

Decision No. 20290

ORIGINAL

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 fic-
titious name of the SAN JOAQUIN
TRANSPORTATION COMPANY,

Complainants,

Case No. 2517.

-vs-

C. B. McClain,

Defendant.

Newlin and Ashburn, by Arthur T. George,
for Complainants.

Richard T. Eddy, for Defendant.

BY THE COMMISSION:

O P I N I O N

F. M. Hodge, John D. Kwis and H. A. Rose, operating under the fictitious name of the San Joaquin Transportation Company, complainants in the above entitled proceeding, complain and allege in substance and effect that C. B. McClain has for more than 30 days 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 Commission of the State of California a certificate of public convenience 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.

C. B. McClain, said defendant, by his written answer herein, denies generally and specifically all of the material allegations contained in said complaint and alleges further that the truck operations of said defendant over the highway of the State of California are those of a contract carrier and that he is not engaged in any acts that have been or are conducted in violation of any provisions of the law whatsoever.

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

Complainants called as their own witnesses C. B. McClain, defendant in this proceeding, together with several other witnesses who had employed the defendant to transport certain commodities between Tulare and Los Angeles and certain other communities.

The undisputed record shows that the defendant has been engaged for the past 4 or 5 years in the business of buying eggs from certain producers at Tulare and elsewhere and selling them to various purchasers at Los Angeles. These eggs have been purchased almost entirely from the Tulare Co-operative Poultry Association and from J. F. Way of Tulare. Defendant has operated one truck and some times a trailer in hauling these eggs to their destination at Los Angeles. It has been his practice to pick up all eggs purchased at the platforms of the Poultry Association or other producers about three times weekly and transport them in his truck to Los Angeles where they were delivered to various purchasers. The egg producing season lasts from about February

15th to September 1st of each year and defendant's truck operations between Los Angeles and Tulare and other points have been confined almost entirely to this period.

The evidence shows that the defendant since February 7th of this year, by virtue of a new written contract, has not purchased any eggs from the Poultry Co-operative Association, but has hauled all eggs offered by this association to Swift & Co. or other buyers at Los Angeles at least three times weekly at a rate fixed in the agreement.

The record further shows that the defendant has by solicitation secured from time to time back-hauls of certain commodities from a limited and selected number of merchants and business firms in Los Angeles. These back-hauls have largely consisted of capacity loads on account of the character of the commodity shipped. The evidence also shows that on several occasions defendant has transported to Tulare and other points in the San Joaquin Valley during the past two years or more pumps and pumping machinery for the Peerless Pump Co. and the Pacific Pump Company, two pump concerns at Los Angeles.

Defendant has also hauled to the city of Visalia on three occasions in the last six months Eastside beer in truck loads to the Visalia Bottling Works, a firm engaged in the business of manufacturing iced beverages, soda water and candies. It also appears that defendant was employed, on at least two occasions within the last six months to transport from Los Angeles a shipment of heating material and pipe to W. M. Fisher engaged at Bakersfield in the ventilating and heating business.

The record shows that all of the foregoing truck operations of defendant constitute practically the entire

transportation service carried on by defendant for the last two or three years. Defendant further testified that at no time did he ever seek to or offer to transport goods of any kind for the public generally, but always confined his operations to a selected number of patrons who employed him under verbal or written agreements made and entered into as a result of prior negotiations.

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 C. B. McClain 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. 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 proceeding, 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 3rd day of October, 1928.

Leon A. Whisell
W. A. ...
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Commissioners.