

Decision No. 18290

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAM NEWTON and THOS. BIGGART, co-partners, doing business under the firm name and style of Newton & Biggart, for an order defining, confirming and validating the operative rights owned and exercised by applicants, for the transportation of property, for compensation, by auto trucks, between San Jose and Hollister and intermediate points; and for an order and certificate declaring that public convenience and necessity require applicants to operate an auto truck line for the transportation of property, for compensation, between San Jose and Hollister and intermediate points.

) Application  
) No.12317

W. F. James, and Sanborn & Roehl and De Lancey Smith,  
by A. B. Roehl, for Applicants.  
Gwyn H. Baker and Robert M. Weight, for Highway  
Transport Company and Bell & Griffin, Protestants,  
H.W.Hobbs for Southern Pacific Company, Protestant,  
L.E.Kitts for American Railway Express Company,  
Protestant,  
E.G.Shoup for Peninsular Railway Company, Protestant.

BY THE COMMISSION -

O P I N I O N

Sam Newton and Thos. Biggart, co-partners, doing business under the firm name and style of Newton and Biggart, have petitioned the Railroad Commission for an order confirming and validating the right of the partnership to operate an auto truck service for the transportation of property, for compensation, between San Jose and Hollister, and intermediate points including Coyote, Madrone, Morgan Hill, San Martin, Gilroy and San Juan; and declaring that public convenience and necessity require the operation by applicants of an auto truck service as a common carrier of property, for compensation, between San Jose and Hollister and the intermediate points of Coyote, Madrone, Morgan Hill, San Martin, Gilroy, San Juan and all

other intermediate points; and further authorizing applicants to charge for the transportation of property, between all of the aforesaid points, the rates as now appearing in applicants' tariff lawfully on file with this Commission.

A public hearing on this application was conducted by Examiner Handford at San Jose, the matter was duly submitted and is now ready for decision.

Applicants allege, in support of their petition for a confirmation of their operative rights and for a certificate and to continue the rates now on file with this Commission that (1) a petition for an injunction is now pending in the Superior Court of Santa Clara County, said petition having been filed by Highway Transport Company and James Bell and Charles Griffin, doing business under the fictitious name of Gilroy Express, said petition alleging that the Railroad Commission by its Decision No.7539 on Application No.5461, as decided May 3, 1920, did not grant to E. C. Heskett, the predecessor of applicant, the right to operate an automobile freight service between or to and from intermediate points between San Jose and Hollister; (2) that applicants acquired the operative rights for which confirmation is herein sought from R. W. Laverty with the approval of the Railroad Commission as contained in its Decision No.15279 on Application No.11508, as decided August 12, 1925, and thereafter in accordance with the conditions of the order in the above mentioned decision on August 21, 1925, by adoption made as their own the tariff previously filed by said E.C.Heskett on May 24, 1920, as his Local Freight Tariff No.1, C.R.C. No.1, publishing rates for the transportation of merchandise between San Jose and Hollister and intermediate points; and (3) that the instant application is filed what there may be no impairment of applicants' service as now rendered to the public.

Mr. Sam Newton, one of the applicant partnership, testified the line had been operated four months, having been purchased from Laverty and the transfer being authorized by the Commission. Groceries are hauled from San Jose to Hollister and intermediate points with return loads consisting principally of fruit destined to San Jose. During the period covered by the testimony, applicants have handled 198 tons between San Jose and Hollister, and 76 tons to or from intermediate points.

Mr. J. D. Chappell, handling plumbing and implements at Gilroy, testified he used applicants' service for shipments from San Jose and although he had not patronized the service when it was operated by Laverty he had used it when operated by Newton and Ayers. Witness further testified he knew of no other service offering the same convenience for his needs.

Mr. Matt Heiner, a hardware merchant at Gilroy, testified he had used the service of applicants for the movement of plaster, cement, roofing paper, sheathing and deadening felt from San Jose, and was of the opinion that a continuation of the service was necessary.

Mr. Frank B. Abbe, in the general merchandise and warehouse business at San Juan, testified he had patronized applicants for shipments from San Jose, and would continue to patronize them if rates were not increased.

Mr. Harry Skeels, in the hotel and restaurant business at Morgan Hill, testified as to knowledge of applicants' service which he had used for the transportation of groceries from San Jose and found same satisfactory.

Mr. Chas. A. Belli, residing in Gonzales, and in the trucking business, testified he was formerly employed by Laverty and Newton & Ayers as a driver on the route now operated by applicants, that during the term of his employment intermediate points were always served.

The granting of the application was protested by Highway Transport Company, Bell and Griffin operating under the fictitious name of Gilroy Express, and Southern Pacific Company.

Mr. F. Hennessy, Vice President and Manager of protestant Highway Transport Company, testified his company was operating a daily freight service between San Jose, Hollister and intermediate points under the authority of a certificate granted by the Railroad Commission and described the service and rates available. His company has ample facilities to handle all business between San Jose, Hollister and intermediate points, the equipment consisting of 46 trucks and 35 trailers, 8 trucks being used between San Francisco and San Jose and 3 trucks south of the latter point.

