

Decision No. 20634

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PETALUMA AND SANTA ROSA RAILROAD COMPANY,  
a corporation,  
Complainant,

vs.

WILLIAM L. DEYSSEER and BERNARD J. LAFARQUE,  
co-partners doing business under the name  
and style of Redwood Empire Truck Lines.

Defendants.

Case No. 2411

**ORIGINAL**

Geary & Geary and C. J. Tauzer, by Donald Geary,  
and E. H. Maggard, for Complainant,

Thomas P. Boyd, for Defendants,

R. W. Palmer and C.M. Jenks, for Northwestern Pacific  
Railroad Company, Intervenor,

A. S. Weston, for American Railway Express Company,  
Intervenor.

Harry A. Encell, by Donald Geary, as Amicus Curiae.

BY THE COMMISSION -

O P I N I O N

Petaluma and Santa Rosa Railroad Company, a corporation,  
by its complaint and amendment thereto, complains of defendants  
and alleges -

1- That defendants are a co-partnership doing business  
under the name and style of Redwood Empire Truck Lines.

2- That defendants are now, and for some time last past  
have been, engaged in the business of the transportation  
of property as a common carrier, for compensation, over  
the public highways and over a regular route between  
San Francisco, Santa Rosa, and Willits and intermediate  
points; that said defendants are not operating exclusively  
within the limits of an incorporated city or town or of a  
city and county; that said defendants, or either of them,  
have not heretofore obtained from this Commission, or  
otherwise acquired, and do not now own, hold or possess,  
any certificate, right, franchise or permit to operate a  
transportation company or to engage in the transportation  
business as a common carrier between the above mentioned

points; that the operation by said defendants, and each of them of said transportation company and business of a common carrier between the above points is in violation of the laws of the State of California and of the rules and regulations of this Commission.

3- That defendants are operating in competition with complainant between San Francisco, Petaluma and Santa Rosa and intermediate points between Petaluma and Santa Rosa; and that by reason of such operation complainant has been, and is now injured, and unless defendants discontinue said operation, further and irreparable injury will result to complainant.

Complainant prays for an order of the Commission directing defendants, and each of them to cease and desist from the alleged violations of the law and the rules and regulations of the Commission, and directing defendants, and each of them, to discontinue the transportation of property between the City and County of San Francisco and the City of Santa Rosa, and intermediate points as a common carrier, for compensation.

Defendants duly filed their answer herein, said answer denying the material allegations of the complaint.

Public hearings on this complaint were conducted by Examiner Handford at San Rafael, Petaluma and San Francisco, the matter was duly submitted following the filing of briefs by counsel, and is now ready for decision.

William L. Deysher, one of the defendant co-partnership, called as a witness for complainant, testified the operation here considered was commenced by his co-partnership in March, 1927; that 5 ton capacity White Trucks are used in the service; that all hauling has been done under verbal arrangement or contract with shippers or consignees; and that business has been refused where it did not appear to be profitable. Witness testified regarding the transportation of shipments for the following:

State of California - Purchasing Dept.  
Asti Colony  
Western Meat Company  
Morris Packing Company  
California Grape Products Company  
Rainier Brewing Company

California Bottling Works  
Weiland Brewing Company  
Rosenberg Department Store, Santa Rosa  
California Picklers & Preservers  
Frye & Company, San Francisco  
Rodenberger, egg shipper  
Sonoma Valley Wholesale Grocery Company  
Pacific Coast Glass Company  
Tacoma Brewing Company  
Petaluma Soda Works  
Coca Cola Bottling Company, Sebastopol  
Levin Tanning Company  
Bauer & Schweitzer, Hops, San Francisco  
Paraffine Company to Marin  
Paper Company, San Anselmo  
Western Apple Vinegar Company, Sebastopol.

This witness further testified that no solicitors were employed by the partnership; and that he personally made all arrangements with parties for whom hauling was done, both as to rates to be charged and service to be rendered.

S. R. Kristiansen, operating the Petaluma Soda Works, testified he had received shipments which were transported by the defendant partnership; that prior to their movement witness Deysher had called at his place of business asking for opportunity to do his hauling and was told if he could do as well as others offering that witness would give the defendants' truck service a trial; that no contract or permanent arrangement was entered into; and that the shipments were given to defendant co-partnership to save a cartage charge from the steamer dock at Petaluma to his place of business.

