

Decision No. 18483

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SAN FRANCISCO, NAPA AND CALISTOGA
RAILWAY, a corporation,

Complainant,

vs.

WESTERN MOTOR TRANSPORT COMPANY,
a corporation.
Defendant.

Case No.1626

John T. York, for Complainant,
Sanborn & Roehl, by E. H. Sanborn, for Defendant,
L. Richardson, for Southern Pacific Company.

BY THE COMMISSION -

O P I N I O N

San Francisco, Napa and Calistoga Railway, a corporation, complains of defendant Western Motor Transport Company, a corporation, alleging that the provisions of this Commission's Decision No.8466 have not been observed by said defendant, a restriction in said decision providing "it shall not carry local passengers between North Vallejo and Napa and intermediate points, nor between Napa and Santa Rosa and intermediate points, nor between Santa Rosa and Healdsburg and intermediate points, but it may carry passengers traveling through from one to another of said portions of through route and between any stage points on its Sacramento line east of Sacramento Junction;" that since defendant commenced operation in March, 1921, said defendant has carried and now continues to carry passengers between North Vallejo and the City of Napa and points intermediate thereto; that during such time defendant has carried and now continues to carry local passengers between the City of Napa and the City of Santa Rosa and intermediate points; that for the purpose of securing local traffic in violation of the terms of this Commission's Decision defendant has authorized and permitted its

ticket agent and the operators of its stage lines to represent and publish that it will carry local passengers between said prohibited terminals; that for the purpose of securing local traffic in violation of the terms of the Commission's Decision defendant has procured certain automobiles to meet auto stages at Sacramento Junction and carry said local traffic into Napa; that for the purpose of securing local traffic between Napa and Vallejo defendant issued a ticket reading "good for continuous passage, Napa to South Vallejo" and has permitted its ticket agents to inform passengers that the station name had no significance and that drivers would let them leave the stage at any desired point; that defendant has established a station called King, located at an oil service station maintained by Napa City Water Company near its plant on Jefferson Street in the City of Napa; and that no passengers have ever been carried between Vallejo and the station of King but were carried from Vallejo and discharged at the Elace Hotel in Napa, said hotel being located on Suscol Avenue and Third Street directly opposite the railroad station of complainant in the City of Napa.

Complainant further alleges that by a traffic contract, duly filed with this Commission, complainant and defendant have agreed to handle joint passenger traffic between all points on the line of complainant and all auto stage lines in Napa and Lake Counties; that defendant has misrepresented the time of arrival and departure of the trains of complainant and by reason of such misrepresentation has secured passengers to be carried on its own stages between Oakland and said Napa and Lake County points who would otherwise have been carried on the joint lines covered by said traffic contract; that for the purpose of securing local traffic in violation of the conditions of the Commission's decision, defendant has authorized and permitted the operators of its stages to accept and carry passengers at any and all points between Napa and Vallejo, declining to furnish a ticket but accepting cash fares, has accepted fares not provided in its published tariffs and schedules, and has at all

times carried local passenger between prohibited points; that complainant is now and has always, in good faith, sold tickets and routed passengers from its joint line between Napa and Oakland and has been, and is at all times, ready and willing to provide any and all necessary accommodation and service to the public between Napa and Oakland and all other points reached by its line and to auto stage lines connecting at any point with complainant's railroad; that by reason of the transfer by defendant to A. Durham of a portion of its route between Napa and Santa Rosa and to one Birch of a portion of its route between Santa Rosa and Healdsburg, said transfers having been approved by this Commission, there no longer exists a through auto service between Oakland and Healdsburg, but notwithstanding such fact defendant is now operating service as a common carrier between Napa and Oakland in conflict with the provisions of this Commission's Decision No.8466 in unfair and unlawful competition as against the through route and joint rates now existing between Napa and Oakland by reason of the traffic contract between complainant and defendant.

Complainant prays for an order revoking the certificate contained in its Decision No.8466, revoking the certificate heretofore granted to Baughman and Lycke and thereafter transferred to defendant and that said defendant be restrained and enjoined from further operation on the routes covered by said certificates.

