

DECISION NO. 18740

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PETROLIA STAGE COMPANY, a co-partnership
consisting of M. F. Gardner and Elmer C.
Gardner,

Complainant,

vs.

A. W. WAY and JOHN DOE STAGE COMPANY,

Defendant.

Case No. 2247

E. S. Mitchell, for Complainant,
J. J. Cairns, for Defendant.

BY THE COMMISSION -

O P I N I O N

M. F. Gardner and Elmer C. Gardner, a co-partnership, operating under the fictitious name of Petrolia Stage Company, an automobile passenger and freight service between Ferndale and Upper Mattole, in the County of Humboldt, complain against A. W. Way operating an automobile freight line between Ferndale and Upper Mattole, alleging that said A. W. Way has ceased to operate as a carrier over and has abandoned said route; that complainants have invested some twelve thousand dollars in their business for the purpose of caring for their obligations as imposed by their certificate of public convenience and necessity and have faithfully and fully complied with their schedules and all other obligations, regularly operating their freight and passenger service over the authorized route; that the volume of freight available for carriage over the route is not sufficient to justify the operation of two transportation lines; that complainants are now able and for the last three and one half years have been fully caring for the transportation of all traffic available on said route; and that by the defendant's holding of

a certificate of public convenience and necessity the rights of complainants over said route are jeopardized. Complainants pray for an order of the Commission cancelling the operative rights of defendant insofar as same cover the territory between Ferndale and Upper Mattole.

Defendant duly filed his answer herein denying the material allegations of the complaint.

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

Elmer C. Gardner, one of the complainants, testified that the copartnership, operating under the name of Petrolia Stage Company, had originally secured its operative right by transfer from Geo. M. Brice, said transfer having been duly authorized by the Railroad Commission; that continuous operation had been conducted in the carriage of passengers, freight, express and mail; that there has been no operation by defendant excepting two loads of pipe and camp equipment hauled to Scott Valley; and that defendant has not served the public nor maintained any stations at either Ferndale or Upper Mattole. Witness further testified that his co-partnership has maintained sufficient equipment at all times to serve the public, there being always two units of equipment in operation and from two to four reserve trucks available. It is the opinion of this witness that there is not sufficient traffic available between Ferndale and Upper Mattole to justify the operation of two competing carriers, he estimating that from 800 to 1000 pounds of outbound freight being the average daily amount offered for transportation and a lesser amount moving into Ferndale, resulting in a revenue of approximately \$700 per month.

Forrest Gardner, residing at Upper Mattole, testified that defendant had not maintained any regular service between Ferndale and Upper Mattole during the last five years, witness having been

employed as a driver for the Petrolia Stage Company during a portion of such period. Witness knew of freight having been consigned to defendant and such freight being handled over the line of the Petrolia Stage Company. During the period that witness was employed as a driver there was never more freight offered for transportation than could be properly cared for by the Petrolia Stage Line.

M. F. Gardner, one of the complainants and a co-partner in the Petrolia Stage Company, testified that there was not sufficient business between Ferndale and Upper Mattole to justify the profitable operation of more than one stage line.

C. Markeson, operating a general merchandise store at Ferndale, stated that he had been ten years in business and had customers along the route between Ferndale and Upper Mattole; that he knew of the Petrolia Stage Company service but had no knowledge of any service being operated by defendant on such route. Witness has freight hauled by Petrolia Stage Company every day, amounts varying from 100 pounds to one half ton. At one time lumber was offered to defendant for hauling but no hauling was done.

Fred Hall, residing at Petrolia and employed as a driver by complainants, testified he had been employed by the Petrolia Stage Company for four years, three years of which was continuous service; that he had no knowledge of defendant operation, as although on the road practically daily as a driver he had not seen defendant's trucks; that he knew of no office maintained by defendant in Ferndale; and that defendant picked up freight at the Petrolia Stage Company's station at Ferndale destined to points on his line between Eureka and Ferndale and also delivered freight to such point when destined to points on the line of the Petrolia Stage Company.

