

Decision No. 22881.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
C. J. NAGEL,
for an order establishing that he was
in operation on May 1st, 1917 and con-
tinuously since that date as a "Trans-
portation Company."

ORIGINAL

Application No. 16602

C. B. Wooster, for applicant.

BY THE COMMISSION:

O P I N I O N

C. J. Nagel has petitioned the Railroad Commission for an order determining that he has established a prescriptive right to conduct an automotive service for the delivery of packages between San Jose, Willow Glen, Santa Clara, Cottage Grove, Burbank and Sunol, by reason of operation in good faith before May 1, 1917, and continuously thereafter; that such operations under Chapter 213, Acts of 1917, as amended, do not require him to obtain a Certificate of Public Necessity and Convenience therefor.

A public hearing herein was conducted by Examiner Williams at San Jose.

Applicant testified that he had purchased the package delivery service in 1914, and that at the time of purchase the business had already existed several years. Since that time applicant testified that he had continued to operate it to the same

The record herein justifies the finding that applicant was conducting the same service he is now conducting on May 1, 1917, and prior thereto, in good faith, as a common carrier of property for compensation, between San Jose and the termini heretofore stated, and we hereby so find; that continuous operation thereof has been made and that no certificate of public convenience and necessity therefor is required to be obtained under the provisions of Chapter 213, aforesaid, or as amended.

O R D E R

C. J. Nagel, operating under the fictitious name of "Red Line Parcel Service" between San Jose and various termini, having made application to have prescriptive right therefor established and confirmed by this Commission, a public hearing having been held, the matter having been duly submitted, the Commission being fully advised, and basing its order on the conclusions and findings of fact, as set forth in the opinion preceding this order;

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that C. J. Nagel, operating under the name and style of "Red Line Parcel Service", an automotive service as a common carrier of property, for compensation, was so operating between San Jose and Cottage Grove District, City of Willow Glen, Burbank and Sunol districts and City of Santa Clara and intermediate points, on May 1, 1917, and previously thereto and continuously thereafter until the date of hearing herein, and by reason of such facts is exempted from procuring a certificate of public convenience and necessity therefor from the Railroad Commission, in the manner prescribed in Chapter 213, Acts of 1917, as amended; and

termini and over the same routes, and was so operating at the time of the hearing, without deviation from the routes and service as established May 1, 1917.

The business is conducted under the fictitious name of "Red Line Parcel Service." It is a one way distribution of deliveries from San Jose, the only return movement being undelivered or rejected packages. The business has grown until at the time of hearing applicant is serving 52 stores and using seven light trucks, making delivery in each point at least once a day, and handling approximately 700 packages daily.

Applicant testified that he had twice sought legal advice as to whether his operation was a common carrier service subject to regulation and had been advised that it was. Recently he sought an informal ruling from this Commission and was advised to file the present application. Applicant appears to have acted in good faith at all times, without concealment or avoidance.

J. M. Waterman, for twenty-seven years manager of Canelo Bros. and Stackhouse Co., proprietors of the "Arcade" department store, testified to his personal knowledge of the use of applicant's service for twenty years past, and to his knowledge of its use by many other business houses during the same period. Similar statements in writing were made by H. R. Herold, of the Herold Shoe Company, and J. F. Brooke, superintendent of L. Hart & Son Company, department store, each having used the service continuously since 1915.

Applicant now offers to submit to regulation by this Commission, as prescribed by Chapter 213, Acts of 1917, and to render full compliance thereto. No one appeared to oppose the application.

Good Cause Appearing:

IT IS HEREBY ORDERED that applicant, C. J. Nagel, file with this Commission, in duplicate, and in accordance with General Order No. 80 of this Commission, his schedule of rates, routes, rules and regulations and time schedules, said rates, routes, rules and regulations and time schedules to be those in force on June 30, 1930, or such as will be satisfactory to this Commission, said filing of said rates, routes, rules and regulations and time schedules to be made within thirty(30) days from the date of this order.

DATED at San Francisco, California, this 17th day of July, 1930.

W. H. ...

James ...

W. H. ...

Commissioners.