

Decision No. 17684

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application  
of EDWARD BAHLER and G. NIEDER-  
HAUSER for certificate of public  
convenience and necessity to oper-  
ate auto truck service between  
Los Angeles and Riverside on the  
one hand, and Riverside or dairy  
ranches located in vicinity of  
points named, on the other hand. }

APPLICATION NO. 11882.

C. H. Tribit, Jr., for Applicants.

Phil Jacobson for Rex Transfer Company, Key-  
stone Express and J. H. Hawkins, Protestants.

C. E. Jones for Pacific Electric Railway Com-  
pany, Protestant.

H. W. Kidd for Ray A. Anderson and Motor Serv-  
ice Express, Protestants.

BY THE COMMISSION:

O P I N I O N

In this proceeding Edward Bahler and G. Niederhauser have petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by them of an auto truck service for the transportation of dairy feed between Los Angeles and Riverside on the one hand, and between Riverside and dairy ranches located in the vicinity of certain points named in the application, on the other hand.

A public hearing herein was conducted by Examiner Williams at Redlands.

Applicants seek a certificate authorizing the transportation of hay and dairy feed between Los Angeles and Riverside and certain dairy ranches. As equipment for the proposed service they offer two trucks and two trailers of approximately 10 tons' gross capacity. The rates proposed are as shown in their Exhibit "A" attached to the application. The service is proposed to be conducted without regular schedule.

From the testimony of Edward Bahler, one of the applicants, E. A. Bost, manager of the Dairymen's Feed & Supply Company of Riverside, and Howard C. Warren, general manager of the same company, it appears that the entire transportation service performed by applicants is conducted under private contract with the Dairymen's Feed & Supply Company; that all the commodities transported are the property of the Supply Company, and that the consignees are dairymen who are members of the Dairymen's Association and buy through the Association. All the testimony in the record indicates that the relationship between applicants and the Supply Company is contractual in its character, and applicants themselves seek a certificate to perform service for no consignor other than the Supply Company.

It appears that applicants transport large quantities of hay and dairy feed from Los Angeles to the Supply Company's depot at Riverside, and from Riverside distribute it to dairies within a radius of 50 miles thereof. No other transportation service is performed or sought to be performed by applicants. They admitted that they had begun to transport milk from the San Bernardino region to Los Angeles, but had desisted when apprised by this Commission that such operation required a certificate.

The record clearly shows that applicants are private carriers operating under a specific contract and do not hold themselves out to perform any service as a common carrier between fixed termini or over a regular route. Under the decision of the United States Supreme Court in the Frost & Frost case, this Commission is without jurisdiction over such operations. Accordingly an order will be entered herein dismissing the application for lack of jurisdiction.

O R D E R

Edward Bahler and G. Niederhauser having petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by them of an auto truck service for the transportation of hay and dairy feed between Los Angeles and Riverside, and between Riverside and dairy ranches located in the vicinity of certain points named in the application, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

IT IS HEREBY ORDERED that the application herein be and the same is hereby dismissed for lack of jurisdiction.

Dated at San Francisco, California, this 29<sup>th</sup>  
day of November 1926.

H. R. Ludwig  
A. Seamy  
Edmund West  
Lion Whittell  
Thos. J. Lewis  
COMMISSIONERS.