

Decision No. 18588.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Los Angeles & Oxnard Daily Express)
and Los Angeles & Santa Barbara Mo-)
tor Express Co., Inc.,)
Complainants,)

vs.)

Ojai, Ventura & Los Angeles Express)
and Frank C. Johnson, Owner,)
Defendants.)

Case No. 2299.

In the Matter of the Suspension by)
the Commission on its own Motion)
of Rule 1-B naming intermediate)
points between Los Angeles and Ven-)
tura as published in Ojai, Ventura)
and Los Angeles Express Tariff C.R.)
C. No. 7.)

Case No. 2300.

Hugh Gordon, for complainants.
Earl E. Ross, for defendants.

BY THE COMMISSION:

O P I N I O N

These two proceedings involving the same issues were, by stipulation, heard together and will be disposed of in one opinion and order.

Case No. 2299 is a joint proceeding of the Los Angeles & Oxnard Daily Express owned by W. O. and H. E. Fleischer and of the Los Angeles & Santa Barbara Motor Express Company, a corporation, against the Ojai, Ventura and Los Angeles Express, Frank C. Johnson, owner, alleging

(a) That defendant is operating common carrier motor

trucks for the transportation of freight and express between Los Angeles and Ventura and has within the two months prior to the filing of this complaint engaged in transporting property to and from the intermediate points.

(b) That Harry M. Hunt, former owner of the Ojai, Ventura and Los Angeles Express, and his successor in interest, refused to accept shipments to and from the intermediate points for more than three years after receiving a certificate of public convenience and necessity, Application No. 4470, Decision No. 7334, April 3, 1920.

(c) That this Commission has never authorized the Ojai, Ventura and Los Angeles Express to serve the intermediate points.

(d) That defendant published in Rule 1-B of its tariff C.R.C. 7 the following provision:

"(b) Rates published herein applying between Los Angeles and Ventura or from Los Angeles to Ventura, or vice versa, will apply to, from or between Los Angeles and intermediate points, as follows:

Camarillo	Fillmore	Oxnard	Santa Susana	Simi
Castiac	Moor Park	Piru	Saticoy	Somis"
El Rio	Newhall	Santa Paula	Saugus	

The complainants pray that this Commission issue an order suspending Tariff C.R.C. 7 and requiring defendants to desist from transporting property to or from points located between Los Angeles and Ventura.

Case No. 2300 was instituted December 13, 1926, on this Commission's own motion in response to the complaint in Case No. 2299, and Rule 1-B of the Ojai, Ventura and Los Angeles Express Tariff C.R.C. No. 7 was suspended.

Public hearings were held before Examiner Geary at Los Angeles February 8th and March 15th, 1927, and the matter having been duly submitted is now ready for our opinion and order.

By Application No. 4470 filed with this Commission April 1, 1919, Harry M. Hunt sought a certificate of public convenience and necessity to operate freight and express service between Ojai, Ventura and Los Angeles and intermediate points. The evidence clearly showed that applicant was operating prior to May 1, 1917; that he had continued such operation from May 1, 1917 to the time of filing application 4470, therefore a certificate of public convenience and necessity was not required, and applicant was instructed in Decision No. 7334 of April 3, 1920, to file tariffs and time schedules governing the operations between Los Angeles, Ojai, Ventura and intermediate points. A tariff issued in compliance with the decision was filed May 5, 1920.

On May 12, 1920, Harry M. Hunt and Waterman & Carne filed a joint application seeking an order authorizing the transfer of the operative rights from Harry M. Hunt to Waterman & Carne. This transfer was authorized by Decision No. 7689, dated June 8, 1920, and Waterman & Carne filed an adoption tariff supplement July 14, 1920.

Waterman & Carne published effective April 5, 1921, their Local Tariff C.R.C. No.1. Rule 1 of the tariff reads:

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

On October 20, 1922, Tariff C.R.C. No. 2 became effective. This tariff was issued in compliance with the order in Application No. 8034, Decision No. 11068 of October 7, 1922, authorizing the use of Monroe's Ship by Truck Classification and also making certain reductions in rates.

In Decision 11301 dated December 1, 1922, Waterman & Carne were authorized to transfer the operative rights, title and interest in Ojai, Ventura and Los Angeles Express to George R.

Carne, and Adoption Supplement No. 1 to Tariff C.R.C. No. 2 was published, effective December 15, 1922.

On May 23, 1923, a joint application was filed by George R. Carne to sell and Frank C. Johnson to purchase and operate the auto truck line operating between Los Angeles, Ventura and Ojai and intermediate points. The transfer was authorized by Decision No. 12144 of May 25, 1923, paragraph 3 of the order reading

"Applicant Frank C. Johnson shall immediately file, in duplicate, tariff of rates and time schedules or adopt as his own the tariff of rates and time schedules as filed by applicant Carne covering service, certificate for which is herein authorized to be transferred. All tariff of rates and time schedules to be identical with those as heretofore filed by applicant Carne."

Adoption Supplement No. 4 to Ojai, Ventura & Los Angeles Express Tariff No. 2 was issued for the purpose of taking over all rights, titles and interest of George R. Carne.

The rates, rules and regulations maintained by Ojai, Ventura & Los Angeles Express, Frank C. Johnson, owner, have been published in tariffs carrying C.R.C. Nos. 3, 4, 5, 6 and 7, successively including a rule providing for the application of rates at intermediate points but not naming the specific points.

The issue here presented is whether or not defendant has the right, either by virtue of prior operations of its predecessors or by the terms of the certificate granted in Decision No. 12144, May 25, 1923, to operate its auto trucks for the transportation of property between the intermediate points in question on the through routes from Los Angeles to Ventura and Ojai.

