

Defendant duly filed his answer to the complaint denying the specific allegations therein contained and alleging that no solicitation of freight hauling had ever been made in the cities of Fresno and Hanford; that defendant's hauling was not confined to the route between Fresno and Hanford but that hauling was done between many and various other points; and that defendant was engaged in a general trucking business, hauling on a ton basis only.

Public hearings on this complaint were conducted by Examiner Handford at Fresno and Hanford, the matter was duly submitted and is now ready for decision.

Mr. R. A. Winzler, District Manager at Fresno for Lacey Bros. Milling Company, testified defendant had hauled freight from Hanford to Fresno for his company, principally full truck and trailer loads of feed and flour. The hauling has been done at irregular intervals, sometimes every day, and has been performed entirely on a ton basis.

Mr. A. D. Willis, Manager of Sales Department of Haas Bros., receives orders from Rosenthals' Sales Store at Hanford, orders being presented by defendant who received the merchandise and transported same to Hanford.

Mr. Lee A. Rummelsburg, Assistant Manager for Kutner-Goddstein Co. of Fresno, occasionally receives orders for truck load lots of grain from their branch store at Hanford, the grain being hauled by defendant under arrangements made with the Hanford branch store.

Mr. E. D. Rowell, Assistant Manager of Hobbs-Parsons Co., wholesale produce merchants of Fresno, testified his concern had shipped merchandise to Hanford by defendant's truck, shipments being destined to Rosenthals, Inc., and Gallaher's Market. The shipments consisted of goods for which orders were taken by salesmen, the orders specifying that shipments were to be made over defendant's truck line.

Mr. F. L. Farrell, Traffic Manager for San Joaquin Grocery Co., of Fresno, testified defendant did no hauling for his concern, all arrangements being made by consignees. Orders for goods are brought to witness' firm by truck driver; the goods are delivered to driver and charges for transportation are paid by consignees. Goods have been so delivered for points in Hanford, principally for Gallaher's Market, Liberty Candy Co., and a customer named Vail. Shipments to Gallaher's Market have totaled 37,775 pounds for the three months period ending February 28, 1927.

Mr. Frank Pinkard, Manager of the Terminal Warehouse Co. at Fresno, testified defendant had hauled some goods to Hanford for the Bomberger Seed Co., a tenant of the warehouse. Witness had record of one shipment of 1350 pounds which was hauled on February 1, 1927. Defendant had never solicited any hauling from this witness.

Mr. Geo. H. Rogers, a witness called on behalf of defendant, testified he was formerly the agent for the Stewart Fruit Company in Kings County; and that on account of inability to secure delivery of a rush shipment of shock and fruit baskets from Fresno he secured the services of defendant who performed the hauling to Hanford, no other local draymen being available and the need for the shipment being urgent.

Mr. W. C. Gallaher, a witness called on behalf of defendant, testified that he operated a market in Hanford; that defendant had hauled for witness who sends him to Fresno and other points with orders for merchandise, which defendant procures and transports to Hanford; that hauling is only done when orders are given him; that the price is usually fixed on a hundred-weight basis although occasionally witness has employed defendant on a trip basis; and that there have been times when defendant's service has not been available.

Mr. E. W. Campbell, a witness called on behalf of defendant, testified that he was the office manager for the Lacey Milling Co., at Hanford; that defendant had hauled to his company's warehouse at Hanford from Corcoran, Stratford, Helm, Huron and from intermediate ranches; that all hauling was paid for on a tonnage basis; and that all hauling, excepting grain, was from Hanford to the Lacey Milling Company's plant at Fresno. The witness stated his company operated their own fleet of trucks and had used the service of defendant to supplement their own transportation units, defendant having been used by the Lacey Milling Company for over a year, giving satisfactory service to the extent of the company being able to dispense with the services of one of their own trucks and defendant's service being available at any time.

Mr. F. M. Douglas, a witness called on behalf of defendant, testified he was employed by the Rosenthal Sales Co. at Hanford; that defendant had hauled goods for his concern from Fresno to Hanford, orders being given defendant which were filled by Fresno merchants and the goods brought to Hanford by defendant's truck; that all hauling was done on a tonnage basis; that defendant had never solicited the transportation; and at times could not be found when hauling was to be done.