Defendant duly filed its answer denying each and every material allegation of the complaint.

F. D. Everman, employed as Traffic Manager for defendant, testified that his company had established a station at a point near the crossing of the Southern Pacific Company and the highway leading from Napa to the Sonoma County line, said station having been named "King"; and that from March 3rd to September 30, 1921, 151 tickets were sold from Vallejo to King Station.

Witness further testified regarding instructions issued by him in his capacity of traffic manager to agents and operators regarding the manner in which traffic was to be handled between Vallejo and Napa, such instructions having been contained in "Station and Operator's Bulletin No.62", issued March 21, 1921, reading in part, as follows:

"Starting March 3rd, a new service will be started between Oakland and Healdsburg, via Vallejo, Napa, Sonoma, Santa Rosa and Healdsburg.

Following regulations must be strictly observed by both Operators and Agents.

No.1, Special provisions in our franchise state that we are not allowed to carry local passengers between No. Vallejo and Napa or between Napa and Santa Rosa, or between Santa Rosa and Healdsburg. Between these points tickets must not be sold or cash fares taken. If passengers apply, state that you cannot carry local passengers and refer them to the respective carriers who operate over these restricted zones.

You are allowed to sell tickets and collect cash fares if destination is from one zone into another from Oakland, Richmond, Pinole, Rodeo, So. Vallejo to any point on line.

Note: So. Vallejo zone is from So. Vallejo Wharf, foot of Lemon Street to point on road where Southern Pacific R.Y. crosses or what is commonly known as the Marsh Fill."

and that such instructions were delivered to all agents and operators, the witness having personally instructed each agent and operator regarding the necessity for absolute compliance therewith; and that some operators had been discharged for the violation of instructions regarding the carriage of local passengers in prohibited territory when the matter was brought to his attention by checks of inspectors; that from April 1, 1921, to May 26, 1921, 495 tickets were sold at Napa for South Vallejo.

John A. Eichwaldt, employed as an investigator by complainant, testified as to the purchase of a ticket at the Blace Hotel, of paying a cash fare from the Napa State Hospital to Vallejo, Napa, the ticket being for a destination at Vallejo; of paying cash fare on a trip from a point on the highway in the northerly portion of the city of Vallejo to Napa; and of paying a cash

fare from Sacramento Junction to Napa; that he had endeavored to purchase a ticket from Vallejo to Napa and had been refused by the ticket agent at Vallejo. The ticket purchased by witness was received as complainant's Exhibit No.1. This ticket is one issued by Western Motor Transport Co. on Form 5, Serial No.353, reading South Vallejo to Napa, and is stamped on the reverse side "Jul 18 1921" or two days later than the date upon which witness, after referring to written memoranda, testified as to the date of purchase. The ticket calls for transportation in a direction which is the reverse of that for which witness intended to travel.

Marie Kretlow, a witness, employed by complainant during the month of March, 1921, to investigate stage conditions testified she purchased a ticket over the line of defendant from Vallejo to King, same being bought at the United Cigar Store in Vallejo; that she was told by the driver that she could stop off at Napa; that she purchased a ticket at the Palace Hotel, Napa, for South Vallejo, and on asking as to the location of South Vallejo was told by the agent that she could leave the stage at any point desired, such information being confirmed by the driver of the stage in response to her inquiry; that three other trips were made from Vallejo to Napa, a ticket to King being purchased in each instance, one trip made to King; two additional trips were made from Napa to Vallejo, tickets for which were purchased at the agency of the defendant at the Palace Hotel, Napa; and one ticket, Vallejo to King was purchased but not used for transportation. Witness further testified that on some of these trips passengers were picked up by the defendant's stages at the Napa State Hospital and on one occasion cash fares were observed to have been paid to the driver. We cannot accord material weight to the testimony of this witness for the reason that not only was the evidence uncertain although largely given with the assistance of notes compiled following the

several trips, but because a ticket from Vallejo to King testified as having been used by witness for transportation, Vallejo to Napa, was presented as complainant's Exhibit No. 6.

