

Decision No. 20275

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

F. M. Hodge, John D. Kwis and  
H. A. Rose, a co-partnership,  
doing business under the ficti-  
tious name of the SAN JOAQUIN  
VALLEY TRANSPORTATION COMPANY,

Complainants,

-vs-

W. I. COMPTON, operating under  
the fictitious name of the  
EAGLE TRANSFER COMPANY,

Defendant.

ORIGINAL

Case No. 2514.

Newlin & Ashburn, by Arthur T. George,  
for Complainant.

Theodore M. Stuart, for Defendant.

BY THE COMMISSION:

O P I N I O N

F. M. Hodge, John D. Kwis and H. A. Rose, a copartner-  
ship, operating under the fictitious name of the San Joaquin Val-  
ley Transportation Company, complainants in the above entitled  
proceeding, complain and allege in substance and effect that W.I.  
Compton, operating under the fictitious name of Eagle Transfer  
Company, has for more than one year last past been operating  
auto trucks as a common carrier in the business of transportation  
of property, for compensation, between Los Angeles and Fresno and  
intermediate points without having obtained from the Railroad Com-  
mission of the State of California a certificate of public con-  
venience and necessity authorizing such operations. Complainants

pray for an order that the defendant be enjoined and restrained from further operating said auto trucks, as a common carrier, between Los Angeles and Fresno until he has obtained from the Railroad Commission a certificate of public convenience and necessity.

W. I. Compton, said defendant, by his written answer herein, denies generally and specifically all the material allegations contained in said complaint and alleges further:

That the truck operations of said defendant over the highways of the State of California are those of a private and contract carrier only and that he is not engaged in the business of a common carrier.

A public hearing on said proceeding was conducted by Examiner Satterwhite at Fresno, the matter was duly submitted, and is now ready for decision.

Complainants called the defendant W. I. Compton as a witness in support of their complaint, together with three other witnesses who from time to time have patronized the transportation services of said defendant.

The record shows that for several years last past the defendant has been engaged at Fresno in the general drayage business, conducting a warehouse in connection therewith. Defendant has also carried on a construction and wrecking business in the erection of steel structures. In the conduct of his business he has been engaged in the operation of motor trucks anywhere throughout California and a considerable portion of his truck operations have been carried on in the territory south of Fresno and as far as Los Angeles.

The undisputed testimony of the defendant shows that during the past year he has transported between Los Angeles and Fresno and intermediate points various shipments of goods and merchandise for 10 or 12 merchants who constitute a few of his

local patrons at Fresno. All of these shipments were made under special contracts and after private negotiations and private understanding, either oral or written, with the patron seeking the service of defendant.

The testimony of the three other witnesses called by plaintiff discloses definitely the facts and circumstances under which shipments were transported either to or from Los Angeles or elsewhere by defendant.

D. Levy, who conducts a general merchandise store at Fresno, testified to the effect that he had employed the defendant eight or nine times in the past year to haul plumbing goods from Los Angeles to Fresno; that on each occasion the charges or rates, conditions, time and the character of pick-up and delivery of all shipments were a matter of previous negotiations and that on several occasions the defendant refused to haul shipments for him because of unsatisfactory terms as to price or time of delivery.

Mr. B. Wilson, Manager at Fresno for Swift & Co., testified that he also had employed the defendant several times to transport heavy bulky goods, such as shortening and oils, from Los Angeles usually in truck-load lots and that in each instance the transportation service was rendered as the result of private agreement and at a price and upon terms mutually satisfactory, and that frequently defendant refused to carry these commodities at all for lack of truck capacity or equipment or press of other engagements.

A. S. Ramage, Manager for Garcia Maggini and Company, testified substantially to the effect that defendant had hauled for his company on many occasions in the past year from Fresno to Los Angeles raisins and other dried fruits in truck-load lots; that this transportation service was performed as the

result of previous special negotiations and upon terms satisfactory to both parties.

The record further shows that the transportation service performed by the defendant in connection with his machinery and steel construction at Los Angeles and elsewhere was always incidental to and part and parcel of a contract privately made after oral or written negotiations.

It further appears from the testimony of defendant that he has never held himself out as a common carrier or at any time or in any way offered to serve the public generally in the transportation of goods or merchandise of any kind between Los Angeles and Fresno and intermediate points or elsewhere.

After a careful consideration of all the evidence in this proceeding, we are of the opinion and hereby find as a fact that the defendant W. I. Compton is not operating as a common carrier between Los Angeles and Fresno and intermediate points, and that his transportation service or operations are those of a private contract carrier only. The complaint should therefore be dismissed for lack of jurisdiction.

#### O R D E R

A public hearing having been held in the above entitled complaint, the matter having been duly submitted, the Commission being fully advised and basing its order on the findings of fact in the foregoing opinion,

IT IS HEREBY ORDERED that the complaint in the above entitled proceeding be and the same is hereby dismissed for

lack of jurisdiction.

Dated at San Francisco, California, this 28<sup>th</sup> day of  
September, 1928.

Leon Whitall  
Chairman

Thos. D. Smith

M. A. Green

Commissioners.