

Decision No. 18578

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

AUTO TRANSIT COMPANY, a corporation,

Complainant,

vs.

PICKWICK STAGES, NORTHERN DIVISION, INC.,
& corporation,

Defendant.

ORIGINAL

Case No. 2103

J. E. Mc Curdy, for Complainant,
Warren E. Libby, for Defendant, and for
Elabon and Cleaveland, lessors of the
operative right in question.

BY THE COMMISSION -

O P I N I O N

Auto Transit Company, a corporation, engaged in the operation of an automobile stage line transporting passengers between San Francisco and Santa Cruz and other points, including Watsonville and Hollister and stations between said points and intermediate to Hollister, complains of defendant Pickwick Stages, Northern Division, Inc., a corporation, and for cause of complaint alleges that defendant, engaged in the operation of automobile passenger stage lines in the State of California, heretofore on January 19, 1925, filed with the Railroad Commission a tariff known as Supplement No. 2 to C.R.C. No. 25, effective February 16, 1925, and cancelling Supplement No. 1 to said Tariff C.R.C. No. 26; that said supplement was filed in connection with the Monterey-Salinas Auto Service and Monterey-Salinas Auto Stage Line and shows local service and fares between San Luis Ranch and Fresno and other points including Hollister, San Juan, Chittenden Road Junction, Chittenden, Aromas, Watsonville, Aptoe, Soquel and Santa Cruz; that said defendant has no operative right or authority from the Railroad Commission, or any other right, to engage in the operation of said automobile stage line for the carriage of passen-

gers as shown on said tariff; that any operation as contemplated under said tariff would be illegal and in violation of law and of the rules and regulations of this Commission.

Complainant prays for an order of this Commission directing defendant to stop the contemplated operation under the proposed tariff.

Defendant corporation duly filed its answer herein denying the material allegations of the complaint, and alleging that it has operative rights to conduct operation between each and all the points set forth in its tariff known as Supplement No.2 to C.R.C. No.26, effective February 15, 1925,

A public hearing on this complaint was conducted by Examiner Handford at San Francisco, at which time Pickwick Stages System, a corporation, successor in interest to Pickwick Stages, Northern Division, Inc., was substituted as defendant herein, the matter was duly submitted and is now ready for decision.

Geo. H. Higgins, president of Auto Transit Company, testified that the Pickwick Stages did not operate through Aromas, although showing such point on their tariffs, passengers being discharged at a point on the highway approximately one-half mile from the town; that he had been informed by drivers of the Pickwick stages that passengers were being carried locally between Hollister and Santa Cruz, being transferred at Chittenden Junction from the San Jose-Hollister line to the Fresno-Santa Cruz line and delivered by such car to Watsonville and points intermediate between Chittenden Junction and Watsonville, also passengers were being transported from Hollister to Soquel and Aptos, which are points between Santa Cruz and Watsonville.

J. S. Nickols, employed by the Auto Transit Company, testified he was formerly operating a stage line between Watsonville and Hollister, known as the "Red Star Auto Stage Line," under the authority of a certificate from this Commission; that said line served Watsonville, Aromas, Chittenden, Chittenden Road Junction, San Juan and Hollister; that such line was transferred,

by authority of the Commission to Auto Transit Company and was now operated by such company over the same route and serving the same points as originally established.

Mrs. Cora B. Carden, employed as ticket agent at the Union Stage Depot in Santa Cruz, testified that she formerly sold tickets for the Blabon and Cleaveland Stage Line, operating between Fresno and Santa Cruz prior to its acquisition by defendant; that no tickets were ever sold over such line between Santa Cruz and Hollister and points intermediate between such station; that she was instructed by both Blabon and Cleaveland, the proprietors of the line, not to sell tickets between Santa Cruz and Hollister and intermediate points; and that to her knowledge no such tickets were sold, nor were passengers carried or tariffs issued calling for such service .

C. M. Blabon, a former partner with J. R. Cleaveland in the operation of the "Blabon & Cleaveland" line between Santa Cruz and Fresno, testified that to his knowledge he had never filed, or authorized the filing, of any tariff with this Commission offering service between Santa Cruz and Hollister, or points intermediate between such stations, nor were any passengers carried locally between such points during the time the partnership was operating the line; and that he had instructed ticket agents not to sell any tickets between such points.

E. V. Davis, employed as a driver by Auto Transit Company and formerly employed by the Blabon & Cleaveland line, testified that in his operation between Santa Cruz and Fresno for the Blabon & Cleaveland line he carried no passengers locally between Hollister and Santa Cruz, or points intermediate thereto, having been instructed by both members of the partnership not to carry passengers between such points.

C.M. Blabon and J.R. Cleaveland, partners in business, by the authority contained in this Commission's Decision No. 7648 on Application No. 5192, as decided May 27, 1920, were granted a certificate of public convenience and necessity to operate an

automobile stage line as a common carrier of passengers between Fresno and Santa Cruz by way of Los Banos, Hollister, San Juan and Watsonville, the order providing

***** that no local passengers will be carried in connection with this permit between Fresno and Los Banos and between Watsonville and Santa Cruz."

The rate schedule as filed with the application shows no local rates between Hollister and Santa Cruz and points intermediate thereto.

