

Decision No. 21473

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

SOUTHERN PACIFIC COMPANY,  
Complainant,  
vs.  
L. A. THORNEWILL,  
Defendant.

**ORIGINAL**

Case No. 2651.

E. W. Hobbs and W. S. Johnson, for Complainant.  
Douglas Brookman, for Defendant.  
Edward Stern, for Railway Express Agency, Inc.,  
Intervenor.  
R. L. Hayes, for Highway Transport Company,  
Interested Party.

BY THE COMMISSION:

O P I N I O N

Southern Pacific Company, a corporation, has filed complaint against L. A. Thornevill alleging that said Thornevill has been, and now is, engaged in the transportation of commodities as a common carrier between San Francisco and Santa Cruz; that defendant is conducting his business in competition with that of complainant, at rates which are lower than complainant's published tariff rates, thereby securing business which complainant would otherwise have enjoyed and to which complainant is entitled; that defendant is conducting his operations without certificate of public convenience and necessity authorizing the transportation of all commodities in that the transportation includes commodities other than those specified by this Commission's Decisions Nos. 17451 and 19638, on Applications Nos. 12407 and 14428, and to such extent is

unlawful; and that defendant has been and now is engaged in the conduct of <sup>such</sup> business in defiance of the authority of this Commission and in violation of Sections 2 and 5 of the Auto Stage and Truck Transportation Act. Complainant prays for an order directing defendant to cease and desist from further conducting of the alleged or any unlawful freight transportation operation and for the revoking and annulling of certificates of public convenience and necessity as heretofore granted by this Commission to defendant by Decisions Nos. 17451 and 19638.

Defendant herein duly filed his answer herein, same being a general denial of the material allegations of the complaint. Upon the issues thus joined a public hearing on this complaint was conducted by Examiner Handford at Santa Cruz, the matter was duly submitted and is now ready for decision.

The operative rights of defendant L. A. Thornewill are those authorized by this Commission's Decision No. 17451 on Application No. 12407, as decided October 13, 1926; and Decision No. 19638 on Application No. 14428, as decided April 20, 1928. These operative rights cover the transportation of berries, fruits, vegetables, poultry and eggs from Santa Cruz and Capitola to San Francisco, and grapes and plums from Alma to San Francisco, and a return movement of millfeed in sacks, and empty containers (free) from San Francisco to Santa Cruz and Capitola; also for the transportation of berries, fruits, vegetables, poultry and eggs from Swanton to San Francisco by way of Davenport and Santa Cruz and to serve points intermediate between Swanton and Santa Cruz, with the right to return empty containers without charge from San Francisco to Swanton and intermediate points. The certificates provided no authority for the handling of any commodities other than those

heretofore specifically mentioned.

The record shows from the testimony of defendant L. A. Thornewill that in addition to the authorized commodities shipments of packing house products, canned goods, cooked meats, plumbing, hardware, electric supplies, sheet metal, citrus fruits, dressed poultry, welding material and supplies, coffee, tea, spices, druggists supplies, groceries and cut flowers have been transported from San Francisco to 17 merchants at Santa Cruz, shipments to individual receivers averaging two to three times per week, and that such transportation has been furnished with approximately the same degree of regularity for several months prior to the hearing.

Twelve witnesses testified, and by stipulation the testimony of four additional was admitted, that they had received shipments by defendant's service, and that charges for the transportation were paid at the time or on the day of the delivery of shipments.

Defendant testified that none of the transportation herein complained of was solicited by him but that it was undertaken in response to the urgent demands of merchants in Santa Cruz as an accommodation to them. He further stated that when such transportation service had reached a volume and regularity which marked it, in his estimation, as the service of a transportation company as defined by law, he then made application to the Commission for an enlargement of the limited certificate which he had. Such application was numbered 15249, filed December 6, 1928. It appears undisputed in the record that defendant collected compensation for the hauling of all shipments as herein complained of and that such service was undertaken before filing said application and continued with substantial regularity without

waiting for a decision on the application.

The unauthorized service thus voluntarily undertaken by defendant cannot be regarded by the Commission as a minor violation of his certificate which may lightly be excused. Having been granted a permit to haul certain commodities only, after showing made that public necessity required a transportation service for those particular commodities, he has assumed without further authorization to enlarge his truck service to an extent limited only by the capacity of his facilities. Defendant himself has been the complainant against others who have engaged in irregular truck operations between Santa Cruz and San Francisco and has asked the Commission to enforce in this territory the provisions of the law in respect to such highway transportation. By his own violations of the law he has further complicated the intolerable situation already existing. There can be no partiality in the enforcement of the law. We are of the opinion, therefore, that he should not only be ordered to cease the hauling of all those commodities for which he holds no certificate but that his existing limited certificate should be revoked.

The Commission takes this occasion to again state that it is fully aware of its obligation to consider the shipping necessities of the public in all proceedings before it involving transportation by motor truck. There may be need for an improved or additional truck service between Santa Cruz and San Francisco. In considering that question, however, we are compelled to demand as a condition precedent that carriers, no matter how well qualified otherwise, manifest a sincere intention to submit to regulation by this Commission in conformity with the provisions of the law.

In view of the record in this proceeding we are of the opinion and hereby find as a fact that defendant L. A. Thornewill has violated the orders of this Commission and the provisions of

the statutory law by transporting, as a common carrier and for compensation, commodities between the fixed termini of San Francisco and Santa Cruz, said commodities not being authorized by the provisions of Decisions No. 17451 and 19638 on Applications Nos. 12407 and 14428, said decisions authorizing only the carrying of specific commodities and expressly prohibiting the conduct of any other service or the carriage of other than the specific commodities referred to in the decisions.

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 finding of fact as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED that certificates of public convenience and necessity as heretofore issued by this Commission to L. A. Thornewill under its Decision No. 17451 on Application No. 12407, as decided October 13, 1926, and Decision No. 19638 on Application No. 14428 as decided April 20, 1928, be and the same hereby are revoked and annulled.

IT IS HEREBY FURTHER ORDERED that defendant L. A. Thornewill immediately cease and desist from the operation of an automobile truck service, as a common carrier for compensation, between San Francisco and Santa Cruz.

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

Dated at San Francisco, California, this 20<sup>th</sup> day of August, 1929.

Thos S. Lewis  
James D. ...  
Deon ...  
M. J. ...  
Commissioners.