

Decision No. 23352

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

F. A. WERMUTH, doing business under the
name and style of Wermuth Transfer,

Complainant,

vs.

E. F. ZANETTA,

Defendant.

ORIGINAL

Case No. 2935

Geo. D. Pollock, for Complainant.

John Thompson, for Defendant.

W. S. Johnson, for Southern Pacific Company,
and Pacific Motor Transport
Company, Intervenor in behalf
of complainant.Edw. Stern, for Railway Express Agency, Inc.,
Intervenor in behalf of complainant.

BY THE COMMISSION -

OPINION

F. A. Wermuth, doing business under the name and style of Wermuth Transfer, has filed complaint against E. F. Zanetta alleging that said Zanetta is now operating a truck line as a common carrier of all kinds of property over the highways of this state, and specifically between San Jose, Oakland and San Francisco on the one hand, and Carmel, Pacific Grove, Monterey, Marina, Seaside and Castroville on the other hand; that said defendant is conducting said business in competition with complainant and at rates less than the published rates of complainant, thereby procuring business that complainant would otherwise enjoy and to which complainant is entitled and otherwise would have received. Complainant further alleges that defendant is conducting the alleged operations without having secured a certificate of public convenience and necessity from this Commission for the transportation of all commodities, and that defendant has been and is now engaged in the conduct of said business in defiance of the authority of

the Railroad Commission and in violation of Sections 2 and 5 of the Auto Stage and Truck Transportation Act. Complainant prays for an order of this Commission directing defendant to cease and desist from further conducting said or any unlawful freight transportation operations as hereinabove set forth, and that the present certificate of public convenience and necessity heretofore granted by this Commission in Decision No. 22779 be revoked and annulled, and that suitable penalties be imposed upon said defendant for the alleged unlawful operations herein complained of as provided in Section 6 of the Auto Stage and Truck Transportation Act.

Defendant, E. F. Zanetta, duly filed his answer herein, said answer being a general denial of the material allegations of the complaint.

Public hearings on the issues presented by this complaint were conducted by Examiner Handford at Carmel and Monterey, the matter was duly submitted and it is now ready for decision.

F. A. Wermuth, complainant herein, testified that he had been engaged in the trucking business for fifteen years at Monterey and Carmel, operating under a certificate of public convenience and necessity as issued by this Commission. Witness has seen the trucks of defendant delivering all classes of merchandise and commodities to merchants at Carmel, and followed one truck on September 29, 1930, which made delivery of consignments to Lloyd's Bakery at Carmel. Witness has hauled freight originating at San Francisco for Carmel from the freight station of the Southern Pacific Company and from the wharves at Monterey. Since the alleged unauthorized hauling by defendant the business of the witness from his six largest customers in Carmel has shown a decrease of approximately sixty percent in the business handled in the year 1930 over a similar period in the year 1929.

Arthur Mc Donald, employed by complainant, testified that he had seen the trucks of defendant delivering shipments of merchandise to stores in Carmel during the month of September, 1930.

Peter Bartowich, employed by the Bay Rapid Transit Co., as driver of the Highland Inn bus, testified that he had seen the trucks of the defendant making deliveries to merchants in Carmel, and that he had signed for goods transported by the defendant's trucks, said goods being transported from Carmel by the vehicle of his employer from Carmel to their final destination at Highland Inn.

E. A. Mason, a resident of Monterey, and an employee of Bay Rapid Transit Co., testified that he had accepted goods from the trucks of defendant at Carmel which were destined to Highland Inn, such goods having been received once a week for the past several months.

C. S. Rohr, in the electrical business at Carmel, testified that he bought goods in San Francisco which were shipped via the truck line of the Monterey-Peninsula Drayage Co., formerly operated by E. F. Zanetta. Witness has received shipments every other day and does ^{not}/recall that defendant or his drivers have ever refused to render service. Witness has no contract for the hauling of his merchandise.

R. E. Bonham, a resident of Carmel and engaged in the hardware business, testified that he purchased and received goods from San Francisco. Witness has used the truck service of the defendant and originally requested defendant to haul goods for him at the time of a conversation with defendant in the Elk's Club at Monterey. Witness settles his transportation charges at the time bills are rendered, drawing checks in favor of the transportation company whose name appears on the bills rendered for transportation furnished. Witness specifies Zanetta Truck Delivery on his orders sent to San Francisco for merchandise, the service having been regular and dependable. Although having no contract with anyone for truck hauling, the service of

defendant's trucks has been used for six or seven months.

E. M. Durham, a resident of Carmel, engaged in the hardware business, testified that he received three or four shipments each week from San Francisco by truck, and that he has no contract covering the hauling of his merchandise.

E. Burnham, a resident of Carmel, and in the plumbing and heating business, testified that he received an average of from one to three shipments daily from San Francisco. Witness makes his payments to Zanetta Drayage Co., and pays his bills for hauling once or twice a month, and has no contract for his truck hauling.