W. O. Croxdale, a witness employed by complainant as an investigator, testified that he presented himself at the agency of defendant in the Palace Hotel at Napa and asked for a ticket to Vallejo and was told that he could not be sold a ticket to Vallejo but would be sold to South Vallejo and he could get off where he wanted to. Witness purchased two tickets, one of which was used for passage to Vallejo. On the same day witness went to the ticket office at the United Cigar Store in Vallejo and requested a ticket to Napa, was told that they would not sell to that point, and upon requesting a ticket to King was refused but was told he could purchase a ticket to Santa Rosa.

James Lycke, employed as Assistant Traffic Manager for defendant, testified he was formerly employed as a stage operator between Sacramento and Oakland and that while so employed it was a daily occurrence for passengers to request transportation from Vallejo or North Vallejo to Sacramento Junction and Napa; that he was familiar with his company's bulletin prohibiting the furnishing of such transportation and had consistently refused to accept local passengers between such points.

Frank C. Williams, employed as a stage operator by defendant, testified as to his operation of eight round trips daily between Napa and Sacramento Junction; that he was familiar with the bulletin of his company prohibiting the carrying of local passengers; that he had passengers request transportation to North Vallejo, some of whom boarded his stage; that when passengers insisted on going to North Vallejo he told them to take the electric railway but if they desired to go to South Vallejo he went to the Napa ticket office, purchased a ticket and took them to the end of his run at Sacramento Junction where they transferred to another stage to reach their destination.

Arthur J. Leroux, employed as stage operator by defendant, testified he was assigned to service between Oakland and Sacramento; that in such service he transported passengers from Sacramento Junction to South Vallejo that had previously been transported from Napa to Sacramento Junction; that all such passengers held tickets; that almost daily requests were made by passengers for transportation from North Vallejo to Napa or points intermediate which inquiries were referred to the electric railroad; that he had never carried a passenger on a cash fare from North Vallejo to Sacramento Junction who was destined to Napa, or a point intermediate between Sacramento Junction and Napa; that he was familiar with his company's bulletins prohibiting the carriage of local passengers between Vallejo and Napa and had not violated such instructions.

Albert L. Owens, employed as agent at Vallejo by defendant, testified that an average of ten people inquired at his office daily for transportation from North Vallejo to Napa; that such inquiries were referred to the electric railroad; that at no time had he solicited business for Napa in violation of his company's bulletin prohibiting such practice; that he had sold tickets to King when same were requested by patrons but had sold no tickets destined to King to any passengers requesting tickets to Napa.

Defendant Western Motor Transport Company by the provisions of this Commission's authority as contained in its Decision No. 7111 on Application No. 5144, as decided February 11, 1920, acquired from W. A. Gentry the operative right for the transportation of passengers between Vallejo and Sacramento and between Napa and Sacramento Junction and was required to

"file in its own name tariffs and time schedules or to adopt as its own the tariffs and time schedules heretofore filed by said W.A. Gentry, all rates and fares to be the same as those heretofore filed with this Commission by said W. A. Gentry."

Defendant Western Motor Transport Company by the provisions of this Commission's authority as contained in its Decision No.8466 on Application No.5758, as decided December 20, 1920, was granted an operative right for the operation

"of a through auto stage service as a common carrier of passengers and baggage between Oakland and Healdsburg via Napa, Sonoma and Santa Rosa, but it shall not carry local passengers between North Vallejo and Napa and intermediate points nor between Napa and Santa Rosa and intermediate points, nor between Santa Rosa and Healdsburg and intermediate points, but it may carry passengers traveling through from one to another of said portions of said through route and between any such points and points on its Sacramento line east of Sacramento Junction."

