Livermore, Tracy, Manteca, Modesto and Turlock; and (b) for the transportation of milk, cream and butter only between Newman, Gustine and Los Banos, on the one hand, and San Francisco and Oakland on the other hand. Applicant proposes to conduct this service with one 5-ton and 1 2½ ton truck, operating one round trip daily over each of those routes. The proposed tariff of rates accompanies the application.

Public hearings were held before Examiner Austin at Modesto

when evidence was offered, the matter was duly submitted, and it is now ready for decision.

At the outset, protestant Southern Pacific Company moved to dismiss this proceeding on the ground that a previous application of this applicant for the same operative rights had been heard and denied by this Commission, (Decision No.13809, dated July 18, 1924, in Application No.9959) counsel citing in support of his motion our decision in the Craig case. (In re Application of E. C. Craig, Decision No.9796 dated November 25, 1921, in Application No.6950).

By Decision No.13809, the petition of applicant herein for authority to conduct a service substantially similar to that sought in the instant proceeding, was denied for lack of sufficient evidence to show public convenience and necessity for the operation of the proposed service. In the Craig case, supra, we held that where an application for an operative right had been previously denied, a similar application filed without first seeking a rehearing in the previous matter will not be considered, the former decision being conclusive. In this opinion we said:

"If this procedure (applying for a rehearing) is not invoked, the matters presented at the original hearing should be deemed to be finally adjudicated. To hear a matter a second time upon merely re-filing an application and treating it as a new question would in effect set at naught the procedure provided by the Legislature. It would also consume time and expense which the Commission, in the public interest, needs to devote to meritorious matters coming before it."

In this connection, the Supreme Court has held that our orders are conclusive between the same parties only for the purpose for which they were made and are not binding upon them in subsequent proceedings in the sense that they are res adjudicata.

Motor Transit Co. v. Railroad Commission, 189 Cal. 573;
209, Pac.586.

Stratton v. Railroad Commission, 186 Cal.119, 126; 198 Pac.
1051.

While it is true that our order in Application No.9959 is conclusive as to the non-existence of public convenience and

necessity when the matter was heard, nevertheless it does not preclude applicant from showing that subsequently there has arisen a public convenience and necessity for a freight service over the same route. It is true that applicant cannot predicate such a showing upon facts existing prior to the former decision and adjudicated therein. But he has not attempted to do so in the instant proceeding, his showing dealing only with present public convenience and necessity. The motion to dismiss will therefore be denied, and we shall now consider the application on its merits.

Applicant offered evidence showing that the proposed rates were compensatory, and that he was financially able to conduct this enterprise and that there was a need for the service, several prospective shippers being called as witnesses. Grapes, fruits and berries are raised in substantial quantities along the proposed route and move in considerable volume to San Francisco and Oakland. Producers testified they preferred to truck these commodities, thereby obviating much of the handling incident to other methods of transportation which has a deleterious effect upon the shipments and tends to lessen their market value. This feature was deemed so important that several shippers expressed a willingness to pay rates higher than those charged for railway freight or express service. As applicant proposed an earlier delivery than is possible by railway freight or express or the protesting truck lines, his service was favored by some of the shippers, who testified that early delivery was essential to obtain the best market prices. Several shippers of poultry and eggs endorsed applicant's service, preferring it to the railway express which they stated caused a shrinkage in the weight of poultry and consequent loss in value, due to hot and unventilated cars, a circumstance absent in truck transportation.

With respect to general merchandise, several dealers favored the convenience of applicant's proposed direct pick-up and delivery service, but seemed unwilling to pay applicant's charges, which

are considerably higher than the rail freight and express rates. Only one shipper, a dealer in automobile tires, was willing to pay the higher rates in order to obtain the convenience of expedited delivery of emergency shipments. No San Francisco or Oakland shippers were called to show the need of a transportation service from those cities to points along applicant's route. Two witnesses, employed by applicant to investigate the possibilities of traffic from San Francisco and Oakland, testified they had interviewed several business firms in these cities, and had found them willing to patronize applicant's truck line, the amount of tonnage originating from these prospective shippers being estimated in detail. Such a showing, unsupported by the testimony of the shippers themselves is insufficient to establish public convenience and necessity for the proposed service.