Wesley E. Roscoe, Postmaster at Upper Mattole and Walter Stewart, a resident of Petrolia, testified they had not known of any truck operation by defendant between Ferndale and Upper Mattole during the past five years. By stipulation it was agreed that the testimony of John Stewart, Harold O'Leary and William Reynolds, residents of Petrolia, would be similar to that of Walter Stewart.

A. W. Way, defendant, testified that he was the proprietor of a freight trucking operation conducted under the fictitious name of Way's Ferndale-Lolota-Eureka Freight Service; that regularly scheduled service was operated between Eureka and Ferndale; that his operations were established prior to the Commission's request for the filing of tariffs and that original tariffs were filed and accepted by the Commission in which the service between Ferndale and Upper Mattole, including Capetown, Petrolia and Union Mattole as intermediate points, was to be given when loads and roads would permit; that he has at all times and now stands ready and willing to transport all freight in accordance with his tariff provisions, having ample facilities and equipment to satisfactorily handle all business offering; and that although some business had been offered it had been tendered at rates less than his published tariff and the business had moved by contract carriers. Witness further testified that he had made a verbal agreement to exchange business at Ferndale with the Petrolia Stage Company, all freight originating at Eureka and destined to points beyond Ferndale being turned over to the complainants for transportation from Ferndale to destination, and all freight originating on the line of complainants between Upper Mattole and Ferndale when destined to Eureka being delivered to defendant at Ferndale for movement to its Eureka destination. Witness claims this arrangement has not always been adhered to by complainants and that in some instances truck load consignments have been moved to destination on defendant's

operative line.

Geo. Bartlett, a witness for defendant, testified he had been employed by defendant since 1911, the last three or four years as Manager of defendant's truck lines and garages; that at all times defendant had sufficient available equipment to operate his truck lines; and that he knew of no business having been handled on the Upper Mattole route excepting two loads of apples in the year 1922, although he frequently had been requested to bid on the movement of freight but has always advised prospective customers of the tariff rates as filed with the Commission.

Other testimony was offered, some relative to the character of service performed by the complainant and as to the transportation of freight, by unauthorized carriers, which was not material to the issues presented herein.

It appears from the record herein that the operations of defendant were being conducted prior to the advent of the Commission's jurisdiction over the operation of auto stage and truck lines as conferred by the provisions of Chapter 213, Statutes of 1917. The first tariffs filed by defendant, in response to the Commission's General Order No.47 requiring the filing of tariffs, covered regular operation between Eureka and Ferndale, and also between Ferndale and Upper Mattole, serving the intermediate points of Capetown, Petrolia and Union Mattole, the Ferndale-Upper Mattole service being at a tonnage rate and applicable when loads and roads would permit auto trucking. This tariff was first issued on June 1, 1917, to be effective June 1, 1917, filed as supplement No.2 to C.R.C. No.1. Subsequent tariff filings have included these rates, and such are of record with the Commission at this time.

The evidence shows no refusal on the part of the defendant or his employees to transport freight at his published rates whenever same may be offered by the public under the load conditions specified in the tariffs, and the fact that but few loads have been so offered, or transported, does not justify an order of this Commission directing the surrender of a right recognized by the legislature as existing at the time of the enactment of Chapter 213, Statutes of 1917. Neither does the testimony purporting to establish the fact that there is not sufficient traffic between Ferndale and Upper Mattole to justify the operation of two freight lines justify an order directing defendant to suspend his authorized service in accordance with his acquired right and tariff provisions. This is not a proceeding in which defendant is seeking to sell, transfer or otherwise dispose of his operative rights between Ferndale and Upper Mattole and the protest of complainants against such action on the part of defendant is not an issue herein, no application for such authority being before the Commission.

After full consideration of the record herein we are of the opinion and hereby find as a fact that the operations of defendant A. W. Way between Ferndale and Upper Mattole have been conducted in accordance with the offer to the public as contained in his published tariffs as lawfully filed with this Commission. The complaint will 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 the same hereby is dismissed.

Dated at San Francisco, California, this 19th day of August, 1927.

Chesney

Thos D. Powell

W. A. Carr

COMMISSIONERS.