

Decision No. 22243

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

In the Matter of the Investigation upon
 the Commission's own motion into the
 rates, rules, regulations, charges,
 classifications, practices, contracts,
 operations and schedules or any of them
 of R. W. RASMUSSEN COMPANY, INCORPORATED,
 operating a common carrier trucking
 service between points in the State of
 California.

Case No. 2762.

In the Matter of the Investigation upon
 the Commission's own motion into the
 rates, rules, regulations, charges,
 classifications, contracts, practices,
 and operations, or any of them, of
 SERVICE LINES, INC., and/or R. W.
 RASMUSSEN, operating a common carrier
 trucking service between points in the
 State of California.

Case No. 2764.

Gwyn H. Baker for Respondents,
 Earl A. Bagby for California Transit Company and
 Pickwick Stages, as their interests may appear,
 Edward Stern for Railway Express Agency, Inc.,
 as an interested party,
 W. H. Metson for California Transportation Company,
 as an interested party,
 W. J. Quinn for White Lines, Stockton, as their
 interests may appear,
 W. S. Johnson and Morton G. Smith for Southern
 Pacific Company and Monticello Steamship Company,
 interested parties.
 L. N. Bradshaw for Western Pacific Railroad Company,
 Sacramento Northern Railway and Tidewater Southern Rail-
 way Company, as their interests may appear,
 W. G. Stone for Sacramento Wholesalers and Manufac-
 turers Association, as their interests may appear,
 W. F. Williamson, Wallace & Vaughan, by Reginald
 L. Vaughan, for Bay Cities Transportation Company, as
 an interested party,
 Berne Levy for The Atchison, Topeka & Santa Fe Railway
 Company, and The Modesto and Empire Traction
 Company, as their interests may appear.

BY THE COMMISSION:

O P I N I O N

Case No. 2762 is an investigation on the Commission's own motion into the rates, rules, practices, etc. of R. W. Rasmussen Company, Incorporated, and Case 2764 is a similar investigation with respect to Service Lines, Incorporated, and/or R. W. Rasmussen. The former was ordered to show cause why its operating rights should not be revoked and annulled, and the latter why they should not be ordered to cease and desist common carrier operations.

Public hearings were held before Examiner Cannon in San Francisco. At the outset it was stipulated that these two matters be consolidated for hearing and decision.

Decision No. 16318 on Application No. 11576 granted a certificate to R. W. Rasmussen and Benjamin James, co-partners, authorizing the transportation of milk, cream and cottage cheese between Oakland, San Francisco, Alameda, Berkeley and Hayward, on the one hand, and Hayward, Decoto, Niles, Mission San Jose, Irvington, Newark, Centerville, Alvarado, Gilroy, Salinas, Modesto, Hughson and Patterson, and intermediate points, on the other hand. Decision No. 19015 on Application No. 14084 authorized the partners to transfer this right to R. W. Rasmussen Company, Incorporated, hereinafter referred to as Rasmussen Company.

Nine witnesses were called by the Commission and their testimony may be summarized as follows:

Leland Goucia, a former truck driver for Rasmussen Company and Service Lines, Inc., testified that insofar as he had observed the two companies were one and the same.

He had delivered groceries at Alvarado, meat and butter at Watsonville, bacon at Salinas, and Swift and Company products at San Jose and Alvarado. On return trips milk and cream were brought into Oakland and San Francisco. The truck driven by witness was owned by Rasmussen Company.

George Ledgett had been employed as a driver by Rasmussen Company for five years. Southbound he carried ham and bacon consigned by Armour and Swift, also auto parts, machinery and drugs. Groceries were hauled by him to Turlock, Merced and Atwater as often as once a week. Freight from Armour, Swift and Skaggs stores was delivered at Livermore quite frequently. On return trips from Hughson to Oakland, the witness stopped at Modesto and picked up powdered milk in barrels and case milk. Butter and eggs were also picked up from Swift and Company in Ceres and Modesto. The manifests supplied to the witness bore the heading "Service Lines, Inc." The trucks operated were owned by Rasmussen Company. According to this witness, Service Lines, Inc. had operated since 1928, at which time he first began carrying merchandise other than milk, cream and cottage cheese.

