

Decision No. 18119

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

JOHN W. ANDERSON,

Complainant,

vs.

UNITED PARCEL SERVICE OF SAN
FRANCISCO, a Corporation,

Defendant.

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)
)
CASE NO. 2155.
)

Edward R. Solinsky, for Complainant.

Devlin & Brookman, by Douglas Brookman,
for Defendant.

BY THE COMMISSION:

O P I N I O N

Complainant herein, John W. Anderson, a common carrier of property by automotive power, operating under authority of a prescriptive right established prior to May 1, 1917, seeks from this Commission an order requiring the United Parcel Service of San Francisco, a corporation, defendant herein, to cease and desist from delivering packages or other property at certain points in Marin County.

Complainant alleges that the defendant is conducting, without authority from this Commission, a common carrier business for the delivery of packages in Sausalito and other points in Marin County served by complainant, and that the business

so conducted by said defendant, unless prohibited, will impose "irreparable damages" on complainant.

Defendant in its answer filed herein alleges in substance that it is engaged in the business of transporting property, but only as a private carrier performing service under private contract, and that none of its operations are subject to the jurisdiction of this Commission. Defendant further denies that any of the business conducted by it is of such character as to bring it within the jurisdiction of this Commission.

Upon the issues thus joined, a public hearing was conducted by Examiner Williams at San Francisco, the matter was duly submitted and now is ready for decision.

In support of the complaint, John W. Anderson, complainant, operating under the fictitious name of the Sausalito - Mill Valley - San Francisco Express, testified that since early in August, 1925, he had met vehicles bearing the name of the United Parcel Service traversing the roads in Marin County, and had noticed the delivery of packages at various points from these vehicles. Complainant testified that he had been engaged in the business of transporting property between Marin County and San Francisco for the past 15 years; that during the greater portion of this period he had made Marin County deliveries for San Francisco department stores (including Hale Bros.) and other firms; that on August 1, 1925, Hale Bros. transferred all their shipments to the defendant herein, and that since that time complainant had not enjoyed this business, which he estimated was worth \$250 a month gross income to him. Complainant further testified

as to the equipment which he owns and devotes to public service, also as to commodity rates provided for package service, and as to his ability to perform all the service necessary as a public carrier between San Francisco and the points now served by him in Marin County.

Complainant called to the stand J. E. Casey, president of the defendant corporation. Mr. Casey testified that the United Parcel Service sent its vehicles into Marin County to make deliveries of packages under private arrangement entered into August 1, 1925, with certain department stores in San Francisco. He further testified that the defendant corporation was organized as a private carrier and incorporated as such in the Spring of 1925, for the particular purpose of entering into a joint contract with the City of Paris, O'Connor, Moffett & Company, Hale Bros. and the Emporium, all department stores in San Francisco, under which contract defendant assumes all the package delivery service for each and all, within and without the city of San Francisco. He further testified that this contract enabled each of the department stores to abandon its own package delivery service and rely upon the contractual arrangement made with defendant to supply such service. In support of this testimony, witness introduced, as defendant's Exhibit No. 1, the articles of incorporation of the United Parcel Service of San Francisco. Mr. Casey testified that the contractual relation with the four department stores named was such that the business could not, without great difficulty and the consent of all parties concerned, be enlarged to include any other service, and that the defendant did not hold itself out to carry packages for any others than those named in the contract, and had not performed

any service for others.

Mr. Casey, recalled in behalf of defendant, testified that the additional business of Magnin & Company and Livingston's had been offered to defendant, but had been declined because of the private nature of the contract with the four department stores named and lack of their consent to an enlargement. Complainant was insistent that this contract be placed in evidence, but defendant was not required to produce it, for the reason that when the demand was made, complainant had produced no testimony in support of the material and essential allegations of his complaint, other than the physical presence in Marin County of vehicles bearing defendant's name, and delivery of packages therefrom.

Complainant herein seeks to enjoin the operation of defendant on the ground that defendant is performing, without valid authorization, common carrier service over routes and to points now served by complainant. In his testimony Mr. Casey explained in detail how service is given in the area affected, admitting that all deliveries are made for the four houses with which defendant has a contract in substantially the same manner as any common carrier would perform the service. He testified that the plant of this corporation and all its equipment, valued at more than \$100,000, were constructed and established and are maintained solely for the purpose of performing package delivery service for the four stores named, and that such deliveries are made wherever required to be made, not only in Marin County but in other counties, as well as in the city of San Francisco. There is no dispute, therefore, as to the fact that defendant is

actually making deliveries, as alleged by the complainant, in territory served by complainant as a common carrier. The question is whether complainant has shown affirmatively that the service thus performed by defendant is that of a common carrier and subject to regulation by this Commission.

Defendant's Exhibit No. 1 (its articles of incorporation) shows that defendant corporation was organized and incorporated for the purpose of conducting the business of a private carrier, and it is specifically provided in the second paragraph of said articles of incorporation that "in exercising any of the powers hereinabove enumerated, this corporation shall not have the power and shall not engage in the business of a common carrier."

After a careful examination of the evidence herein submitted, we cannot find that it has been affirmatively shown that defendant has, by any act, engaged in the business of a common carrier; on the contrary, we believe the testimony shows conclusively that the business heretofore done by this defendant has been done strictly in the performance of its contract with the four department stores named herein, and for them only. In view of the recent decision of the United States Supreme Court in the case of Frost & Frost vs. California Railroad Commission, holding that this Commission has jurisdiction only over common carriers (operating between fixed termini or over a regular route), and not over private carriers, and in view of the failure of the complainant to show any service of a common carrier nature performed by defendant, we must find that the operations of defendant are those of a private carrier, over which this Commission has no

jurisdiction. Upon this finding an order will be entered dismissing the complaint for lack of jurisdiction.

O R D E R

This case, being at issue upon complaint and answer on file, having been duly heard and submitted, and the Railroad Commission being fully advised and having on the date hereof adopted and approved the foregoing findings of fact and conclusions thereon, which findings are hereby made a part hereof,

IT IS HEREBY ORDERED that the complaint in this proceeding be and the same hereby is dismissed for lack of jurisdiction.

Dated at San Francisco, California, this 29th
day of March, 1927.

E. M. Weston
K. F. Brundage
C. C. Clegg
Leon A. Lillard
Thor S. Routt
COMMISSIONERS.