

Decision No. 18453

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

GEORGE W. JOHNSON and J. M. JOHNSON,

Complainants,

vs.

GEORGE J. BENNETT,

Defendant.

CASE NO. 1773

Preston & Duncan, by C. A. Linn, for Complainants.
Chas. Kasch, for Defendant.

BY THE COMMISSION -

O P I N I O N

George W. Johnson and J. M. Johnson, co-partners, in business, operating an automobile freight line between Geyserville and Navarro and intermediate points under the authority of a certificate of public convenience and necessity duly issued by the Railroad Commission, have filed complaint against George J. Bennett of Philo, alleging that said Bennett has solicited and accepted freight to be hauled from Philo and other points to Cloverdale and within the territory in which said complainants are serving; that said defendant has no certificate of public convenience and necessity permitting his operation, nor is he authorized by law to operate and his operations are in violation of law; that complainants at all times have been, and now are, ready, willing and able to haul all the freight which has been hauled by said defendant.

Defendant duly filed his answer herein alleging that the hauling complained of has been conducted under separate and individual contracts; that complainants have not been able, willing or ready to haul all the freight which has been hauled by defendant; that the service heretofore rendered by complainants is and has been

wholly inadequate and unsatisfactory and that for such reason the farmers and growers of Anderson Valley and vicinity have made contracts with defendant to do their hauling; that hauling has been contracted for by defendant by reason of the unsatisfactory service of complainants; and that the operations of defendant have been conducted in accordance with advice of his counsel.

A public hearing on this complaint was conducted by Examiner Handford at Cloverdale, the matter was submitted on briefs filed by counsel and is ready for decision.

Geo. J. Bennett, defendant, testified he operated trucks from points in Anderson Valley to Cloverdale and other points on the line of the Northwestern Pacific Railroad; that he owned and operated a ranch in Anderson Valley supplementing his ranching activities with the operation of his trucking service; that his total trucking work aggregated one month's work in each year; that he had done no advertising or solicitation for the transportation of property, his patrons usually coming to him and offering him their business; and that he was now ready and willing to haul freight at any time such work were offered by any one.

C. O. Dightman, residing at Philo, testified defendant had hauled dried fruit from the ranch of witness to Healdsburg.

Henry Munn, an apple grower, residing at Philo, testified defendant had hauled apples for him, witness having requested defendant's service.

Henry Clow, residing at Philo, has employed defendant to haul wool from Philo to Cloverdale.

Chas. Sanders, residing near Philo, has had hauling done by defendant, 15 or 16 truckloads of grape stakes being transported from a point $1\frac{1}{2}$ miles from the highway near Philo to the Northwestern Pacific Railroad station at Cloverdale. Defendant was requested by this witness to do the hauling.

P. Eton, residing at Philo, has employed defendant to haul lumber from Navarro to Philo, witness having requested defendant to undertake the work.

Complainants herein are operating a freight line under the jurisdiction of this Commission and the authority granted by its Decision No.7393 on Application No.5417, decided April 8, 1920, covering operation between Cloverdale and Navarro, serving as intermediate points the communities at Boonville and Philo. Also by the authority conferred by this Commission's Decision No.9027 on Application No.6621, as decided May 28, 1921, covering operation between Cloverdale and Geyserville and intermediate points as an extension of rights already granted between Cloverdale and Navarro and intermediate points.

Complainants object to the operation of defendant in the territory, over the routes and between the fixed termini covered by their certificated authority. It appears, however, from the record herein that the hauling done by defendant has not been from regular termini but shipments have originated at points off the highway traversed by complainants in the conduct of their authorized and certificated service and that the business conducted by defendant is fully comparable with the class of service heretofore considered in its Decision No.15618 on Application No.11303, decided December 31, 1925, being the application of Ben Moore for a certificate of public convenience and necessity to operate freight truck service at Sanger and in the vicinity thereof, wherein the Commission held that a general "on call" service where the operations are not proposed to be "usually or ordinarily" between particular fixed points or over definite regular routes that such operations are not subject to the jurisdiction of this Commission as provided by the statutory law. The operations of defendant, as herein complained of, not being regular or between fixed termini and over regular routes, but being those of an operator transporting freight to any point desired by his customers

and with no reasonable degree of regularity as regards "fixed termini" or "over regular routes", we are of the opinion and hereby find as a fact that the operation complained of is not subject to the jurisdiction of this Commission, and the complaint will, therefore, be dismissed.

O R D E R

A public hearing 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 finding of fact as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED that this complaint be and it hereby is dismissed.

Dated at San Francisco, California, this 1st day of

June
~~July~~, 1927.

H. H. Brundage

C. Seaver

Thos. J. Quinn
COMMISSIONERS.