Gray Johnston was another driver for Rasmussen Company on the Oakland-Modesto run. His manifests bore the imprint "Service Lines, Inc." Southbound he carried a general line of freight consisting of auto parts, drugs, sugar, canned goods, groceries, flour, salt and hardware. Deliveries were made at Livermore, Tracy, Manteca, Ripon, Salida and Modesto. Northbound, in addition to his regular load of milk and cream, he sometimes carried canned evaporated milk, poultry and canned fruit. Two or three times a month mill-feed was delivered at

Tracy. Cases of empty milk bottles were carried twice a week from Modesto. The witness was constantly on duty in excess of ten hours a day.

Roscoe Yater testified that he had been a relief driver for Rasmussen Company on the Salinas run. Southbound he carried dairy feed, drugs, groceries, auto supplies, oils, hardware and tires. On the back-haul, he brought milk, cream and powdered milk. On the Ripon run he often picked up farm machinery at the Palo Alto Ranch and on one occasion he had hauled north from this ranch forty-five dead goats on the same truck with the milk. Poisonous weed-oil in drums was frequently hauled to California Irrigated Farms at Banta. His hours on duty varied from twelve to eighteen, depending upon the run. All freight was hauled in Rasmussen trucks under Service Lines manifests.

Joseph Guisso was in the employ of Rasmussen Company for three and one-half years. On the run between the bay cities and Merced tires, oil, iron, sheet metal, nails, salt, coffee, groceries and auto parts were hauled south. He delivered meat at Livermore, groceries at Tracy, coffee at Salida and Manteca, drugs and coffee at Ripon, coffee, meat and oils at Modesto, meat at Ceres, and sheet metal and nails at Merced. Witness was on this run for five months. On the Salinas run butter, groceries, feed and paint were handled southbound, the back-haul consisting of milk, cream and powdered milk. Witness had charge of this run for two years and was also on the Sacramento run for some eight or nine months. On this latter run he carried, northbound, meat products, drugs, machinery, coffee, groceries and sundry other commodities. On the return

trip from Sacramento he carried eggs, butter and poultry. On the Salinas run he averaged twelve to fourteen hours daily, and on the Sacramento trip from eighteen to twenty-two hours daily. Service Lines manifests were used and all trucks were owned by Rasmussen Company. He collected freight charges which were turned over to this company.

Fred Wildhagen was in charge of the maintenance department of Rasmussen Company and thereafter was made Superintendent in charge of operations. He testified that, in addition to milk, cream and cottage cheese, Rasmussen Company handled auto supplies, butter, groceries, hardware, canned goods in cases, meat and powdered milk in barrels. This witness testified that in fact Rasmussen Company "took everything they were able to handle profitably," (Tr. p. 148) on all routes. Service to Sacramento was inaugurated in May, 1928, with three trucks per week. Later, a regular daily schedule was maintained to Sacramento. In the mind of this witness there was no distinction between Rasmussen Company and Service Lines, Inc., in the handling of freight.

Leo C. Paul of the Commission's Auto Stage and Truck Department made an investigation and compiled a list of freight shipments in process of transportation by Rasmussen Company on October 7 and 8, 1929 (Exh. 3). This exhibit lists shipments to consignees located at Sacramento, Turlock, Modesto, Livermore, Merced, San Francisco and Oakland. The shipments originated at San Francisco, Oakland, Emeryville, Merced and Modesto. The commodities transported were linoleum paste, steeltex, meat, leather goods, auto parts, paint, oil, wrapping paper, office and drug supplies, rugs and tires.

