

Decision No. 20376.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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C. W. GANOW,
Complainant,
vs.
PAUL RICCI,
Defendant.

Case No. 2570.

T. L. Chamberlain, Auburn, California,
for Complainant.

P. G. West, Sacramento, California,
for Defendant.

BY THE COMMISSION:

O P I N I O N

The complaint charges that defendant Ricci is accepting passengers and freight for transportation by motor vehicle for compensation without having first obtained a certificate from this Commission. Ricci denies the allegations. A public hearing was held thereon on September 19, 1928.

Ricci has a contract to carry the United States mail between Auburn and Georgetown. At Greenwood, which is between the two points, he conducts a general store. His one ton truck which is used in carrying the mail is used also in hauling freight for himself and others. He claims that, with the exception of one private contract to haul for another storekeeper, and perhaps an occasional service by agreement with a few other

persons, all transportation has been for his own account, or, if for others, without compensation.

Ricci instructs his driver, Shephard, to accept from all persons along his route orders for such articles as are not carried in stock in his store, and, supplying his driver with funds, has him purchase each day in Auburn such goods as his customers need. The driver upon his return trip from Auburn makes deliveries to the customers, collecting from them the cost of the goods plus a transportation charge or profit. Since Ricci is engaged in the merchandising business he undoubtedly has the right to solicit and deliver such orders and to receive some compensation even though it may, in part, be based upon cost of transportation. That part of his operation is in no sense public.

Ricci admits hauling a considerable quantity of goods for compensation under an agreement with one Ackley, who runs a general store in Georgetown. He admits also having at several times undertaken to haul goods for compensation by special agreement. Yet his single contract to haul all the goods of another merchant, or even the occasional undertaking by special agreement to haul for several persons, standing alone, would not, we believe, classify him as a public carrier.

There is evidence, however, that the defendant has quite regularly transported goods for others under circumstances which would compel us to hold that he is a common carrier were it clear that he had received compensation for such services. Cream was taken to Auburn and empty cans returned. Ice cream and other commodities, brought into Auburn by rail or motor carriers and con-

signed to various persons in Georgetown, were picked up by his driver in Auburn and delivered to the consignees. Ricci denied knowledge of some of these transactions. Others he freely admitted, but declared that the service was entirely gratuitous. He admitted also having carried passengers on occasions but declared that service too was gratuitous. The complainant produced no witnesses to testify that a transportation charge had actually been made in such cases. Shephard, the driver for defendant, stated that the only money he had ever collected was for goods which he himself had purchased for the account of his principal.

Defendant Ricci is blind. It may be that his driver has accepted goods for transportation without his knowledge, but of course, he is responsible for the acts of his employee. It is hardly credible that there could have been so many instances of goods carried on Ricci's truck without some consideration having been paid to him or his driver. However, we find no evidence in the record, that he has undertaken to carry for the public for compensation. Though he has in fact hauled goods quite generally for persons in his neighborhood, in the absence of direct evidence that he has received some compensation, we can not hold that he has been operating in violation of law.

ORDER

This case being at issue upon the complaint and answer on file, and having been duly heard and submitted, and basing its order on the findings of fact and conclusions

contained in the foregoing opinion,

IT IS HEREBY ORDERED that the complaint in
this proceeding be and the same hereby is dismissed.

Dated at San Francisco, California, this
24th day of October, 1928.

Leon Whelan

W. J. Sawyer

Paul S. Hewitt

W. A. Lewis
Commissioners.