

LW

Decision No. 23360

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY, a corporation,

Complainant,

vs.

A. M. GOTTFREDSON,

Defendant.

ORIGINAL

Case No.2904

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY, a corporation,

Complainant.

vs.

L. E. SCHMIDT,

Defendant.

Case No.2905

E. T. Lucey, for Complainant.

L. E. Schmidt, in propria persona,
Defendant in Case No.2905.

Edw. Stern, for Railway Express Agency, Inc.,
Intervenor.

BY THE COMMISSION -

OPINION

In Case No.2904, The Atchison, Topeka and Santa Fe Railway Company, a corporation, complains of A. M. Gotfredson, and alleges that said Gotfredson has for some time been engaged in the operation of a line or system of trucks between San Bernardino and Needles and intermediate points, transporting goods, wares, merchandise and other forms of property for hire as a common carrier; that said defendant was not so operating prior to or as of the date of May 1, 1917, nor has said defendant ever obtained a certificate of public convenience and necessity from the Railroad Commission in accordance with the provisions of

Chapter 213, Statutes of 1917, and effective amendments thereto, covering such alleged operation. Complainant further alleged that it is able adequately to handle all freight offered for transportation between San Bernardino and Needles and that the alleged illegal operation by defendant deprives complainant of business which it otherwise would enjoy. Complainant prays for an order of the Railroad Commission compelling defendant to cease and desist from the operation of trucks over the public highway as a common carrier, for compensation, between San Bernardino and Needles and intermediate points.

Defendant, A. M. Gotfredson, filed no formal answer herein, but advised the Commission by letter that he was not a common carrier but owned a store in Needles and sold only his own merchandise in Needles and at other points.

In Case No. 2905, The Atchison, Topeka & Santa Fe Railway Company, a corporation, complains of L. E. Schmidt and alleges that said Schmidt has for some time been engaged in the operation of a line or system of trucks between San Bernardino and Needles and intermediate points, transporting goods, wares, merchandise and other forms of property for hire as a common carrier; that said defendant was not so operating prior to or as of the date of May 1, 1917, nor has said defendant ever obtained a certificate of public convenience and necessity from the Railroad Commission in accordance with the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto, covering such alleged operation. Complainant further alleges that it is able adequately to handle all freight offered for transportation between San Bernardino and Needles and that the alleged illegal operation by defendant deprives complainant of business which it otherwise would enjoy. Complainant prays for an order of the Railroad Commission compelling defendant to cease and desist from the operation of trucks over the public highway as a common carrier, for compensation, between San Bernardino and Needles and intermediate points.

Defendant L. E. Schmidt filed no formal answer herein, but advised the Commission by letter that he was not engaged in the freight business but was in the wholesale produce business, raising, buying and selling produce in Needles and towns adjacent thereto.

A public hearing on the above entitled complaints was conducted by Examiner Handford at San Bernardino, the matters were duly consolidated for the receiving of evidence and for decision, were duly submitted and are now ready for decision.

It appears from the record herein that although the trucks of both defendants have been observed by the agent and other representatives of the complainant in Needles, and delivering to restaurants, stores and other mercantile establishments in Needles, there is no evidence indicating that the commodities delivered were not the property of defendants herein and sold by them to the parties to whom delivery was made.

L. E. Schmidt, one of the defendants, testified, that he had sold fruit, produce, groceries and other merchandise to merchants at Needles, Amboy, Fenner, Siberia and Goffs, that he was now operating two trucks which made trips twice a week. This witness purchases produce and other merchandise at points in the Imperial Valley, Los Angeles and San Bernardino and sells same to the merchants at the towns above mentioned and also to merchants in Arizona, the majority of the business of witness being handled in Arizona during the summer months. Witness also operates a retail store in the town of Needles where a stock of groceries, potatoes, fruit and produce is carried.

After careful consideration of the record in this proceeding we are of the opinion and hereby find as a fact that the complainant has not substantiated the allegations of the complaint and that the record herein does not sustain the allegation that the defendants are operating over the highway between San Bernardino and Needles as a common carrier.

ORDER

A public hearing having been held on the above entitled complaints, the matters having been duly consolidated for the receiving of evidence and for decision, having been duly submitted, the Commission being now fully advised and basing its order on the finding of fact as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED that Case No.2904 and Case No.2905 be and the same hereby are dismissed.

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

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

Clarence
Leon O. White

M. B. Hanna

COMMISSIONERS.