Defendant Western Motor Transport Company by the provision of this Commission's Decision No.8994 on Application No.6775, as decided May 21, 1921, was authorized to sell and transfer to A. Dunham the operative rights between Napa and Santa Rosa as such rights existed under the authority granting same to said Western Motor Transport Company and as contained in this Commission's Decision No.8466 on Application No.5758, decided December 22, 1920. A. Dunham as the successor in interest was required

"to immediately file tariff and time schedule, in duplicate, in his own name, or to adopt as his own the tariffs and time schedules heretofore filed with the Railroad Commission by applicant, Western Motor Transport Company, all rates to be identical with those filed by applicant, Western Motor Transport Company."

Defendant Western Motor Transport Company by the authority contained in this Commission's Decision No.10073 on Application No.7340, as decided February 8, 1922, sold and transferred to California Transit Company, a corporation, all of its franchises, assets, operative rights, equipment, property and assets, the order providing that

"Applicant California Transit Company shall immediately file tariff of rates and time schedules, in duplicate, in its own name, or adopt as its own the tariffs and time schedules heretofore filed with the Railroad Commission by applicant Western Motor Transport Company, all rates and time schedules to be identical with those filed by applicant Western Motor Transport Company."

Western Motor Transport Company filed with this Commission its Supplement No.1 to Local and Joint Tariff No.1, C.R.C. No.2, on February 21, 1920, issued February 18, 1920, and effective February 20, 1920, in which are filed the rates authorized by Decision No.7111 on Application No.5144, same being the rates formerly in effect by W. A. Contry.

Western Motor Transport Company filed with this Commission on January 15, 1921, its Local Passenger Tariff No.4, C.R.C. No.5, issued January 8, 1921, effective March 1, 1921, naming one-way and round-trip fares between Oakland and Healdsburg and intermediate points, in conformity with the Commission's Decision No.8466 on Application No.5758, North Vallejo and South Vallejo appearing as fare points in said tariff.

On March 2, 1921, defendant Western Motor Transport Company filed with this Commission its Local Passenger Tariff No.5, C.R.C. No.6, issued February 23, 1921, effective March 1, 1921, naming one-way and round-trip fares between Oakland and Healdsburg and intermediate points. This tariff named rates to stations not previously authorized as intermediate points to be served by this carrier, the authorized stations under Decision No.8466 being those appearing in Application No.5758, or Napa, Sonoma, Boyes Springs, Santa Rosa and Healdsburg. The tariff adds the additional points of Flosda, Napa Junction, Sacramento Junction, Soscol, Napa Hospital and Kings, all of which are unauthorized points and not covered by the Commission's certificate of public convenience and necessity.

Western Motor Transport Company by its Supplement No.1 to Local Passenger Tariff No.5, Supplement No.1 to C.R.C. No.6, naming one-way and round-trip fares between Oakland and Napa, and between Sacramento and Napa, and intermediate points, issued May 23, 1921, effective May 29, 1921, canceled all fares appearing in tariff applying between points east of Napa on the one hand and points west of Napa on the other, by reason of the transfers authorized from Western Motor Transport Company to A. Dunham and J. F. Birch under the authority

contained in this Commission's Decision No.8994 on Application No.6775, as decided May 21, 1921.

Western Motor Transport Company filed with this Commission on May 24, 1921, its Tariff C.R.C. No.7, issued May 23, 1921, effective May 29, 1921, naming joint one-way and round-trip fares in connection with the lines of A. Dunham and J. F. Birch, between Oakland and Sacramento and Healdsburg, and to intermediate points, via Napa. In this joint tariff the unauthorized intermediate station of Kings again appears.

California Transit Company having purchased the operative rights of Western Motor Transport Company by the authority contained in this Commission's Decision No.10073 on Application No.7540, as decided February 8, 1922, filed on February 20, 1922, issued February 18, 1922, effective February 23, 1922, its adoption of the rates, fares, rules and regulations of Western Motor Transport Company.

California Transit Company by its adoption of the rates, fares, rules and regulations of Western Motor Transport Company is now operating under Joint Passenger Tariff No.1 of Western Motor Transport Company, covering one-way and round-trip fares in connection with Rodeo-Vallejo Ferry Co., Vallejo Bus Co., A. Dunham, J.F.Birch, Shasta Transit Co., and Placer Auto Stage Co. (C.R.C. No.9) in which tariff is shown as a fare point the unauthorized station of Kings.

