

Decision No. 22926.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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**ORIGINAL**

In the Matter of the Application of D. S. ROSA, doing business under the name and style of CAMBRIA STAGE LINE, for authority to change rates and weight limits on express service and fares on passenger service.

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) Application No. 13475.

VALLEY & COAST TRANSIT COMPANY,  
Complainant,

)  
)  
) Case No. 2328.

vs.

D. S. ROSA,  
Defendant.

)  
)  
)

In the Matter of the Investigation on the Commission's own motion into the practices and operations of D. S. ROSA, operating a public utility stage service for the transportation of persons and property between San Luis Obispo and Cambria, California.

)  
) Case No. 2412.  
)  
)

In the Matter of the Application of D. S. ROSA (Cambria Stage Line) for authority to change rates and weight limits on freight and express service and fares on passenger service.

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) Application No. 16192.  
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Chas T. White and E. N. Blair, for Valley Transit Company, Complainant in Case No. 2412 and Protestant in Applications Nos. 13475 and 16192.

H. J. Dubin, for D. S. Rosa, Defendant in Cases Nos. 2412 and 2328, and Applicant in Applications Nos. 13475 and 16192.

BY THE COMMISSION:

O P I N I O N

By Decision No. 16782, determining eight proceedings before this Commission, in which D. S. Rosa, operating stage and

freight service between San Luis Obispo and Cambria, is complainant, defendant and applicant, variously, this Commission found that Rosa had been operating illegally in the matter of exceeding the weight limits adopted by him, by operating beyond Cambria to San Simeon without valid authority and by charging rates different from the rates on file with this Commission by him. Upon this finding the Commission, in the following order dated May 29, 1926, declared:

"IT IS HEREBY ORDERED that said defendant, D. S. Rosa, in Complaint No. 2000, be and he is hereby directed to immediately discontinue all passenger and freight service between San Luis Obispo and San Simeon and between Cambria and San Simeon."

In addition, the same order denied an application (No. 9670) of Rosa to extend passenger service from Cambria and San Simeon.

The above-entitled proceedings are a consequence of the two orders mentioned in the foregoing. In Case No. 2328 Valley & Coast Transit Company complains of Rosa and alleges that he has violated the order of the Commission by doing exactly the same things that were found to be illegal in the decision above quoted and asking the revocation of his certificate. Defendant denied specifically and generally the allegations, and in his answer made the averment that Decision No. 16782 had fully adjudicated Rosa's rights.

The instant group of proceedings as consolidated are intended to determine fully the rights of Rosa as they now exist legally and both parties stipulated that this Commission should include in the record all previous proceedings in which Rosa had been a party, all the files and documents in possession of the Commission including rates, schedules and annual reports. Under this stipulation a complete investigation of Rosa's status

has been made and it is deemed unnecessary to present analysis and discussion of the numerous channels followed. It is sufficient, we believe, that the findings of fact, resulting therefrom, be stated generally in an order based thereon issued.

The important questions involved are what valid rights Rosa has and how far, if at all, he has exceeded them in actual operation. The whole record clearly shows that his rights are limited to transportation of persons and property only between San Luis Obispo and Cambria, under a restriction of 75 pounds maximum as to property. There is no showing as to all the rates he has been charging but it is admitted that these rates have been different, though less, than shown in the only tariff ever filed by him in 1920. Operations by him between San Luis Obispo and San Simeon and Cambria and San Simeon clearly appear illegal. The attempt to justify such operations under claim of prescriptive right falls under the various assertions of Rosa under oath and various verified pleadings contradicting such alleged right. The order to be entered will definitely set up the valid rights as they are supported by the testimony and such order must be final and conclusive.

Having fixed Rosa's rights there is no longer excuse, under color of alleged prescriptive creation, for continued transportation of either persons or property between any point and San Simeon. In view of Rosa's illiteracy and inability to understand written regulations, coupled with mistaken legal advice, and other ameliorating facts shown in the record revocation of the rights will not be ordered at this time. Rosa must conform to the findings herein in the future or face full penalties. Not, under these conditions is this Commission justified in enlarging his rights, as sought in Application No. 16192, even though there is testimony that some of his patrons may use a greater limit

as to freight and that Rosa has performed satisfactory service in the past and that his service meets a measure of public need.

O R D E R

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FINDS AS A FACT that D. S. Rosa, applicant, defendant and respondent herein, now possesses prescriptive right, created by his own operations as a common carrier in good faith prior to May 1, 1917, to conduct automotive service between San Luis Obispo and Cambria, said right as to property being restricted to packages weighing not more than 75 pounds; also a certificated right, similarly restricted, granted by Decision No. 5476 on his Application No. 3673; also that he acquired the prescriptive right for passengers created by Orle N. Mayfield by bona fide operation as a common carrier prior to May 1, 1917, between San Luis Obispo and Cambria; that said applicant D. S. Rosa possesses no right, as a common carrier, prescriptive or otherwise between San Luis Obispo and San Simeon, or between Cambria and San Simeon, as determined in our Decision No. 16782 on Application No. 9670, which decision is hereby re-affirmed; and basing its action on the above findings and on the findings set forth in the opinion preceding this order,

IT IS HEREBY ORDERED that in Application No. 16192 applicant herein, D. S. Rosa, be and he hereby is required to conduct automobile service for the transportation of persons and property, as set forth in the foregoing paragraph, between San Luis Obispo and Cambria and intermediate points, and no other service; and as to variation therefrom said application is hereby denied; and

IT IS HEREBY FURTHER ORDERED that said applicant D. S. Rosa file with this Commission, within twenty (20) days from date hereof, his schedule of rates and charges for such service between San Luis Obispo and Cambria, as set forth in exhibits attached

to his Application No. 16192, together with time schedules as therein set forth, or such other rates or schedules as may be acceptable to this Commission, and

IT IS HEREBY FURTHER ORDERED that applicant from and after the date of this order cease and desist from any operation as a common carrier of persons or property between Cambria and San Simeon or the transportation of persons or property between San Luis Obispo or Cambria, or points intermediate thereto, and San Simeon, at the rate to Cambria or any other rate.

IT IS HEREBY FURTHER ORDERED that Application No. 13475, Case No. 2328 and Case No. 2412 herein be and the same are hereby dismissed.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission transmit to the District Attorney of San Luis Obispo County a certified copy of this Opinion and Order.

Dated at San Francisco, California, this 30th day of September, 1930.

W. J. Leavelle

Leon Whiskey  
Thos. B. Leland

W. J. Leavelle  
Commissioners.

*Dissenting Opinion.*  
In my judgment this applicant's certificate should be revoked. He is the most persistent violator of the law that has ever come before this Commission. I have already expressed my views in the Janetta decision No. 22779 and it will be unnecessary to repeat them here. E. W. Wood's Commission