

Decision No. 20425

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ARTHUR L. BOEN,
Complainant,

vs.

ROY L. SMITH and RESORT FREIGHT LINE,
Defendants.

Case No. 2585

ORIGINAL

In the Matter of an investigation on the Commission's own motion into the practices and operations of ROY L. SMITH, operator of an automotive trucking service between Middletown and Calistoga and certain other points.

Case No. 2603

In the Matter of the Application of ARTHUR L. BOEN for certificate of public convenience and necessity to operate freight service as a common carrier between Calistoga, Napa County, and Adams Springs, California, and intermediate points.

Application No. 14944

J. A. Ratchford, for Applicant and Complainant.

Sanborn & Roehl & De Lancey C. Smith, by
A. B. Roehl for Herrick Co. Protestant
in Application No. 14944.

C. E. Brown for San Francisco, Napa & Calistoga
Railway, interested party.

BY THE COMMISSION -

OPINION

Arthur L. Bohn is the applicant for a certificate to operate motor truck freight service between Calistoga and Adams Springs, he being also the complainant in the above entitled action against Roy L. Smith in which he alleges that Smith has abandoned his operating right between the same points.

Upon said complaint being filed the Commission instituted its own investigation into the operations of defendant Smith and the three matters were heard together in Middletown October 5, 1928.

The application of Bohn was protested by the Herrick Company which also has an operative right in the same territory. Defendant Smith made no appearance. The testimony clearly shows that Smith abandoned all service about February 15, 1928. An order will be made revoking his certificate.

The applicant Bohn was employed as a driver for Smith for about a year prior to the time Smith ceased operations. The circumstances appear to be that Smith was in debt to Bohn and to others, and fearing that his trucks would be repossessed by the legal owners, he turned the management of his business over to Bohn to permit Bohn to reimburse himself from any profits which might be derived from the business under his management.

Smith's trucks were in fact repossessed on about March 15, 1928. Bohn testified that at that time he had taken from profits an amount sufficient to pay the obligation due to him. Thereupon Bohn himself purchased a truck and continued operations in his own name. His complaint against Smith and his application for a certificate were filed with the Commission on August 6, 1928. The protestant contends that Bohn has operated illegally and consequently that he should be denied a certificate. We are of the opinion, however, that he did not willfully seek to evade the law.

The record shows that after Bohn assumed the operation of the line with Smith's consent, the latter refused to join in an application to the Commission for a legal transfer of the franchise. His address was unknown to Bohn and to the Commission. Bohn promptly made inquiry as to the procedure necessary to legalize his operations. In effect, therefore, this complaint and application together serve the same purpose as an application to transfer the existing certificate. Of necessity the existing operative right

must be revoked and a new right granted, but the showing of public convenience and necessity usually required of an applicant for a new certificate appears to us unnecessary in this instance.

We are of the opinion that public convenience and necessity require the continuance of the truck operation which has always existed and which Bohn has in such manner acquired from his predecessor. The application will be granted.

Arthur L. Bohn is 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.

O R D E R

A public hearing having been held on the above entitled complaint and application, and the same having been consolidated for the receiving of evidence and decision, and the matter submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby finds that Roy L. Smith has abandoned all operations by motor truck between Calistoga and Middletown, and between Middletown, Harbin Springs, Stuperarich's Resort, Coyote Valley, Cobb, Hoberg's Resort, Adams Springs, Salmina Resort, Seigler Springs, Howard Springs and Speir's Springs, and

IT IS HEREBY ORDERED that the operative rights heretofore granted to said Roy L. Smith by Decision No. 11959 on Application No. 8888 and Decision No. 12424 on Application No. 9010 be and the same are hereby revoked and

IT IS HEREBY FURTHER ORDERED that the rates and time schedules on file with the Railroad Commission of the State of California in the name of Roy L. Smith be and the same are hereby canceled.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA further declares that public convenience and necessity require that Arthur L. Bohn operate a motor truck freight service between Calistoga and Adams Springs and intermediate points, including among others the following points:- Middletown, Stuperarich's Resort, Harbin Springs, Howard Springs, Seigler Springs, Hoberg's Resort, Spoir's Springs, Cobb, and Coyote Valley; and

IT IS HEREBY FURTHER ORDERED that a certificate for such service be and the same is hereby granted to Arthur L. Bohn, subject to the following conditions:

1- Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.

2- Applicant shall file, in duplicate, within a period of not to exceed twenty (20) days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be identical to those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed thirty (30) days from the date hereof.

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

4- No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this 1st day of November, 1928.

Leon O. Whittell
C. S. Seay

Thos. B. Lottis

W. J. Lane
COMMISSIONERS.