A. C. Allen, accountant of the Railroad Commission, submitted a report of his investigation of the books and records of Rasmussen Company (Exh. 6). The first four months of 1928 revenue was divided into two accounts "contract" and "franchise." Subsequent to that time the books do not show such a segregation. Mr. Allen made a detailed examination of the revenues for the months of April, 1928, and July and August, 1929. This study shows that rates charged certain shippers did not conform with the effective tariff of Rasmussen Company as to shipments of milk, cream and cottage cheese. The report contains a summary of shipments by commodities named in the tariff from and to points not provided for in the tariff. It also contains a list of commodities transported not provided for in the tariff on file.

Benjamin James, Secretary-Treasurer of Rasmussen Company, testified that the incorporators of Rasmussen Company were Rasmussen, James, and W. K. Ward and that these three also incorporated Service Lines, Inc. Rasmussen and James were also on the boards of directors of the two companies and all three were stockholders in both concerns. This witness further testified that since October 1, 1929, the place of business of Rasmussen Company has been in Oakland and that of Service Lines, Inc. in Emeryville. Service Lines, Inc. was organized "because we wanted to engage in the contract hauling business" (Tr. p. 214) and "because you can not haul * * * you can not conduct the contract business with a franchise corporation" (Tr. p. 216).

George L. Carmichael is Traffic Manager of Service Lines, Inc. receiving his instructions from Rasmussen and

James. He testified that he was instructed to make such contracts as he saw fit to make, to exercise full authority, to exclude certain contracts and to select his shippers * * * to pick any additional shippers that might come to them in order to maintain the volume of freight and keep their equipment busy. (Tr. p. 264 & 265). Some ten contracts have been arbitrarily cancelled. Certain of the alleged contracts are written, others are verbal. Some are in the form of a letter to prospective shippers, setting out what particular service this company offers and were given where the shipper "preferred a letter to a contract." "In other words, it is a full detailed letter which really is as good as a contract." (Tr. p. 268). "Temporary contracts" have also been made for hauling for a limited period. Service Lines, Inc. has a depot in San Francisco and an office in Sacramento.

Respondents' Exhibit 12 lists some twenty-seven firms which Service Lines have refused as shippers. Exhibits 10 and 11 are bills covering prepaid shipments from F.W. Truitt at Gibson Terminal, Oakland, to Mebius & Drescher at Sacramento on forms headed "Service Lines, Inc., Fast Freight and Express Service, Oakland Depot, 1350-34th Street." Service Lines has no writing or "contract" with either the consignor or consignee above mentioned, although it has handled shipments for the Gibson Terminal (Lawrence Warehouse) for some time. According to the instructions given the traffic manager of Service Lines, Inc., "there was no set limitation on the number of contracts but that was to be left up to my judgment." (Tr. p. 346).

Typical of the form of the alleged contracts two writings were introduced in evidence (Exhibits 7 & 8), being

with H. J. Heinz Corporation of Berkeley and A. Schilling & Company of San Francisco. An analysis of these writings shows that the form used does not provide for any specific period nor any specific volume or amount of tonnage. They do not impose an obligation on the shipper to patronize the particular service. Rates quoted in the writings are stabilized. "For instance, on coffee, we do not like to discriminate from one man to another and we do not maintain our rates in that way. They are not a wild bunch of rates. We have all the same rates in there." (Tr. p. 307). That Service Lines, Inc. has not itself considered these writings as binding is evidenced by the fact that several have been "arbitrarily cancelled" by it. Respondent's Exhibit 13 lists some forty-six "contracts" now in force covering service from the bay cities to Sacramento and points in the San Joaquin Valley (Modesto, Merced, Turlock, Ripon, etc.). Eleven of these are oral understandings, seven are letters of confirmation, eight are in the same form as Exhibit 8, and nineteen in the same form as Exhibit 7. The special or temporary "contracts" are not listed in this exhibit.