Mr. Jas Bell, one of the co-partners of Bell & Griffin operating the Gilroy Express, testified regarding the service operated by his concern between San Francisco, Gilroy, Hollister and intermediate points; that tonnage was very light in the Coyote territory and between Coyote and Hollister; that 11 trucks and 7 trailers comprised the equipment available for the service; and that the existing authorized carriers could satisfactorily handle all the business in the territory covered by the application.

Protestant Southern Pacific Company, by its trainmaster, Mr. L. P. Hopkins, introduced its freight schedules in the territory between San Jose and Hollister. It appears the service has always been able to care for all shipments offering for train movement, and that no through rates are available to San Juan in connection with the California Central Railroad.

The records of this Commission show the following data regarding the route herein considered:

Decision No. 7539 on Application No. 5461, as decided May 5, 1920, granted to E. C. Heskett a certificate of public convenience and necessity to operate "an automobile freight service between San Juan and Hollister" and required the acceptance of said certificate and the filing of tariffs and time schedules. The application sought authority to operate between San Jose and Hollister and intermediate points. The tariff proposed and appearing as an exhibit attached

to the application named single commodity rates, except for pianos which were shown at 22 cents per mile.

Decision No.7762 on Application No.5790, decided June 19, 1920, authorizing the transfer of operative right previously granted to E. C. Heskett by Decision No.7539 to William E. Bledsoe, and requiring the filing or adoption by Bledsoe of schedules and tariffs as previously filed by Heskett.

Decision No.10550 on Application No.7806, decided June 8, 1922, authorizing the transfer of the operative right previously acquired by William E. Bledsoe from E.C.Heskett to C.C.Newton and W.D. Ayers, co-partners, doing business under the firm name and style of Newton and Ayers and requiring the filing or adoption by the co-partnership of schedules and tariffs as previously filed or adopted by William E. Bledsoe.

Decision No.12498 on Application No.9288, decided August 17, 1923, authorizing the transfer of the operative right previously acquired by C.C.Newton and W.D.Ayers, a co-partnership, from William E. Bledsoe, to R.W.Laverty and requiring said Laverty to file or adopt as his own the schedules and tariffs as formerly filed or adopted by said C.C.Newton and W.D.Ayers.

Decision No.15279 on Application No.11508, decided August 12, 1925, authorizing the transfer of the operative right previously acquired by R.W.Laverty from C.C.Newton and W.D. Ayers, co-partners, to Sam Newton and Thomas Biggart, co-partners, doing business under the firm name of Newton & Biggart, and requiring said co-partnership to file or adopt as their own the schedules and tariffs as formerly filed or adopted by said R.W.Laverty.

An inspection of original tariff filings as appearing in the official files of this Commission show filings to have been made by the respective grantees of the certificate originally granted to E. C. Heskett and subsequently transferred in accordance with the above mentioned decisions, the original tariff by Heskett covering rates "between San Jose, Hollister and intermediate points" and stating rates for commodities between San Jose and Hollister with rules as to the application of rates as follows:

"Rates to or from intermediate points not shown herein will be the same as next more distant point to or from which rates are published."

"Minimum charge for full truck load of one or more commodities between any two points will be \$25.00, except where lower charge is specifically provided for herein."

Subsequently adoptions were duly filed by the successive grantees by transfer duly authorized and the original tariff as filed by E.C.Heskett is now, by successive adoption, the tariff of applicants herein.

It also appears from the evidence herein that intermediate points between San Jose and Hollister have always been served by this line since its establishment by E.C.Heskett, merchants at Gilroy, Morgan Hill and San Juan having used the service and finding it satisfactory and a driver formerly employed on the line under two different owners testifying intermediate points always were served.

We are of the opinion and hereby find as a fact that the right to serve intermediate points between San Jose and Hollister has been established by applicants from the record herein, and that a need exists for the continuance of such service.

#### O R D E R

A public hearing having been held on the above entitled application, the matter having been duly submitted, the Commission being now fully advised and basing its order on the finding of fact which appears in the opinion preceding this order,

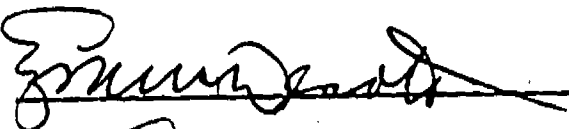

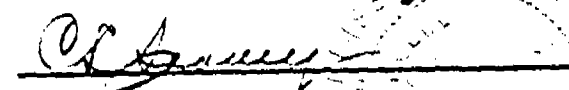


THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the furnishing of service to intermediate points between San Jose and Hollister by Sam Newton and Thos. Biggart, co-partners, doing business under the firm name and style of Newton & Biggart, in connection with the operation of the motor freight

line operated by said co-partnership under the authority contained in this Commission's Decision No.15279 on Application No.11508, as decided August 12, 1925, said intermediate points being on the route between San Jose and Hollister via Coyote, Madrone, Morgan Hill, San Martin, Gilroy and San Juan, including pick-up and delivery within one mile of the route or of the main business center of all points served, and

IT IS HEREBY ORDERED that applicants Sam Newton and Thos. Biggart, co-partners, doing business under the firm name and style of Newton & Biggart, be and they hereby are authorized to continue operation of a freight motor truck service between San Jose and Hollister and intermediate points via the route set forth in the foregoing declaration.

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

Dated at San Francisco, California, this 29<sup>th</sup> day of April, 1927.

  
  
  
  
  
COMMISSIONERS.