

Decision No. 22785

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

BOB ARUTOFF,

Complainant,

vs.

COR. VANDERWAAL, BEN ORMANDE,
JOE MELLO and F. L. FRONCO,
MIKE ARUTUNIAN and OHANNES
GREGEROFF,

Defendants.

ORIGINAL
CASE NO. 2849

Hooper & Miller, by L. O. Miller, for
Complainant.

Phil Jacobson, for Arutunian & Gregeroff,
Defendants.

Norcop & Cushing, by John J. Cushing,
for Cor. Vanderweal, Defendant.

Fred C. Bigby, for Ben Ormande, Defendant.

BY THE COMMISSION:

O P I N I O N

Complainant herein, Bob Arutoff, conducts automotive freight service for the transportation of milk and other dairy products from a certain district south of Los Angeles, including Athens, Rosecrans, Gardena, Wilmington and San Pedro and intermediate points, to Los Angeles, by virtue of Decision No. 20292, dated October 3, 1928, on Application No. 14716.

In his complaint Arutoff alleges that defendant Vanderwaal is now and has been transporting milk from the dairies of W. Larsen at 161st and Figueroa Streets, and Charles DeGoot at 182nd Street and Normandie Avenue, said shippers being within the territory which complainant is authorized to serve and not being within the territory which Vanderwaal is authorized to serve; also that defendant Ormande has been transporting milk to Los Angeles from the same shippers; also that Joe Mello and F. L. Fronco have been hauling milk from the dairy of one Joe Simas at Gardena and also from the dairy of Manuel Silva on Truck Boulevard north of Dominguez Avenue, and others; all being located in the territory from which complainant is authorized to transport the commodity and for which defendants have no certificates from this Commission, and that each and all of the defendants are offering themselves to the public as common carriers within the territory served by complainant.

Complainant further alleges that defendants Arutunian and Gregeroff have been transporting milk from J. C. Laurence, located at Carson and Avalon Streets, and others in complainant's territory, and have also been offering themselves as common carriers within said district without certificate therefor from this Commission.

Defendants (except Mello and Fronco) each separately answered the complaint, denying the allegations in general; and defendants Vanderwaal and Ormande set up a separate defense to the effect that the movements conducted by them were under contract and were made for a milk producers' association.

Defendants Arutunian and Gregeroff admitted having

formerly performed service as alleged to two shippers in Arutoff's territory, (now discontinued), but denied that a third shipper at 182nd Street and Main Street was within the service area included in complainant's certificate. These defendants are the only ones now operating under certificate of this Commission and the area which they serve is adjacent to part of that of Arutoff. They stipulated that they would be bound by the exterior boundaries and routes of themselves and Arutoff as shown by a map filed by the Commission as Exhibit No. 5 in Case No. 2814, and that if this map showed the location 182nd and Main Streets to be in Arutoff's territory, they would accept an order to cease and desist. Reference to this map shows that the location is on the route certificated to Arutoff, and therefore the order will provide that defendantz Arutunian and Gregeroff cease and desist from serving this point.

As to the other defendants, Vanderwaal submitted a contract between himself and the Dairymen's Protective Association, which contract was executed in September, 1929, and which appears to be a true lease of a truck to the Association for the transportation of the milk from the dairies of its members from points of production to the city of Los Angeles. The milk thus transported was produced at the dairies of Larsen and DeGoot, members of the Dairymen's Protective Association, and they are but two of five hundred and nineteen members whose milk is transported under various contracts or by public carriers. It appears from the record that the transportation conducted by Vanderwaal is not a common carrier service for compensation, as this defendant has not transported, and will not transport, milk for anyone except members of the Association under his contract.

It appears, therefore, that the facts require the dismissal of the complaint in so far as it refers to Vanderwaal.

Defendant Ormande urged a similar defense as to his transportation of milk from the dairies of Manuel Silva and Joe Simas. Ormande denied that he had hauled any milk for Charles DeGoot and the testimony in behalf of complainant does not establish the fact that he did.

By the testimony of Joe C. Vierra, director of the Dairymen's Co-operative Association of Norwalk and vicinity, it was shown that this organization, which has fourteen members, entered into a contract with Ormande to transport the milk of its members to creameries at Los Angeles; that the contract is in the same form and substance as the one under which Vanderwaal operates, and that it is not a common carrier service, as there was no testimony to show that Ormande had hauled for any others than members of this Association, which is a non-profit organization. It appears, therefore, that the allegations as to the common carrier service for compensation alleged to be rendered by Ormande have not been sustained, and that the complaint should be dismissed as to him.

No response was made by defendants Mello and Fronco. The record shows they have ceased any service. As the record presents Defendants Vanderwaal and Ormande conducting service under bona fide contract an order dismissing the complaint as to them, and also Mello and Fronco will be entered.

O R D E R

Bob Arutoff having filed a complaint with this Commission against Cor. Vanderwaal, Ben Ormande, Joe Mello, F. L. Fronco, Mike Arutunian and Ohannes Gregeroff, defendants having answered and having appeared at the hearing, except defendants Mello and Fronco, who defaulted, a public hearing having been held, the matter having been duly submitted and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED that defendants Arutunian and Gregeroff immediately cease and desist from any transportation of milk from 182nd and Main Streets in the County of Los Angeles, to Los Angeles, and that in all other respects the complaint as to them be and the same hereby is dismissed.

IT IS HEREBY FURTHER ORDERED that the complaint as to Cor. Vanderwaal, Ben Ormande, Joe Mello and F. L. Fronco be and the same hereby is dismissed.

Dated at San Francisco, California, this 13th day of

August 1930.

Clarence
Edmund
Leon
John

Commissioners.