The rule is well settled that operations under such understandings, whether oral or written, are not those of a private carrier within the doctrine of Frost vs. Railroad Commission, 271 U. S. 583; (Bakersfield, etc. Company v. Willhour, 31 C.R.C. 367; Thornwill vs. Gregory, 31 C.R.C. 843; Re Jack Hiron, 32 C.R.C. 48; Tucker vs. Payne, 32 C.R.C. 200; Pioneer Express Company vs. Keller, 32 C.R.C. 314; Petaluma, etc. R.R.Co. vs. Leal, 33 C.R.C. 63.) Nor may a common carrier truck line transmute itself into a private contract carrier and by so doing defeat a restriction placed upon its operative rights (Rasmussen Co. vs. Barrere Co., 32 C.R.C. 862).

Mr. Rasmussen testified that Rasmussen Company was at the time of the hearing operating from Pleasanton to San Francisco and Palo Alto and Redwood City, although not authorized to operate between those points. Service to and from Salinas had been abandoned as has that from Modesto to Oakland. Authorization for such abandonment has not been obtained. Time schedules have been changed from time to time but these changes have not been filed with the Commission. The company has also operated between Watsonville and San Francisco, points not authorized by their present certificate. It further appears that operations have been conducted between Merced and San Francisco in violation of the certificate. The infractions listed above pertain to the hauling of authorized commodities (milk, cream and cottage cheese) and in and of themselves constitute just cause for the revocation of a certificate, even if the hauling of unauthorized commodities was not to be here considered.

As to Service Lines, Inc., it is admitted that it is engaged in transporting property by auto trucks over the public highways of the state, between fixed termini and over regular routes. It claims, however, to be so hauling as a private carrier and not as a common carrier. A careful review of the record shows this contention to be without merit.

Violations of existing certificates or attempts to evade regulation are not lightly to be excused or tolerated. As expressed by the Supreme Court of California, "If such a studied attempt to evade the provision of the statute should prove availing, the law will become a nullity and the primary purpose of the act to regulate auto truck transportation companies would come to naught." (Haynes vs. MacFarlane, 1929, 78 Cal. Dec. 92).

O R D E R

An investigation having been instituted into the operations, etc. of R. W. Rasmussen Company, Incorporated, and Service Lines, Inc., orders to show cause why any and all operative rights of R. W. Rasmussen Company, Incorporated, should not be revoked and annulled, and why Service Lines, Inc., should not be ordered to cease and desist common carrier operations, hearings having been held thereon and the matters having been submitted on briefs,

IT IS HEREBY ORDERED that the certificate heretofore granted by Decision No. 16318 in Application No. 11576 and authorized to be transferred to respondent R. W. Rasmussen Company, Incorporated, by Decision No. 19015 in Application No. 14084, be and the same is hereby revoked and annulled and said R. W. Rasmussen Company, Incorporated, ordered to cease and desist all common carrier operations thereunder within thirty (30) days from the date hereof.

IT IS HEREBY FOUND AS A FACT that Service Lines, Inc., is operating as a common carrier of property by auto truck for compensation over public highways in this state between fixed termini and over regular routes between San Francisco and East Bay cities on the one hand and Sacramento on the other hand, and between San Francisco and East Bay cities on the one hand and points in the San Joaquin Valley on the other hand, all as more specifically pointed out in the opinion preceding this order.

IT IS HEREBY ORDERED that said Service Lines, Inc., immediately cease and desist such common carrier operations unless and until a certificate of public convenience and necessity shall have been obtained therefor, and

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission serve or cause to be served a certified copy of this opinion and order upon said R. W. Rasmussen Company, Incorporated, and Service Lines, Inc., and mail or cause to be mailed a certified copy of this opinion and order to the District Attorneys of San Francisco, Alameda, Contra Costa, Solano, Sacramento, San Joaquin, Stanislaus, Merced, Santa Clara, San Benito, Monterey, Santa Cruz and San Mateo Counties.

For all other purposes the effective date of this opinion and order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 20th day of March, 1930.

Cl. Seaver
W. J. [unclear]
W. J. [unclear]
Commissioners.