J. Ed Mingus, a witness employed by the Mingus Transfer Company of Monterey, testified that he knew defendant and had seen his trucks making deliveries in Monterey and Pacific Grove, and has also noticed trucks owned by the defendant arriving at Monterey from the north, loaded with all kinds of merchandise.

C. W. Whitney, operating a restaurant at Carmel, testified that he ordered goods from San Francisco and averaged three shipments from that point each week. Witness has the option of shipping by boat, rail or truck and has specified Zanetta's truck service. Witness stated that several weeks ago the name of the trucking company was changed, although witness has always made his checks for hauling payable to the Zanetta Draying Company. The trucks owned by defendant have transported his shipments from San Francisco for the last five or six months and approximately ninety percent of his truck hauling is done by defendant's trucks. Witness has never been refused service by the defendant, and has no contract for the hauling of his shipments. Witness has always presumed that the Zanetta Draying Company was E. F. Zanetta, defendant herein.

E. F. Minges, a resident of Carmel, and engaged in the grocery business, testified that about fifteen percent of his supplies were purchased in San Francisco. The service received from defendant's trucks has been regular and dependable. Witness

is of the opinion that the change in the name of the trucking company operating from San Francisco to Carmel was made around September, 1930, but the service rendered remains the same. Witness has no contract for the transportation of his merchandise and does not know whether the defendant or the Zanetta Drayage Company or the Monterey-Peninsula Drayage Company is the present operator of the service.

E. F. Zanetta, defendant herein, testified that he had been in the transportation business since 1922, beginning his operation, as a certificated carrier of certain restricted commodities, under the jurisdiction of the Railroad Commission on September 10, 1930, and in accordance with tariffs duly filed. Defendant uses two trucks in his operation of the route held under certificate. Witness states that he operated as the Zanetta Drayage prior to August 1, 1930, since which time he has operated as E. F. Zanetta and has confined his operation solely to the restricted commodities for which he was authorized by the Commission's certificate of public convenience and necessity and for which he has filed tariffs. Witness claims that trucks under his operation do not now make deliveries in Carmel as there is no business in such town which moves under the restricted commodities permitted by his certificate.

Witness testified that he sold the business of generally transporting commodities between San Francisco and other points to a Mr. Stamper as of August 1, 1930, and that said Stamper is now operating under the name of Monterey Peninsula Drayage Co., the amount received by the witness being approximately \$500, which covered principally the office equipment and stationery on hand, no equipment being involved in the sale. Witness leases equipment to Monterey Peninsula Drayage Co. on a mileage basis of fifteen cents per mile for trucks and twelve and one half cents per mile for trailers. Pick-up and delivery trucks are leased by this witness to the Monterey Peninsula Drayage Co. on a monthly basis for pick-up and delivery service in Monterey and Carmel.

Witness states that he has no interest in the Monterey Peninsula Drayage Co. other than the revenue received from the rental of trucks, all of which bear P.S. licenses which were secured by the witness at the time he operated as the Zanetta Drayage Co. Witness has no contracts for the hauling of any freight and states that he does no hauling excepting that done under tariffs now on file with this Commission and issued subsequent to the granting of a limited certificate (as to commodities), of public convenience and necessity as granted by the Railroad Commission by the provisions of Decision No.22779 on Application No.16000, as decided August 11, 1930.

Frank Labes, employed as a driver of truck making deliveries in Carmel on the date of hearing, testified that he was employed by a Mr. Stamper of Monterey and received his compensation of \$36.00 per week from such party. Witness in the course of his employment first began making the trip from Monterey and making deliveries at Carmel about four or five months ago.

After a careful review of the record herein, it appears that defendant is not now the responsible party for the operation of an auto truck service between San Francisco and points on the Monterey peninsula, including Carmel, and that defendant sold such business to a Mr. Stamper of Monterey on August 1, 1930, since which time defendant claims to have had no connection with such operation except the leasing of equipment for line haul and pick up and delivery service, the only operation now conducted by the defendant being the operation of a truck line for specific commodities under certificate as authorized by this Commission under Decision No.22779 and as per tariffs on file in accordance with the provisions of said certificate. We therefore conclude, on the record herein, that defendant E. F. Zanetta is not now operating a truck line for the carriage of all merchandise and commodities, as a common carrier for compensation, between

San Francisco, Oakland and San Jose on the one hand, and Carmel, Pacific Grove, Monterey, Marina, Seaside and Castroville on the other hand, and that the complaint herein should be dismissed.

O R D E R

Public hearings on the above entitled complaint having been held, the matter having been duly submitted, the Commission being now fully advised and basing its order on the conclusion as set forth in the opinion which precedes this order,

IT IS HEREBY ORDERED that this complaint be and the same is hereby dismissed.

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

Dated at San Francisco, California, this 2d day of February, 1931.

C. C. Dennis
Leon Whitwell
W. J. C.
M. B. Harvey
Fred G. Stewart
COMMISSIONERS.