

Decision No. 19284.**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of)
 SOUTHERN PACIFIC MOTOR TRANSPORT)
 COMPANY for a certificate of public)
 convenience and necessity to carry) Application No. 14335
 excess baggage and express on the)
 so-called Dunham Stage Line, between)
 Napa and Santa Rosa, and intermediate)
 points.)

BY THE COMMISSION -

OPINION and ORDER

This is an application by Southern Pacific Motor Transport Company, a corporation, for a certificate of public convenience and necessity to operate an automotive service for the transportation of express and baggage in connection with and as part of the automotive passenger stage service it is now operating under authority of the Railroad Commission between Napa and Santa Rosa and intermediate points.

Applicants propose to charge rates in accordance with schedule marked Exhibit "A", which exhibit is attached to the application herein and made a part thereof.

Applicant herein recently purchased from the estate of A. Dunham an operating right for an automotive service for the transportation of passengers between Napa and Santa Rosa and intermediate points, the Commission approving the transfer in its Decision No. 19170, dated December 23, 1927, and issued on Application No. 14267. We quote from said decision:

"The operating right herein proposed to be transferred was established by A. (Azariah) Dunham through operation prior to May 1, 1917, and the filing of tariffs and time schedules in accordance with the requirements of the Railroad Commission. C.R.C. No. 1, filed by A. Dunham under the fictitious name of Dunham Auto Bus, the issuance date being February 24, 1917, and effective date March 1, 1917, covers service between Napa, Sonoma, Santa Rosa and intermediate points. Rates are quoted to the following intermediate points: Carnerous, Vineberg, Sonoma, Hot Springs, Eldridge, Glen Ellen, Kenwood, Annadel and Melitta. No package or excess baggage rates were shown

"in C. R. C. No.1 and there is no record of the Commission ever having authorized Dunham to transport property between Napa and Santa Rosa. Package and excess baggage rates appear for the first time in C.R.C. No.4, issued by Dunham on August 15, 1921, and effective August 17, 1921. In view of this record the order herein will authorize the transfer of an operating right limited to passengers and hand baggage."

The instant application, then, is not for a certificate authorizing a service to be newly established but is, in effect, an application for a certificate under which legally to perform a service carried on for years under the mistaken impression that proper legal authority for the service had been established. Applicant herein declares:

"That at the time said stage line was taken over by your applicant, as aforesaid, a considerable amount of package or express business and excess baggage was being handled by said stage line; that transportation was a material convenience to and was necessary for the requirements of persons living along the line of said stage route; and if the transportation of such package or express matter and excess baggage is discontinued by your applicant, there will be a material inconvenience suffered by the people along said line requiring said service."

In view of all the circumstances and in view of the further fact that the only other carrier operating between Napa and Santa Rosa is the Southern Pacific Company, of which applicant herein is a subsidiary, we are of the opinion that this is a matter in which a public hearing is not necessary and that the application should be granted.

Southern Pacific Motor Transport Company is hereby placed upon notice that "Operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given. The Commission at the early stages of the development of this kind of transportation should be extremely

careful not to lend encouragement to the idea that these rights possess a substantial element of value, either for rate fixing or capitalization.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by Southern Pacific Motor Transport Company, a corporation, of an automotive service for the transportation of express and baggage between Napa and Santa Rosa and intermediate points, said express and baggage to be transported on automotive passenger cars operated by Southern Pacific Motor Transport Company between the points served by said Company under authority of the certificate of public convenience and necessity acquired by Railroad Commission Decision No.19170, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such a service be and the same is hereby granted to Southern Pacific Motor Transport Company, a corporation, subject to the following conditions:

- 1- Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.
- 2- Applicant shall file, in duplicate, within a period of not to exceed twenty (20) days from the date hereof, tariff of rates, such tariffs of rates to be identical with those attached to the application herein, or rates satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed twenty (20) days from the date hereof.
- 3- The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.
- 4- No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 23rd day of January, 1928.

Leon Whittell
Chairman
Wm. J. ...
Thos. ...
W. J. ...
COMMISSIONERS.