

Decision No. 19450

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 JOHN ANDERSON, also known as JONAS ANDERSON,
 doing business under the fictitious name of
 ANDERSON TRANSPORTATION COMPANY, and
 DENIS O'DONOGHUE, E. H. WARREN and D.L.PETERS } Application
 for permission to transfer certain operative } No.14251
 rights for the transportation of freight for }
 compensation, upon the inland waters of the }
 State of California. }

W. S. Solari, for Applicants,
 Sanborn & Roehl and De Lancey C. Smith by H.E.Sanborn,
 for California Transportation Company, Bay Cities
 Transportation Company, Erickson Navigation Company,
 and Sacramento Navigation Company.

BY THE COMMISSION -

O P I N I O N

John Anderson, also known as Jonas Anderson, doing business under the fictitious name of Anderson Transportation Company, and Denis O'Donoghue, E. H. Warren and D. H. Peters, a co-partnership proposing to do business under the firm name and style of Anderson Transportation Company, have petitioned the Railroad Commission for an order authorizing the sale and transfer of certain operative rights for the transportation of freight, for compensation, upon the inland waters of the State of California, now owned by applicant John Anderson to Denis O'Donoghue, E. H. Warren and D.L.Peters a co-partnership proposing to do business under the name and style of Anderson Transportation Company.

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

The operative rights herein proposed to be transferred cover the transportation of freight upon the inland waters of the State of California between the following points, viz: Sacramento, Stockton, San Francisco, Oakland, and intermediate points, and landings on the San Joaquin River below Streckers, Mokelumne River below New Hope, Old River, Middle River, Sacramento River and

tributaries below Sacramento.

The co-partnership proposes to adopt rates as heretofore filed by John Anderson under Local Freight Tariff No.3 and Demurrage Tariff No.1, both tariffs having been issued on September 1, 1924, and effective October 1, 1924.

The equipment proposed to be used is the power boat "Hermine Blum" and the power boat "Utility" and such other boats as may be acquired in future.

The proposed transfer is to be made in accordance with an agreement dated November 27, 1927, whereby Jonas Anderson transfers to the co-partnership all of his right, title and interest in the vessel "Hermine Blum" and to his operative right to operate vessels upon the inland waters of the State of California for the sum of \$3000, \$6400 having been paid and the remaining \$1600 to be secured by a mortgage which is to be paid by the co-partnership upon the authorization by the Commission of the requested transfer. A copy of the agreement was filed as an exhibit at the hearing on this application.

The operative rights herein proposed to be transferred are those possessed by John Anderson prior to the passage of the Public Utilities Act and as shown in Local Freight Tariff No.1 of John Anderson as issued August 16, 1917, effective August 17, 1917; C.R.C. No.2 of Woodworth Campbell, Agent, Bay and River Boat Local Freight Tariff No.1, issued May 29, 1920, effective June 1, 1920; C.R.C. No.1 of John S.P. Dean, Agent, Bay and River Local Freight Tariff No.3, issued July 15, 1922, effective August 15, 1922; and C.R.C. No.3 of John Anderson, Local Freight Tariff No.3, issued September 1, 1924, effective October 1, 1924.

Council for California Transportation Company, Bay Cities Transportation Company, Erickson Navigation Company and Sacramento Navigation Company objected to the transfer of the operative rights insofar as they contemplated service to Sacramento and Stockton, on the basis that no service had heretofore been

rendered to such points. As no evidence was produced in support of such contention and as the record fails to show any regular service to any of the points covered by the tariffs, the operation being on call in response to the requirements of shippers or consignees, we do not herein pass on the contention, the matter being one that may properly be made the subject of a formal proceeding at some future time.

We are of the opinion and hereby conclude that the application should be granted in accordance with the following order:

O R D E R

A public hearing having been held on the above entitled application, the matter having been duly submitted and the Commission being now fully advised,

IT IS HEREBY ORDERED that John Anderson, also known as Jonas Anderson, be and he hereby is authorized to sell and transfer to Denis O'Donoghue, E. H. Warren and D.L.Peters, a co-partnership proposing to operate under the fictitious name and style of Anderson Transportation Company, the equipment and operative rights heretofore used by said John Anderson for the transportation of freight upon the inland waters of the State of California, subject to the following conditions:

1- The consideration to be paid for the property herein authorized to be transferred shall never be urged before this commission or any other rate fixing body as a measure of value of said property for rate fixing, or any purpose other than the transfer herein authorized.

2- Applicant John Anderson shall immediately unite with applicants Denis O'Donoghue, E.H.Warren and D.L.Peters, a co-partnership, in common supplement to the tariffs on file with the Commission, applicant John Anderson on the one hand withdrawing and applicants Denis O'Donoghue, E.H. Warren and D.L.Peters, a co-partnership, on the other hand accepting and establishing such tariffs and all effective supplements thereto.

3- The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been secured.

4- No vessel may be operated by applicants Denis O'Donoghue, E.H. Warren and D.L. Peters, a co-partnership, unless such vessel is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

Denis O'Donoghue, E.H. Warren and D.L. Peters, co-partners, are 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.

Dated at San Francisco, California, this 10th day of March, 1928.

C. Seavoy
W. J. Con
COMMISSIONERS.