

ORIGINAL

Decision No. 18247

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

J. E. WOOLLET,

Complainant,

vs.

COMPANIA DE TRANSPORTES DE
LA BAJA CALIFORNIA, S.A.
(Lower California Trans-
portation Company),
Defendant.

CASE NO. 2220

Richard T. Eddy, for Complainant.

Warren E. Libby, for Defendant.

BY THE COMMISSION:

O P I N I O N

J. E. Woollet, complainant herein, operates stage service for the transportation of passengers and baggage express between San Diego and Ensenada, Mexico, via Tia Juana, Mexico. In this proceeding, he complains that the defendant is conducting operations similar to his own by the same routes without authority from this Commission, and in violation of the Auto Stage and Transportation Act (Chapter 213, Acts of 1917, as amended), to his injury and to his loss of business and patronage; and as a remedy, complainant asks an order from this Commission requiring it to cease and desist from further operations until it has received from this Commission a certificate of public convenience and necessity authorizing a resumption of service for the transportation of passengers between San Diego and Tia Juana, California. Defendant corporation, answering the amended complaint, admits the operation of an automobile stage line between San Diego, California and Ensenada,

Mexico, but denies separately each of the allegations of the complaint as to the allegation that by reason of rules at the Mexican border stages are required to discharge their passengers on the American side and re-embark them on the Mexican side as alleged by complainant. Upon the issues thus joined, the matter was heard by Examiner Williams at San Diego, and is now under submission.

Complainant Woollet received from the Railroad Commission by Decision No. 13425 on Application No. 9524, a certificate of public convenience and necessity, authorizing him to establish operation "as a common carrier of passengers and express matters not over one hundred pounds in weight, and only such express matter as may be carried on passenger stages without inconvenience or discomfort to passengers over and along the following route, by the paved highway between San Diego and the California border at Tia Juana, Mexico". The order also provided: "That applicant shall not transport any passengers or express matter locally between San Diego and Tia Juana, Mexico, both points inclusive, in either direction." It is upon this order the complainant bases his complaint asking this Commission to make similar requirements as to the defendant corporation under the "Auto Stage and Truck Transportation Act (Chapter 213, Acts of 1917, as amended)".

There is little disagreement between complainant and defendant as to the actual facts which appear in the record. Woollet established operation between San Diego and Ensenada in 1922 on regular schedule. In 1924, he was advised by counsel that he required a certificate for the operation of the portion conducted in the State of California, and thereupon made application for the same. At that time, the Commission asserted its right to regulate inter-state carriers and similar traffic with foreign nations so far as their operations in California are concerned, as within its jurisdiction, and upon affirmative showing of Woollet, and without opposition, the certificate was granted.

However, this certificate, in effect, is little more than permission to operate stages for a distance of sixteen miles in California over the route selected, as there was no intention to transport any passengers, express or baggage from point to point in the State of California.

In August, 1925, defendant corporation, organized under the laws of Mexico, established transportation service by auto stage between Tia Juana and Ensenada, Mexico, and began selling through tickets from San Diego to Ensenada via the San Diego and Arizona Railroad. After using this method for several months, the company ceased railway cooperation and transported passengers through by stage from San Diego to Ensenada, and in the reverse direction. This situation continued until July, 1925, when in response to alleged orders from the mayor of Tia Juana, both stage operators stopped their vehicles on the American side, their passengers walking across the border and resuming their journey on the Mexican side.

At the hearing, a great deal of testimony was introduced in reference to this order and a translation of it was placed in evidence. The assumption that this order, however, was authenticated by any national department of the Mexican government is not borne out by the testimony, and it appears to have been a local regulation at the border, made upon the authority of the governor of Lower California. Whatever its intent or effect may have been at this particular point, - and the only point to which it applied, - it did not, on its face, impose any restrictions upon companies nationalized in Mexico, and the defendant company is indisputably a Mexican corporation. Other aspects of the origin and effect of the order, were the desire of the officials at Tia Juana to protect bus operators between the border and the old town of Tia Juana, and to forbid the transportation of passengers from the border to the old town by

through carriers. Whatever legal effect this order may have had, it does not appear to have been more than ordinary police regulation at the border.

Although defendant in its answer alleges that it was complying with this order, at the time of the hearing it was testified that the order was no longer complied with because the defendant had investigated every official source in Mexico to find the authority for the order and had been assured that it is not enforceable against defendant.

Since November, 1926, defendant has transported its stages and passengers across the border without disembarkation. At the time of the hearing, the same situation did not apply to complainant, who was still requiring passengers to disembark, walk across the border, and resume the journey in the same vehicle.

Both complainant and defendant sell through tickets from San Diego to Ensenada. Both traverse the same route and both transport passengers from Tia Juana, Mexico, to Ensenada and intermediate points. There appears to be no substantial difference in their operations in any respect except that complainant requires his passengers to walk across the border while defendant does not. It is the contention of complainant that this Commission should require defendant, or any other operator, to procure a certificate similar to his own for operation over the highways in California, and that he has not been informed by the Commission that his certificate is inoperative.

Based upon decisions rendered by the United States Supreme Court in the Duke Cartage Case, 266 U.S. 570; Buck v. Kuykendall, 267 U.S. 307, and Bush & Sons v. Malloy, 267 U.S. 317, this Commission determined in Decision Numbered 16408 on Applications Numbered 9808, 9681, 9561, 9758 and 9783, dated April 5, 1926, that it has no jurisdiction over operations exclusively of an interstate character except as to reasonable

restrictions upon the use of the highways in this State with respect to safety upon and conservation of the same. The principles enunciated in that decision with respect to interstate commerce apply equally as to commerce with foreign nations. It is our opinion, therefore, that this complaint should be dismissed. An order will be entered accordingly.

It is to be borne in mind that the California Legislature of 1925 passed an amendment to Section 9 of Chapter 213 of the Act of 1917 (Auto Stage and Truck Transportation Act), which provides:

"Neither this act nor any provision thereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this union, except in so far as the same may be permitted under the provisions of the constitution of the United States and the acts of congress; provided, however, that with reference to transportation companies operating solely in interstate commerce between any point or points within this state and any point or points in any other state or in any foreign nation, the railroad commission shall have the power to prescribe such reasonable, uniform and non-discriminatory rules and regulations in the interest and aid of public health, security, safety, convenience and general welfare as shall in its opinion be required by public convenience and necessity. (Amended, Ch. 254, Stats. 1925, p. 433.)"

Under this provision auto carriers engaged in foreign commerce will be required to comply with such rules and regulations as this Commission, under such authority, has established or shall establish.

O R D E R

J. H. WOOLLET having made complaint against Compania de Transportes de la Baja California, S. A. (Lower California Transportation Company), as above-entitled, a public hearing having been held thereon, the matter having been duly submitted by the parties upon stipulation of facts, and the Commission being now fully advised,

IT IS HEREBY ORDERED that the complaint herein
be, and the same is hereby dismissed for want of jurisdiction.

Dated at San Francisco, California, this 16th day
of April, 1927.

Francisco
H. B. Bunnage
C. Seaver
Leon White
Thos. S. Houtt
Commissioners.