

Decision No. 18120

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Charles Kuppinger,
Complainant,

-vs-

J. R. Martin,
Defendant.

Case No. 2245.

Chas. A. Beck, for Complainant,
W. H. Hazell, for Defendant.

BY THE COMMISSION:

O P I N I O N

Charles Kuppinger, complainant in the above named complaint, alleges in substance and effect that said defendant J. R. Martin on or about the month of August, 1924, deliberately and willfully abandoned his operative rights granted to him by Decision No. 6175, dated March 4, 1919, in Application No. 3614, authorizing the operation of an automotive passenger and freight service between Lakeport and Upper Lake and Ukiah and a passenger service between Lakeport and Ukiah for such travel only as may originate at points between Lakeport and Laurel Dell without first having obtained permission so to do from the Railroad Commission.

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Complainant further alleges that this proceeding was commenced by reason of the findings of fact and the order as contained in this Commission's Decision No. 16783 on Application No. 11706, dated May 28, 1926, wherein it was held that the matter of revocation of an applicant's operative rights can only be disposed of either upon a complaint filed for that purpose or upon a proceeding initiated by the Commission on its own motion.

Complainant further alleges that he is at present and has been for several years engaged as an authorized common carrier of property for compensation between various points in Lake and Mendocino counties and more particularly between Lakeport and Hopland and Upper Lake and Ukiah and intermediate points; that he is a fit and proper party to begin and prosecute this proceeding; and prays for an order of this Commission revoking and annulling the said operative rights of said defendant as hereinabove set out.

Defendant, by his written answer to said complaint, denies in substance and effect that he willfully or deliberately abandoned said operative rights, as granted to him under said Decision No. 6175, save and except only as to a portion thereof between Lakeport and Upper Lake and alleges further, in justification of said partial abandonment, that said defendant is inexperienced in and without knowledge of the rules and regulations of this Commission or of the several decisions of the Railroad Commission cited in this Commission's Decision No. 16783 on Application No. 11706; that said defendant did not know that a diminution of service or a failure to maintain constant service over an authorized route might result in revocation either in whole or in part

of defendant's operative rights granted to him under said Decision No. 6175. Defendant, therefore, prays that said complaint be dismissed, particularly that portion of it with reference to his authorized route between Lakeport and Ukiah via Scotts Valley.

Complainant called as his sole witness the said defendant J. R. Martin and also offered in evidence this Commission's Decision No. 16783 on Application No. 11706 of said J. R. Martin, defendant herein, and Adam A. Moore, for permission to transfer to said Moore the said operative rights herein asked to be revoked. This Commission found as a fact in said decision that said defendant J. R. Martin had abandoned a portion of his authorized service between Lakeport and Upper Lake for a period of one year subsequent to August, 1924, and that said defendant had only operated this portion of his route occasionally and at the special request of shippers and that he had failed to maintain any regularity of service over this route, and also that said defendant had deliberately abandoned the operation of this portion of his route without first obtaining the consent of the Commission to do so.

The Commission said in part in its decision:

"An operative right is to be regarded as a distinct entity and as such is indivisible. In granting a certificate the Commission acts upon evidence showing the necessity for service to be conducted over the entire route, as distinguished from its constituent parts; consequently the obligation rests upon the operator to give continuous and adequate service over the whole route embraced within his certificate until he has been authorized by the Commission to discontinue service over such route or a part of it. We have repeatedly held that where an operator willfully and without our consent abandons the operation of an automobile stage or truck service, his rights are subject to forfeiture and his certificate may be revoked.

Since a certificate is indivisible the same penalty may be imposed for the unauthorized abandonment of a substantial part of an operative right and in view of what we have said applicant Martin's operative rights are subject to forfeiture and revocation because of his abandonment of service between Lakeport and Upper Lake. When the abandonment occurred Martin's rights became immediately subject to forfeiture and are not revived by the mere resumption of service."

The record shows further, by the admissions of said defendant as a witness during this proceeding, that he has since February, 1926, sold all of his equipment and has not operated any stage or truck line since that time. Defendant testified that he has sold his equipment to said Adam A. Moore and that said Moore has been operating a truck service over a portion of the route which defendant had served under and by virtue of said operative rights granted to him under said Decision No. 6175 on said Application No. 3614.

After a careful consideration of all the evidence in this proceeding, we are of the opinion and hereby find as a fact that said defendant, J. R. Martin, has willfully and without the consent of this Commission abandoned the operation of the operative rights heretofore granted to him by said Decision No. 6175 dated March 4, 1919, in Application No. 3614, and we are, therefore, of the opinion that said operative rights should be forfeited and revoked. An order will, therefore, be entered herein revoking and annulling said operative rights.

O R D E R

A public hearing having been held in the above entitled proceeding, the matter having been duly submitted, the Commission being now fully advised, and basing its order on the findings of fact and other statements which appear in the opinion

preceding this order,

IT IS HEREBY ORDERED that the operative rights granted to J. R. Martin by Decision No. 6175, dated March 4, 1919, in Application No. 3614, authorizing the operation of an automotive passenger and freight service between Lakeport and Upper Lake and Ukiah and a passenger service between Lakeport and Ukiah for such travel only as may originate at points between Lakeport and Laurel Dell, be and the same are hereby revoked and annulled.

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

Ernest C. ...
H. B. ...
C. C. ...
Leon ...
Thos. ...
Commissioners.