

Decision No. 17844**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 CLARENCE SMITH for a determination
 whether the service heretofore rendered by him was that of a common carrier and for a certificate of public convenience and necessity to operate freight service.)
)
) Application No. 10557.
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Res & Caldwell, by John E. Machado, for Applicant.
 Gwyn E. Baker for Highway Transport Company, Protestant.
 L. N. Bradshaw, for Southern Pacific Company, Protestant.

BY THE COMMISSION:

OPINION

In this matter the applicant alleges, in his petition, that he is the owner of certain trucks and trailers used for the transportation "on call" for wholesale dealers and manufacturers only of groceries, building materials, canned goods and other commodities from San Jose to other points, including Boulder Creek, Salinas, Carmel, Hollister, Watsonville, San Francisco, Oakland, Fresno, Sacramento, San Juan, Pacific Grove and other way-points. The service, he alleges, has been irregular and therefore no fixed schedule has been observed, it being impossible to anticipate the destinations of shipments tendered. Other than naming the points served in the past, no route is described. Applicant alleges that public convenience and necessity require this service, seeks a determination whether his operations are those of a private or common carrier, and prays for a certificate, should he be

found a common carrier.

A public hearing was held before Examiner Austin at San Francisco, when evidence was offered, the matter was submitted and is now ready for decision.

Applicant testified that he operates a general trucking service at San Jose, and in addition transports freight to points as far north as San Francisco and Oakland, and south to Pacific Grove and Salinas, handling such commodities as produce, furniture, junk, paper, wood, stucco, lumber and canned goods. No regular schedule is observed, all operations being conducted "on call," under a special written contract with each shipper covering each trip, the driver being paid in the first instance by applicant, but his compensation is considered in arriving at the transportation charge. Forms of typical contracts were introduced, under which the shipper agrees to pay a stated charge for use of the truck, together with its up-keep and the driver's wages. In all instances the route has been specified by the shipper. The charges are based upon a mileage rate, varying with the rated capacity of the truck employed, in no instance being predicated on a tonnage basis. No mixed loads are hauled for different shippers, each load being confined to a single shipper.

From San Jose as a terminal, applicant has made about three trips a year to Boulder Creek; to Salinas, Pacific Grove and Monterey he has operated about once a week, hauling groceries for a large San Jose firm; to Carmel and Hollister, his trips have been infrequent and irregular; to San Francisco he has operated about twice a week; and to Oakland, infrequently. Between most points he has used the State Highway, which is the usual and only route.

Applicant submitted the case on his own testimony, calling no shippers to show the need for the service.

The granting of this application was protested by Southern Pacific Company and Highway Transport Company, neither of which offered any evidence. Protestants contend that applicant has been conducting a regular freight transportation service between San Jose on the one hand, and San Francisco, Pacific Grove and Salinas, respectively, on the other hand, and therefore falls within the category of a common carrier.

For the most part, applicant's operations have been conducted irregularly and sporadically over a general area, without defined routes or termini, to this extent being beyond our jurisdiction. (In re Ben Moore, Decision No. 15,818, 27 C.R.C 388.) With respect to his regular operations between specific points, the proof does not establish public convenience and necessity for the proposed service, applicant's unsupported testimony being insufficient for this purpose. It is unnecessary to determine the legality of applicant's operations as a private carrier, this being more properly the subject of separate complaint.

In our judgment, the application should be denied.

Upon full consideration of the evidence in the above entitled matter, we are of the opinion and hereby find as a fact that public convenience and necessity do not require the operation by Clarence Smith of an automotive truck service for the transportation of property as a common carrier between San Jose, on the one hand, and Boulder Creek, Salinas, Carmel, Hollister, Watsonville, San Francisco, Oakland, Fresno, Sacramento, San Juan and Pacific Grove, respectively, and intermediate points.

An order will be entered accordingly.

ORDER

A public hearing having been held in the above-entitled application, the Commission being fully advised, and basing its order on the finding of fact appearing in the Opinion which precedes this Order,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity do not require the operation by CLARENCE SMITH of an automotive truck service for the transportation of property as a common carrier between San Jose, on the one hand, and Boulder Creek, Salinas, Carmel, Hollister, Watsonville, San Francisco, Oakland, Fresno, Sacramento, San Juan and Pacific Grove, respectively, and intermediate points.

IT IS HEREBY ORDERED that said application be, and it is hereby denied.

Dated at San Francisco, California, this 6th day of

January, 1927.

H. B. Boudige

C. S. Sauer

Edward L. Scott

Leon C. Whitell

Thos. J. Rutter

Commissioners.