

Decision No. 21092

ORIGINAL

BEFORE THE RAILROAD COMMISSION ON THE STATE OF CALIFORNIA

Petaluma and Santa Rosa Railroad Company,
a corporation,

Complainant,

vs.

George A. Leal, doing business under the
name and style of "Motor Freight Transportation",

Defendant.

} Case

} No. 2625

Geary & Geary and C.J. Tauser, by Donald Geary, for
Complainant.
George A. Leal, in propria persona, Defendant.
Orrick, Palmer & Dahlquist, by Robert L. Hall, for
Northwestern Pacific Railroad Company, Interested
party.

BY THE COMMISSION -

OPINION

Petaluma and Santa Rosa Railroad Company, a corporation,
herein complains of George A. Leal, operating under the
fictitious name of "Motor Freight Transportation", alleging
that said George A. Leal is engaged in the business of owning,
controlling, operating and managing automobile trucks in the
transportation of property as a common carrier, for compen-
sation, over the public highways and over a regular route be-
tween San Francisco and Santa Rosa, and intermediate points;
that said George A. Leal is not operating exclusively within
the limits of an incorporated city or town, or of a city and
county; that said George A. Leal has not heretofore obtained
from the Railroad Commission and does not now own, hold or
possess, any certificate, right, franchise, or permit to oper-
ate a transportation company, or to engage in the transportation
business as a common carrier between the above mentioned points;
and that the operation by said George A. Leal of said transpor-

tation business as a common carrier, between the above mentioned points is in violation of the laws of the State of California and of the rules and regulations of this Commission. Complainant further alleges that the aforesaid operation by said George A. Leal over the highways between San Francisco and Santa Rosa and intermediate points is in direct competition with complainant's railroad, and that the aforesaid operation has and now is, resulting in a diminution of the volume of freight available to be transported by complainant's railroad.

Complainant prays for an order of this Commission directing defendant to cease and desist from the violation of the law and the rules and regulations of this Commission, and to immediately discontinue the transportation of property by automobile trucks between the City and County of San Francisco and the City of Santa Rosa, and intermediate points, as a common carrier and for compensation.

No formal answer was filed by defendant, George A. Leal.

A public hearing on this complaint was conducted by Examiner Handford at San Francisco, the matter was duly submitted and is now ready for decision.

H. S. Graham, Freight Traffic Manager of Petaluma and Santa Rosa Railroad Company, testified that he had investigated the operations of defendant and had ascertained that daily operation was given, using three trucks. Shipments were transported from San Francisco for Langendorf Baking Company, Dodge Sweeney & Co., Sussman-Wormser Co., Petaluma Soda Works, and Coca-Cola Bottling Works. Southbound movement was principally shipments of eggs from Petaluma merchants. All of the shipments transported by defendant were in considerable volume and originated with or were destined to, concerns which had previously patronized the facilities of the Petaluma and Santa Rosa Railroad .

J. J. Geary, General Freight and Passenger Agent of North - western Pacific Railroad Co., testified that shipments formerly transported by his company to merchants at Ross and Cotati were now being transported by defendant's trucks; that a considerable volume of business had been diverted from his company; and that his interviews with wholesale grocers in San Francisco had resulted in advice that no contracts existed between such shippers and the defendant.

George A. Leal, called as a witness for complainant, testified that he became the sole owner of the transportation business, herein the subject of complaint, on February 1, 1929, by purchase from J. J. Clifford; that three trucks were regularly operated between San Francisco and Santa Rosa and intermediate points; and that groceries, merchandise and other commodities constituted the shipments handled from San Francisco, eggs being the principal commodity handled in the reverse direction. Witness has solicited hauling from San Francisco merchants and shippers both orally and by correspondence.

Witness relies on contracts executed by certain shippers and receivers of freight as evidence that the business heretofore and now conducted is not that of a common carrier. Twenty-two of these contracts were received in evidence (Exhibit 3).

An inspection of these contracts shows that all were executed by or on behalf of "Motor Freight Transportation", a fictitious name under which James Clifford and George A. Leal, as co-partners, were operating. The contracts were executed during the period from March 1, 1928, to January 29, 1929, both dates inclusive, and cover generally the transportation of eggs, groceries, cans, barrels, empty containers, general merchandise. Practically uniform rates are set forth between San Francisco and Sausalito, Petaluma, Cotati, Santa Rosa, Sebastopol, and points intermediate

between San Francisco and the above named communities. The contracts provide for service over a period of one year from the date of their execution, although a few are to continue until terminated. Provision for cancellation is made on notice of either party varying from one to five days. Defendant has assumed the obligations covered by the contracts, although all contracts were executed prior to his sole ownership of the business.

Defendant testified that he would render service to any person requesting it upon the terms and conditions as set forth in his general form of contract and where the prospective volume of business justified the execution of a contract.

After full consideration of the record herein it appears and we hereby conclude and find as a fact that defendant is operating an automobile truck line as a common carrier, for compensation, over the public highways between San Francisco and Sausalito, Petaluma, Cotati, Santa Rosa, Sebastopol and between San Francisco and points intermediate to the aforesaid communities, without first having secured a certificate of public convenience and necessity from this Commission as required by the provisions of Chapter 213, Statutes of 1917, and effective amendments. The form of contract relied upon by defendant as placing his operations in the category of a private carrier does not relieve the defendant from compliance with the statutory law, it appearing that the services of defendant are available to any one offering a satisfactory tonnage and meeting the other nominal requirements of the defendant, one of which is the execution of a contract which in effect is but the quotation and acceptance of a scale of rates with no obligation on the shipper or receiver to have any specific tonnage transported during the life of the contract, being merely a rate quotation guaranteed for the period of the contract, and subject to cancellation on one to five days' notice.

Defendant George A. Leal will be required to cease and desist the operation complained of in accordance with the following order.

O R D E R

A public hearing having been held on the above entitled complaint, the matter having been duly submitted, the Commission being now fully advised and basing its order on the conclusions and findings of fact as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED that defendant George A. Leal be and he is hereby directed to immediately cease the operation of an automobile freight transportation service as a common carrier of property, for compensation, over the highways of this state between San Francisco, Sausalito, Petaluma, Cotati, Santa Rosa and Sebastopol, and between San Francisco and intermediate points between the foregoing named communities, and not resume said service unless and until said George A. Leal will have been granted a certificate of public convenience and necessity by this Commission after proper application, in accordance with the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto, and

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be and he hereby is directed to forward a certified copy of this order, by registered mail to the District Attorneys of Marin and Sonoma Counties and of the City and County of San Francisco.

The effective date of this order is hereby fixed as twenty (20) days from the date hereof.

Dated at San Francisco, California, this 15th day of May, 1929.

Thomas D. Lott
George A. Leal
James E. ...
Leon ...
W. J. ...
COMMISSIONERS.