The local tariffs of A. Dunham have never shown, and do not now show, the station King as a fare point, such station only appearing in the joint passenger tariff of Western Motor Transport Company as hereinabove referred to.

We have given full consideration to all the evidence and exhibits herein. It appears therefrom and we hereby conclude and find as a fact that no authorization had ever been given by certificate of public convenience and necessity for the transportation of passengers between North Vallejo (now Vallejo), and King or intermediate points, nor between North Vallejo (now Vallejo) and Napa

and intermediate points; that the establishment of the stations of King, Flodden, Napa Junction, Soscol and Napa Hospital (also called Napa State Hospital) are not authorized by any certificate of public convenience and necessity issued by this Commission as required by the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto. The situation here presented is similar to that previously determined by the Commission in its Decision No.9065 on Case No.1442, A. B. Watson vs. White Bus Line et al. (Opinions and Orders, C.R.C. Vol20, p.18) wherein the principle was established that no transportation company subject to regulation by this Commission under the authority conveyed by Chapter 213, Statutes of 1917, and effective amendments thereto could enlarge or expand operative rights beyond those existing as of May 1, 1917, or subsequently granted by this Commission by a certificate of public convenience and necessity unless a certificate of public convenience and necessity as provided for in the statutory law had been issued by the Commission following application therefor and affirmative showing by an applicant. This decision was sustained by the California Supreme Court on September 22, 1922, by its decision in Case S.F. No.10099 (64 Cal. Dec.278).

The facts herein presented sustain the allegations of the complaint in that defendant has by tariff publication, and without the certificating authority required by the statutory law, held itself out to the public as a common carrier of passengers by auto stage, for compensation, between North Vallejo (now Vallejo) and the stations of King, Flodda (or Flodden), Napa Junction, Sacramento Junction, Soscol, Napa Hospital (also known as Napa State Hospital), and to and from points intermediate between and between intermediate points on the line between North Vallejo (Vallejo) and Napa, and the order herein will direct discontinuance of such unauthorized and illegal operation.

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 conclusion and finding of fact as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED that California Transit Co., a corporation, successor in interest to defendant Western Motor Transport Company, a corporation, be and it is hereby directed to immediately cease the transportation of passengers by auto stage as a common carrier, for compensation, between the stations of North Vallejo (now Vallejo) and the stations of King, Napa, Florda (or Florden), Napa Junction, Sacramento Junction, Soscol, and Napa Hospital (also known as Napa State Hospital) and to and from points intermediate between and between intermediate points on its line between North Vallejo (Vallejo) and Napa; and to and from points intermediate between and between intermediate points on its line between North Vallejo (Vallejo) and Napa; and to immediately cancel all rates applicable to the above points now appearing in its local tariffs, and in joint tariffs in which it is a participating carrier, by proper tariff filings containing such cancellations, and

IT IS HEREBY ORDERED that the executor of the estate of A. Dunham, proprietor, Dunham Stage Line Lines, successor in interest to the operative right of defendant Western Motor Transport Company as regards the operative right between Napa and Santa Rosa, be and he hereby is directed to immediately cease the transportation of passengers by auto stage as a common carrier, for compensation, between Napa and the station of King, either locally between such points or through passengers which may originate at or be destined to points on the line of the California Transit Co. between Napa and North Vallejo (now Vallejo) or points intermediate on such line; and to immediately cancel ^{by proper filings with this Commission} _{its concurrence} with the joint tariff now filed ^{with} this Commission by California Transit Co. (being the adoption of the

joint tariff of Western Motor Transport Company Joint Passenger
Tariff No.1, C.R.C. No.9, issued September 7, 1921, effective
September 8, 1921), insofar as such tariff names rates between
the station of King and any other point in said joint tariff.

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

Dated at San Francisco, California, this 9th day of
June, 1927.

Edmund East
H. B. Rindige
C. S. Sney
Leon Whitell
COMMISSIONERS.