

Decision No. 29985.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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R. W. RASMUSSEN COMPANY,
INCORPORATED, a corporation,
Complainant,

vs.

JOSEPH BARRERE COMPANY, INC.,
a corporation,
Defendant.

ORIGINAL

Case No. 2634.

Gwyn Baker, for Complainant.

McKinstry, Haber & Firebaugh,
by Pierce Coombs, for Defendant.

BY THE COMMISSION:

O P I N I O N

The complaint herein alleges that defendant, Joseph Barrere Company, a corporation, is engaged in the business of transporting milk and cream by automobile truck as a common carrier between Ripon and San Francisco without authority of the Railroad Commission, and that such operation is being conducted by defendant at a rate lower than that lawfully charged by complainant.

Defendant, in its formal answer, alleges that it was granted a certificate to operate between Manteca and Oakdale and intermediate points, and that Ripon is one of such points. It further alleges that it has a special contract to haul the entire milk output of a dairy situated near Ripon, and upon the grounds thus set forth it prays for

the dismissal of the complaint.

Upon the issues thus joined, a public hearing was held by Examiner Gannon at San Francisco and the matter was submitted for decision.

The Commission, in Decision No. 18189, has heretofore granted defendant Barrere the right to operate an automobile truck service as a common carrier of milk and cream between Manteca and Oakdale and intermediate points, "excluding points now served by Minnie Taylor and R. W. Rasmussen under authority of the Commission". The right to serve Ripon was granted to Rasmussen in Decision No. 16318 and was in fact served by him until about November 16, 1928. One of his customers was the Palo Alto Company operating a dairy ranch three miles from Ripon. The testimony of complainant is that it received notice from this company that its service would be no longer required, and the testimony developed that subsequently defendant entered into a private contract with the Palo Alto Company and proceeded to serve them.

Defendant argues in its brief that the service rendered by complainant to the Palo Alto Company was inadequate and that the service rendered to that company by defendant is entirely satisfactory and hence that it be continued.

Prior to the filing of the complaint in this case defendant had no rates in its tariff from or to Ripon. Approximately sixty days after filing of such complaint defendant submitted to the Commission Tariff C. R. C. No. 3 published to become effective March 11, 1929, naming therein specific rates on milk and cream from Ripon to San Francisco, Oakland and Berkeley. Before this tariff became effective a check of defendant's operative rights disclosed the fact

that its certificate did not permit it to serve Ripon and the tariff was rejected. Therefore defendant has no tariff on file with the Commission naming rates to or from Ripon.

The only question before the Commission is whether or not a truck line, operating as a common carrier in a fixed territory may transmute itself into a private contract carrier and by so doing defeat a restriction placed upon its operating rights by the Commission. The evidence here conclusively proves that defendant company served a point which it was expressly forbidden to serve by the Commission's order, and attempted to justify such operation on the ground that it would remedy alleged inadequate service on the part of another carrier.

We are of the opinion, from a careful review of the facts, that defendant's operations, in so far as they affect service to and from Ripon, are in violation of the order of this Commission and should be discontinued, and the order will so direct.

O R D E R

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

IT IS HEREBY ORDERED that the defendant, Joseph Barrere Company, Inc., a corporation, be and it is hereby ordered to immediately cease and desist from the transportation of milk and cream between Ripon and San Francisco, and

to confine its operations strictly to the terms of the Commission's order in Decision No. 18189, and

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission mail a certified copy of the Opinion and Order herein to the District Attorney of San Joaquin County.

Dated at San Francisco, California, this 17th day of April, 1929.

Thos D Lott
C. L. Seamy
Ernest Costa
Leon Whitely
W. J. Lee
Commissioners.