Mr. Harry C. Mac Farlane, testifying in his own behalf, stated that he owned one truck and one trailer; and that he had been in the trucking business about 14 months, first hauling for the Lacey Milling Co. between Hanford and Fresno. Witness does not confine his hauling to the route between Fresno and Hanford, citing instances of hauling between Grangeville and Los Angeles, - furniture from near Tulare to Los Angeles and from San Francisco to Hanford, - grain bags from San Francisco to Helm, - mill feed from Corcoran to Shafter, - fruit from Hanford to Visalia; Y. M. C. A. boys and their baggage from Lake Sequoia to Hanford, furniture from Hanford to Arroyo Grande, - brick from Exeter to

Hanford, - grain and mill feed from Corcoran to Hanford, and boxes, grapes, green and dried fruit from ranches to Armona and Hanford .

Witness states he had never solicited any hauling, has had no occasion so to do as all his hauling has been at the request of his patrons; that he goes wherever his patrons may direct, hauling entirely on a ton or load basis; that he has refused to haul anything unless he has an order from his patrons; that he has hauled for two or more patrons at the same time; that he at times has had a back-haul for other patrons than those for whom the initial load was hauled; and that he has refused small shipments, both as regards between Fresno and Hanford and between other points.

From the record in this proceeding it appears that defendant in his trucking operations serves all points where his services may be desired by his patrons, Hanford by reason of being the location of applicant's business being usually the point to or from which shipments are handled. In connection with this general operation defendant has done a considerable volume of business between Fresno and Hanford, and it is against such business that complaint is made by an authorized carrier operating under certificate of public convenience and necessity as issued by this Commission. The volume of business handled between Fresno and Hanford, which defendant has not operated regularly but only as directed by his patrons, has been sufficiently frequent to bring the operation under the jurisdiction of the Commission. Defendant contends that his hauling has not been secured by any solicitation on his part, but that he has only transported freight between Fresno and Hanford at the request of his patrons, and then only when he had orders to pick up shipments at Fresno or Hanford and transport same to destination. The character of service as given by defendant is outlined by his answer to a question of his counsel, as follows:

"Question,

Who else do you haul for?

Answer,

Anyone who desires me to haul for them."

The operations heretofore conducted by defendant in the carriage of property between Fresno and Hanford are those of a "transportation company" as such is defined in Section 1, paragraph (c) of the Auto Stage and Truck Transportation Act, (Chapter 213, Statutes of 1917, and effective amendments) in the following language:

"The term 'transportation company', when used in this act means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing, any automobile, jitney bus, auto truck, stage or auto stage used in the business of transportation of persons or property, or as a common carrier, for compensation, over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within the limits of an incorporated city or town or of a city and county; *****."

Section 5 of the foregoing statutory enactment provides, in part, that

"No transportation company shall hereafter begin to operate any automobile, jitney bus, auto truck, stage or auto stage for the transportation of persons or property, for compensation, on any public highway in this state without first having obtained from the railroad commission a certificate declaring that public convenience and necessity require such operation. *****."

After full consideration of the evidence and record in this proceeding, we conclude and hereby find as a fact that the operation heretofore conducted by defendant Harry C. Mac Farlane, between Fresno and Hanford has been that of a transportation company in the carriage of property, for compensation, over the public highway between said termini, and for which operation no certificate of public convenience and necessity has been granted by this Commission.

O R D E R

Public hearings having been held on the above entitled complaint, the matter having been duly submitted, the Commission being now fully advised and basing its order on the conclusion and finding of fact as appearing in the opinion which precedes this order.

IT IS HEREBY ORDERED that defendant Harry C. Mac Farlane be and he hereby is directed to immediately discontinue the transportation of property by auto truck, for compensation, over the public highway between the termini of Fresno and Hanford, and to perform no further service as a transportation company in the carriage of property, for compensation, between said termini until said defendant will have procured a certificate of public convenience and necessity from this Commission as required by the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto, and

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be and he hereby is directed to forward, by registered mail, a certified copy of this order to the District Attorneys of Fresno and Kings Counties.

The effective date of this order is hereby fixed as twenty (20) days from the date hereof.

Dated at San Francisco, California, this 6th day of April, 1927.
~~March~~

Emmanuel
H. B. Brundige
C. Seavey
Thos. O. Rautts
COMMISSIONERS.