The granting of this application was protested by Southern Pacific Company, American Railway Express Company, Atchison, Topeka & Santa Fe Railway Company, Modesto & Empire Traction Company, Western Pacific Railroad Company, Tidewater Southern Railway Co., California Transit Company, White Lines (W. J. Quinn, proprietor), Sullivan's Transfer, Pettit's Line, California Navigation & Improvement Co., Merced Chamber of Commerce, and Modesto Chamber of Commerce. The Oakland Chamber of Commerce intervened in behalf of applicant.

Protestant Southern Pacific Company called P. W. Bernard, of its General Manager's staff, who described its service between the points in question. Freight shipped from San Francisco and Oakland is available for delivery in those valley points on the next day as early as 7:00 A.M. and not later than 1:00 P.M. Tables of rate comparisons introduced indicate that this protestant's rates are substantially lower than those of applicant. A statement was offered showing the disposition of previous applications to this Commission for authority to conduct automotive freight and express service in this territory, indicating that most of these applications have been denied. However, as

each application must be determined solely upon its merits, these decisions are not necessarily controlling in our disposition of the pending proceeding. T. H. Kewin, representing the Modesto Chamber of Commerce, testified that the rail service was adequate, and objected to the use of the highways by truck lines paying no substantial sums toward their upkeep, in competition with the railroads which maintain their own roadways.

On behalf of protestant American Railway Express Company, M. G. Licktoig its general agent at Oakland, described its service, introducing exhibits showing frequent passenger train schedules upon which express is handled in both directions, and indicating that the express rates are fairly comparable with applicant's rates, being substantially lower in many instances. Poultry is transported in cars equipped with floor ventilators, permitting free circulation of air and obviating heat which causes shrinkage; and refrigerated express cars are furnished for handling perishable commodities. A free pick-up and delivery service is maintained in the principal cities and towns, and an early morning delivery (at 1:00 A.M.) is provided in Oakland, though not in San Francisco, shipments being available there at 5:00 A.M. The service has improved in recent years due to better help and the replacement of horse-drawn trucks by motor vehicles. In rebuttal, applicant pointed out the necessity for early delivery of perishable produce in the San Francisco market, prices declining sharply upon commodities received after 5:00 A.M.

Protestants, Modesto & Empire Traction Co. and Tidewater Southern Railway Co. introduced evidence describing their service. Protestant Pettit's Line called two witnesses engaged in producing and distributing milk and dairy products at Gustine. One objected to the early hour of shipment required by both the applicant and the railroad and complained of applicant's rates, saying he was paying lower charges to a private truckman. The other expressed satisfaction with the service rendered by the railroad and Pettit's Line, stating there was no need for a new service.

W. J. Quinn, proprietor of the White Lines, operates a truck service between Turlock and Stockton, where shipments are transferred to the steamers of the California Navigation & Improvement Co. for transportation to San Francisco. Oakland shipments are barged across the bay from San Francisco. He has handled eggs, butter, perishables and fruit to San Francisco and Oakland, there being very little traffic moving in the opposite direction. Due to the establishment of branch wholesale houses at Modesto his business has fallen off considerably, and if compelled to face the competition of applicant he may be obliged to abandon operations. He called two witnesses, one engaged in shipping butter from Modesto to San Francisco and the other being a shipper of butter and eggs from Ceres to San Francisco and Oakland. Both expressed satisfaction with protestant's service, and stated they could not pay the higher rates proposed by applicant. Some of applicant's witnesses on cross examination indorsed this protestant's service, saying they had used it and found it satisfactory.

California Transit Company offered in evidence, by reference, certain of our decisions authorizing the transportation of express in this territory.