By its Decision No.14010 on Application No.10445 as decided September 5, 1924, the Railroad Commission authorized the transfer of the operative rights previously granted to C.M.Blabon and J.R.Cleaveland, co-partners, by Decision No.7648 on Application No.5192, to Pickwick Stages, Northern Division, a corporation, the order referring to the prohibition against the transportation of passengers locally between Watsonville and Santa Cruz and reciting -

"that in granting application as herein applied for the Commission in no way authorizes any different, greater or less service than that now being rendered by the co-partnership,"

also requiring

" 3. Applicant Pickwick Stages, Northern Division, shall immediately file, in duplicate, or adopt as its own the tariff of rates and time schedules as filed by the co-partners Blabon and Cleaveland covering said service. All rates and time schedules to be identical with those as filed by the said co-partners."

Blabon and Cleaveland under date May 18, 1920, filed with the Railroad Commission their Local Passenger Tariff No.1 naming rates between Fresno and Watsonville, via Santa Cruz (C.R.C.No.1, issued May 15, 1920, effective May 15,1920.)

Pickwick Stages, Northern Division, Inc., filed with the Railroad Commission on September 15, 1924, its Local Passenger Tariff, C.R.C. No.26, issued September 13, 1924, effective September 15, 1924, Section 3 of such tariff naming rates on the Pacheco Division, being the line acquired from the co-partnership of Blabon & Cleaveland by the authority contained in

Decision No.14010.

In Supplement No.1 to C.R.C. No.26, Local Passenger Tariff of Pickwick Stages, Northern Division, Inc., issued December 15, 1924, effective December 18, 1924, the additional stations of Aptos and Soquel, being intermediate points between Watsonville and Santa Cruz, appear for the first time.

In Supplement No.2 to Pickwick Stages, Northern Division, Inc., Local and Joint Passenger Tariff, C.R.C. No.26, supplement being issued January 15, 1925, effective February 15, 1925, the stations of Chittenden Road Junction, Chittenden and Aromas appear as tariff points.

From the evidence in this proceeding and the record of the Commission as shown by applications, decisions and tariff filings as hereinabove stated it is apparent that an enlargement of the operative rights as granted to C.M. Blabon and J.R. Cleveland under the authority as conveyed by the Commission's Decision No.7648 on Application No.5192, as decided May 27, 1920, has been made as regards the establishment of unauthorized intermediate points by tariff filings, the original authority granting operation between Fresno and Santa Cruz serving as intermediate points the communities of Los Banos, Hollister, San Juan and Watsonville, and original tariffs having shown only such points as the intermediate stations to be served. The record herein shows the following unauthorized points to have been added by tariff filings: - Aptos, Soquel, Chittenden Road Junction, Chittenden and Aromas.

The situation here presented is similar to that presented in Application No.8454, Motor Transit Company, wherein the Commission in its Decision No.15454, as decided April 22, 1924, made the following comment regarding the unauthorized establishment of intermediate points:

"As hereinabove set forth and in accordance with the principle enunciated by this Commission in its Decision No.9065, of June 7, 1921, on Case No.1442, A. B. Watson vs. White Bus Line, et al., (Opinions and Orders, C.R.C., Vol.20, p.18), no transportation company, subject to the regulation of this Commission under authority contained in Chapter 213 and effective amendments thereto, can 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 in accordance with the provisions of the statutory law a certificate of public convenience and necessity has been applied for and thereafter issued by the Commission in an appropriate proceeding. This decision was thereafter sustained by the California Supreme Court on September 19, 1922, by its decision in Case S.F. No.10099 (64 Cal. Dec.278). With the establishment of this principle and its affirmation by the California Supreme Court, it is now obvious that no enlargement of operative rights, either as to routes served or expansion of rights for the carriage of property, can be made without a proper showing in an appropriate proceeding resulting in authority as conferred by a certificate of public convenience and necessity. It is equally applicable as regards increase in the scope of operative rights, such as the enlargement of same by the inclusion of additional stations or operative points in territory not specifically covered either by operative right existing as of May 1, 1917, or rights thereafter conferred by certificate. The particular instance as cited as regards express tariff of applicant, Motor Transit Company, is typical of many instances appearing in passenger tariffs where rights beyond those authorized have been included at the time of filing of such tariffs and which are now apparently relied upon by applicant as justifying their existence and continued use."

"The rules and regulations as adopted by this Commission under its General Order No.51, provide the method and procedure under which rates should be filed with this Commission and for the public. These regulations do not and can not change the requirements imposed by the statutory law as to authority required to be obtained by any transportation company desiring to operate over the highways of this state between fixed termini or over a regular route in the carriage of persons or property for compensation."

After full consideration of the record in this proceeding we are of the opinion and hereby find as a fact that defendant Rickwick Stages System, a corporation, has no authority for serving the intermediate points of Aptos, Sequel, Chittenden Road Junction, Chittenden and Aromas or for the conduct of local business between Santa Cruz and Watsonville, and the order herein will provide for a discontinuance of the unauthorized service.

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 Pickwick Stages System, a corporation, immediately discontinue the carriage of passengers locally between the stations of Santa Cruz and Watsonville and withdraw and discontinue all service either locally or as a portion of any through route or through ticketing arrangement as now given to or from the unauthorized stations of Aptos, Sequel, Chittenden Road Junction, Chittenden and Aromas; and

IT IS HEREBY FURTHER ORDERED that said Pickwick Stages System, a corporation, immediately withdraw by appropriate cancellation in accordance with the tariff regulations of this Commission, all tariffs naming rates for the transportation of passengers as now filed for the foregoing unauthorized service covering both local and joint rates or rates to or from said points in which said Pickwick Stages System is a participating carrier.

Dated at San Francisco, California, this 14th day of June, 1927.

Edmund C. Cotts
H. K. Brundage
C. S. ...
Leon ...
Thos. ...
COMMISSIONERS.