

Decision No. 17731

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application )  
of BAPTESTE DEMERS and HARRY EARLE, )  
co-partners, doing business under )  
the firm name and style of DEMERS )  
& EARLE, for a certificate of pub- )  
lic convenience and necessity to )  
operate motor freight truck service )  
in the counties of Los Angeles, )  
Orange, Ventura, San Bernardino, )  
Riverside, Santa Barbara and San )  
Diego. )

ORIGINAL

APPLICATION NO. 13235.

Jones, Wilson & Stephenson, by Leonard Wilson,  
for Applicants.

H. J. Bischoff, for Coast Truck Line, Motor  
Service Express and W & S Truck Line, Protes-  
tants.

BY THE COMMISSION:

O P I N I O N

Applicants herein, Bapteste Demers and Harry Earle,  
co-partners doing business under the firm name and style of  
Demers & Earle, seek a certificate of public convenience and  
necessity to establish motor freight service for the trans-  
portation of pianos and other musical instruments between Los  
Angeles and various points in Southern California as far  
west as Santa Barbara, as far east as Banning and El Centro  
and as far south as San Diego, and between all points interme-  
diate and points laterally within five miles of all highways  
traversed.

A public hearing herein was conducted by Examiner Williams at Los Angeles.

Applicants possess two trucks and have been in business as partners since September 8, 1925. The rates to be charged for the proposed service are set forth in Exhibit "A" attached to the application. No time schedule is provided, it being proposed to furnish an irregular "on call" service, and no routes are proposed except "all points to be made by the most direct route."

Harry Earle, one of the partners, testified that he had had 17 years' experience in transporting the particular commodities incident to the music trade, and that he had accepted employment indiscriminately from all music houses offering business. He testified that he accepted any movement for any point and fixed the rate at the time the movement was offered. Mr. Earle further testified that he had transported musical instruments, chiefly pianos, for the Fitzgerald Music Company, International Music Company, Heine Piano Company, the Piano Exchange and the Wiley B. Allen Company, and that, so far as he could recollect, no consignments offered for delivery outside the city of Los Angeles had been destined to the same point more than once or twice. As to many of the points named in the application, witness testified that no service had ever been performed by his firm and that no demand had ever been made upon them for such service.

It was stipulated by protestants that representatives of the music houses before mentioned would, if called, testify to practically the same facts as related by Mr. Earle.

It appears from the testimony herein that the business conducted by applicants, while it attracts a considerable volume within the city of Los Angeles, has very few movements to points outside the city and no fixed or regular movements between Los Angeles and any other point. The decision of this Commission on Applications Nos. 11959, 11970 and 12270 of the National Warehouse Company, R. J. Thompson and Fay W. Eardin, respectively, discusses fully the handling of the commodities which applicants seek authority to transport as common carriers, and in that proceeding the situation is no different from the situation involved in the instant application. It is clear that the transportation business conducted by applicants is not a transportation business as defined by the Auto Stage and Truck Transportation Act, particularly in view of the decision of this Commission on the application of Ben Moore (Decision No. 15818 on Application No. 11303) and the decision of the United States Supreme Court in the case of Frost and Frost. For this reason the application herein should be dismissed for lack of jurisdiction. An order will be entered accordingly.

#### O R D E R

Bapteste Demers and Harry Earle, co-partners doing business under the firm name and style of Demers & Earle, having applied to the Railroad Commission for a certificate of public convenience and necessity to operate a motor freight service in the counties of Los Angeles, Orange, Ventura, San Bernardino, Riverside, Santa Barbara and San Diego, 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 10<sup>th</sup>  
day of December 1926.

H. B. Brundage

O. J. Sanchez

Ernest J. ...

Leon ...

Commissioners.