In our judgment the evidence shows a necessity for a truck service for the transportation of farm and orchard products from Manteca and Turlock and intervening territory to San Francisco and Oakland, but no necessity was shown for the carriage of other commodities such as general merchandise, poultry, eggs or dairy products, it appearing that the service afforded by the existing carriers is adequate and satisfactory. As we have pointed out, applicant's showing relative to the transportation of general merchandise or other commodities from San Francisco and Oakland to the territory in question, based as it is on surveys made by applicant's employes or agents unsupported by the testimony of the shippers themselves, is wholly inadequate to show a public need for this service. Moreover, the evidence wholly fails to indicate a necessity for the proposed service for the transportation

of milk, cream and butter from Newman, Gustine and Los Banos to San Francisco and Oakland. In fact, all evidence bearing at all on this subject shows the existing facilities to be adequate and sufficient. We shall therefore grant a certificate for the transportation of farm and orchard products only from Turlock and Modesto and intermediate points to San Francisco and Oakland; in all other respects the application will be denied.

In view of our disposition of the matter, the time and rate schedules accompanying the application must be substantially changed. Applicant will be expected to file such schedules in form satisfactory to the Commission.

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 A. Wainright, doing business under the fictitious name of Valley Transportation Company, of an automotive truck service for the transportation, as a transportation company, of farm and orchard products only, from Turlock, Keyes, Ceres, Modesto, Salida, Ripon and Manteca and intermediate points (including the right to serve the territory over and along said route for a distance of five (5) miles on each side of the highway to be traversed by said applicant) on the one hand, to San Francisco and Oakland, on the other hand, over and along the route via Haywards, Dublin, Livermore, Tracy, Manteca, Modesto and Turlock.

Upon full consideration of the evidence we are of the opinion and hereby further find as a fact that public convenience and necessity do not require the operation by said A. Wainright, doing business under the fictitious name of Valley Transportation Company of an automotive truck service for the transportation, as a transportation company, of : (a) freight or express, (except as otherwise hereinabove expressly provided), between San Francisco, Oakland, Turlock and Los Banos, and all intermediate points over and along the route via Haywards, Dublin, Livermore, Tracy, Manteca, Modesto and Turlock, including territory extending laterally along said route for a distance of five (5) miles on

either side of the highway proposed to be traversed by applicant; nor (b) milk, cream or butter only between Newman, Gustine and Los Banos (including lateral territory as aforesaid) on the one hand, and San Francisco and Oakland on the other hand.

An order will be entered accordingly.

C R D E R

Public hearings 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 A. Wainright, doing business under the fictitious name of Valley Transportation Company, of an automotive truck service for the transportation, as a transportation company, of farm and orchard products only, from Turlock, Keyes, Ceres, Modesto, Salida, Ripon and Manteca and intermediate points (including the the right to serve the territory over and along said route for a distance of five (5) miles on each side of the highway to be traversed by said applicant) on the one hand, to San Francisco and Oakland, on the other hand, over and along the route via Haywards, Dublin, Livermore, Tracy, Manteca, Modesto and Turlock.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to said A. Wainright, doing business under the fictitious name of Valley Transportation Company, for the operation of the service hereinabove specified, subject to the conditions hereinafter set forth.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby further declares that public convenience and necessity do not require the operation by said A. Wainright, doing business under the fictitious name of Valley Transportation Company of an automotive truck service for the transportation, as a transportation

company, of : (a) freight or express, (except as otherwise hereinabove expressly provided) between San Francisco, Oakland, Turlock and Los Banos, and all intermediate points over and along the route via Hayward, Dublin, Livermore, Tracy, Manteca, Modesto and Turlock, including territory extending laterally along said route for a distance of five (5) miles on either side of the highway proposed to be traversed by applicant; nor (b) milk, cream or butter only between Newman, Gustine and Los Banos (including lateral territory as aforesaid) on the one hand, and San Francisco and Oakland on the other hand.

IT IS HEREBY ORDERED that the application of said A. Wainright, in all respects other than as hereinabove granted, be and the same is hereby denied.

The authority herein granted is 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 in form satisfactory to the Commission within a period of not to exceed twenty (20) days from date hereof; and shall commence the operation of the service herein authorized 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 the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 11th day of June, 1926.

H. B. Anderson
C. A. ...
Leon ...

COMMISSIONERS.