There are three highways between Los Angeles and Ventura. The first and most direct, known as the Ventura Boulevard,

is through the communities of Calabasas, Newberry Park, Camarillo, El Rio and Montalvo; the second, known as the Santa Susana route, is through Santa Susana, Moorpark and Somis; and the third and most circuitous is through Saugus, Newhall, Fillmore and Santa Paula.

The operative rights of the Los Angeles & Santa Barbara Motor Express Company extend from Los Angeles to Santa Barbara via the northern route, through Saugus, Fillmore and Ventura, and those of the Los Angeles & Oxnard Daily Express extend from Los Angeles to Oxnard via the Ventura Boulevard, also via the Santa Susana Pass route through El Rio to Oxnard.

Neither one of these lines serves Montalvo, and the defendant in these proceedings is the only line handling freight by motor trucks from Ojai, Ventura and Montalvo to the intermediate points along Ventura Boulevard and the route through Santa Susana Pass.

Defendant Johnson testified that he purchased the operative rights, equipment and all interest of the Ojai, Ventura & Los Angeles Express Company May 25, 1923; that from June, 1919, to the time of purchase he was employed by the former owners in various capacities, such as driving trucks, receiving and delivering freight at Los Angeles and Ventura and collecting the freight charges. He testified further that from the beginning of his employment, in June, 1919, up to December 14, 1926, at which time the order of suspension in Case No. 2300 was issued, that the intermediate territory had been served whenever freight was offered. There were introduced in evidence 322 freight bills covering shipments destined to the intermediate points during the period from January 1, 1925, to December 13, 1926, inclusive, having a total

weight of 284,191 pounds.

These freight bills show that defendant did not handle any shipments at the intermediate points via the third route, through Saugus, Newhall, Fillmore and Santa Paula, with the exception of a few shipments of paint in October and November, 1925, principally to Piru, Fillmore and Santa Paula on behalf of one consignee, which consignments, according to the testimony of witnesses, were for a special job in the construction of a pipe line. No other shipments were moved to intermediate points over the Fillmore route until the beginning of December, 1926, and Tariff C.R.C. No. 7, effective December 13, 1926, was apparently published to specifically name the intermediate points which this defendant then decided to serve and to which points business was solicited. The same situation was developed as to shipments destined to Oxnard, none were handled prior to December 1, 1926, and only ten shipments December 1 to December 14, the date our Suspension Order took effect. Oxnard is not directly intermediate between Los Angeles and Ventura, therefore we find that defendant had no legal right to accept tonnage to or from that point.

Witnesses called in behalf of complainants testified the defendant and its predecessors had refused to serve intermediate points and that when shipments were tendered at the joint terminal in Los Angeles consigned to the intermediate points, they were turned over to the other carriers.

Complainants submitted 10 bills of lading covering shipments received at Los Angeles during the years 1924 and 1925, purporting to have been originally routed via defendant's line to intermediate points, and subsequently re-routed via the Los Angeles and Oxnard Daily Express.

The testimony showed that defendant and complainants occupied a joint terminal in Los Angeles for many years, and that the employees at times as a matter of convenience received for

freight for each other, therefore the mere fact that bills of lading having the received stamp of the Ojai, Ventura and Los Angeles Express were transferred to another line is not sufficient grounds for finding that this defendant or its predecessors did not serve any of the intermediate points.

It is clear from the testimony and exhibits that defendant has regularly transported freight in the past to the intermediate points between Los Angeles and Ventura via Route One, known as the Ventura Boulevard, including Calabasas, Newberry Park, Camarillo, El Rio and Montalvo, and via Route Two, known as the Santa Susana Boulevard, including Santa Susana, Moorpark and Somis, but has not according to this record rendered services at the intermediate points on Route Three through Saugus, Newhall, Fillmore and Santa Paula. The fact that only one consignment was handled to Route Three destinations in the year 1925 and none in 1926 until after December 1, 1926, would indicate that defendant had voluntarily abandoned Route Three intermediate points, although the route was used occasionally in connection with through traffic from Los Angeles to Ventura or Ojai.

After careful consideration of all the evidence and exhibits we are of the opinion and find as a fact that defendant and its predecessors were granted a certificate of public convenience and necessity to operate tracks for the transportation of property for compensation between Los Angeles, Ventura and Ojai and the intermediate points; that defendant served the intermediate points via Ventura Boulevard and via the Santa Susana Boulevard, but did not undertake to and did not serve the intermediate territory between Ventura and Los Angeles via the Fillmore route, and that such action in the past is in effect an abandonment of the route. We are further of the opinion that the service via Fillmore cannot now be revived without a new certificate of public convenience and necessity; this in view of the fact that the Los Angeles and Santa Barbara Express, one of the complainants

in Case No. 2299, has regularly and continuously served the intermediate territory between Los Angeles and Ventura over the Fillmore route.

The investigation in Case No. 2300 will be discontinued.

O R D E R

These cases being at issue upon complaint, and answers on file, having been duly heard and submitted by the parties, full investigation of the matters and things involved having been had, and the Commission on the date hereof having made and filed its opinion containing its findings of fact and conclusions thereon, which said opinion is hereby referred to and made a part hereof,

IT IS HEREBY ORDERED that defendant, Ojai, Ventura and Los Angeles Express, Frank C. Johnson, owner, cancel from its tariff all reference to points located between Ventura and Los Angeles via Fillmore, and discontinue service at such intermediate points.

IT IS FURTHER ORDERED that defendant eliminate all reference to Oxnard as an intermediate point and discontinue service to that point.

IT IS FURTHER ORDERED that Case No. 2300 be and it is hereby discontinued.

Dated at San Francisco, California, this 8th day of July 1927.

E. J. [Signature]

[Signature]

[Signature]
Commissioners.