C. E. Bundschu, President, California Picklers and Preservers, Santa Rosa, testified that his company had made two shipments over the line of defendants, both originating at Santa Rosa and being destined to San Francisco. W. J. Zoerb, Superintendent of the Santa Rosa plant of the California Picklers and Preservers, testified as to three shipments moving from Santa Rosa to San Francisco via the truck-line of defendants; that no contract existed for such hauling; and that defendant Deysher had called at the plant several times soliciting his further hauling business.

F. S. Rosenberg, of Rosenberg's Department Store, Santa Rosa, testified regarding eight shipments of merchandise from San Francisco to Santa Rosa, same moving in the months of August, October and November, 1927; that defendant Deysner had called at the office of the witness in Santa Rosa and had proposed to care for any hauling for witness at a rate equivalent to that charged by the railroad but including store door delivery. No contract was proposed or agreed upon.

E. E. Maggard, President of Petaluma & Santa Rosa Railroad Company, testified that he knew of the operations of defendants in the hauling of freight and the solicitation of business; that former shippers over his line had divested business to the truck service operated by defendants, witness having a record of 21 shippers or receivers in Petaluma, Santa Rosa, Sebastopol and San Francisco who had used or were using defendants' service; that the freight revenues of his company were decreasing; and that any material diversion of business from his line would probably necessitate curtailment of boat service to San Francisco, two boats now being operated which were not patronized to the extent of their capacity.

No witnesses were presented by defendants.

Defendants contend that their operations is not of a character that places same under the jurisdiction of the Commission, in that all hauling for their patrons is conducted on a contract basis and that they do not, and have not, conducted their operations as a common carrier. No written contracts exist and it is therefore upon verbal contracts or arrangements that defendants rely.

The record clearly shows that defendants are operating an auto truck service between San Francisco and Ukiah, serving the intermediate communities at San Anselmo, Petaluma, Santa Rosa and Sebastopol. This service is rendered to selected shippers or

receivers of freight, and the service is apparently available to all who may desire to use it under the conditions deemed requisite by defendants. Defendant Deysher in his testimony outlined what appears to be the attitude of his partnership as regards the carriage of property, as will appear from the following extract from the transcript:

"Question

I am saying, if you carry for the Western Meat Company, for such and such a rate, anybody else who is willing to pay the same rate, for the same service, you will be glad to carry for them, wont you?

Answer

If it proved profitable, yes."

(Transcript - Page 45, lines 3 to 6).

Upon the evidence in this proceeding the operations herein complained of are not those conducted under bona fide contracts, there being a holding out to such portion of the public as may desire to avail itself of the rates, facilities and service of these defendants, of a transportation service over a regular route and between fixed termini, the only reservation from the duties and obligations of a common carrier being that the results from the business of any individual shipper shall "prove profitable" to the defendants.

Operation of this nature is a violation of the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto, in that a certificate of public convenience and necessity is required by any transportation company before commencing the carriage of persons or property for compensation, or as a common carrier, between fixed termini or over a regular route. Such certificate has not been obtained by defendants herein.

We therefore conclude and hereby find as a fact that the operation by William L. Deysher and Bernard J. Lafargue, co-partners

doing business under the fictitious names of "Redwood Empire Truck Line" or "Redwood Empire Freight," of an automobile truck service in the carriage of freight between the fixed termini of San Francisco and Ukiah, San Anselmo, Petaluma, Santa Rosa and Sebastopol is operation as a common carrier for compensation, and is in violation of the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto, in that no certificate of public convenience and necessity therefor has been obtained from this Commission.

O R D E R

A public hearing having been held on the above entitled complaint, the matter having been duly submitted on the filing of briefs, the Commission being now fully advised and basing its order on the conclusion and finding of fact as set forth in the opinion which precedes this order,

IT IS HEREBY ORDERED that William L. Deysher and Bernard J. Lafargue, co-partners doing business under the fictitious names of "Redwood Empire Truck Line" and/or "Redwood Empire Freight" be and they hereby are directed to immediately cease and desist from the operation of an automobile freight truck service as a common-carrier, for compensation, between the fixed termini of San Francisco and Ukiah, San Anselmo, Petaluma, Santa Rosa and Sebastopol and not to resume such operation unless and until said William L. Deysher and Bernard J. Lafargue will have obtained a certificate of public convenience and necessity from this Commission in accordance with the provisions and requirements of Chapter 213, Statutes of 1917 and effective amendments thereto, and

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be and he hereby is directed to forward a certified

copy of this order, by registered mail to the District Attorneys of the Counties of Marin, Sonoma, Mendocino, and of the City and County of San Francisco.

The effective date of this order is hereby fixed as twenty (20) days from the date hereof.

Dated at San Francisco, California, this 11th day of July, 1928.

W. J. C.  
Commissioners.