

Decision No. 23489

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MOTOR FREIGHT TERMINAL COMPANY, a corporation, and SAN JOAQUIN VALLEY TRANSPORTATION COMPANY, a corporation,

Complainants,

vs.

J. O. BRAY, doing business under the fictitious name and style of BRAY MOTOR DRAYAGE,

Defendant.

ORIGINAL

Case No. 2382

O'Melveny, Tuller & Myers, by E. E. Ahlport, for Complainants.

Lindsay & Gearhart, by E. W. Gearhart, for Defendant.

W. J. Johnson, for Southern Pacific Company, and Railway Express Agency, Inc., Interveners.

W. F. Brooks, for The Atchison, Topeka and Santa Fe Railway Company, Intervenor.

BY THE COMMISSION -

OPINION

Motor Freight Terminal Company, a corporation, and San Joaquin Valley Transportation Company, a corporation, have filed complaint against J. O. Bray, operating under the fictitious name and style of Bray Motor Drayage, and allege that said J. O. Bray does not have a certificate of public convenience and necessity from this Commission entitling said defendant to operate as a common carrier and/or as a transportation company as said term is defined by Chapter 213, Statutes of 1917, and effective amendments; that notwithstanding the absence of such authorization from this Commission, said J. O. Bray is, and for a long time past has been, maintaining and regularly owning, controlling, operating and/or managing auto trucks used in the business of transportation of property as a common carrier, for compensation, over the public

highways in the State of California between fixed termini and/or over regular routes, and particularly the transportation of freight and express regularly over the public highways between Los Angeles and Fresno and intermediate points in the San Joaquin Valley; and that said operations of said J. O. Bray are unauthorized and illegal and injurious to the transportation business conducted by the complainants. Complainants pray for an order of this Commission requiring defendant to cease and desist from such illegal and unauthorized operations.

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

Public hearings on the matters at issue in this complaint were conducted by Examiner Sandford at Fresno, the matter was duly submitted, and is now ready for decision.

A. S. Meininger, employed as Inspector for the Railroad Commission, testified as to checks made of trucks owned and operated by defendant between Los Angeles and points in the San Joaquin Valley on June 9, 10 and 11, 1930. On the occasion of these checks witness observed trucks and trailers loaded with various merchandise and commodities, some in truckload or trailer lots and some in less than truckload lots and with a variety of shipments destined to various consignees. These shipments were forwarded from Los Angeles or Vernon to Fresno, San Francisco, Tulare, Stratford, Chowchilla and Dinuba. On May 14, 1930, witness arranged for the shipment of two motors and one box of parts from Los Angeles to Fresno. Witness observed the delivery of consignments by defendant's driver at Fresno and paid an amount of \$10.00 for the transportation of these articles from Los Angeles to Fresno. Documents evidencing the shipment of these articles and canceled checks covering the payment for the transportation of same were received in evidence as exhibits in this proceeding.

H. R. Reynolds, a police lieutenant employed as a motor vehicle inspector for the Board of Public Utilities and Transportation of the City of Los Angeles, testified that he was present at all times during the inspections made by the previous witness, and it was stipulated at one of the hearings that the testimony of this witness would be the same as that of witness Meininger. This witness further testified that on June 14, 1930, he stopped trucks of the defendant at Los Angeles, two trucks being loaded with milk which was delivered to the Challenge Creamery in Los Angeles.

W. E. Palmer, manager of the Fresno branch of the Los Angeles Soap Company, testified that he had made shipments, Fresno to Los Angeles, and received shipments from Los Angeles at Fresno. From two to four truck or truck and trailer loads were received each month. Witness has made shipments since the month of February, 1930, such shipments being paid for at the Los Angeles office of his company. Witness orders shipments from Los Angeles by requisition made by said witness on his main office in Los Angeles. He does not know rates which are charged but still receives shipments from Los Angeles, same varying in weight from six to twelve tons each. Shipments are received at varying periods, sometimes six or eight shipments being made per month.

C. C. Smith, employed at Fresno as branch manager for Goodrich Silvertown, Inc., dealers in tires, testified that he had received freight by the trucks of defendant but no deliveries have been made since the summer of 1930. All charges for transportation are paid by the Los Angeles office of his concern. Witness has been advised by the Los Angeles office of his concern that defendant would not handle less than truckload lots.

E. E. Baker, Fresno district manager of Peerless Pump Co., testified that he had received shipments by defendant's trucks from his Los Angeles house, same destined not alone to Fresno but also to Chowchilla, Sanger and to points in Kings, Fresno and Madera counties. Witness is not familiar with rates as charged

by defendant.

R. L. January, manager of Safeway Store No. 533 at Visalia, testified that he had received two shipments from the Los Angeles warehouse by the truck service of defendant, the charges being paid for by his Los Angeles office.

H. D. Rowell, employed by Hobbs-Parsons Co. of Fresno, testified that he had shipments transported by defendant's trucks, his concern being the Fresno distributor for the Leslie and Morton Salt Companies. Witness also knows of crated bananas having been received from Los Angeles by the trucks of defendant.

L. A. Harnish, a witness residing at Fresno and employed as district manager for the Winther Pump Co., testified that he had a verbal agreement with defendant covering the hauling of pumps and pumping material.

R. Van Hoosear, a resident of San Francisco and employed by the Consolidated Milling Company, testified that he had hauling performed by the defendant; that truckloads were handled from Fresno to Los Angeles as well as from or to Riverdale, Porterville, Bayshore, Exeter, Paso Robles, Lakebottom and other points.

E. E. Hargraves, a witness residing at Fresno and employed by the Leslie California Salt Co., testified that he had hauling performed by defendant's trucks, such hauling being principally in truckload lots from San Francisco bay points to Fresno and other San Joaquin Valley points.

John R. Spellacy, residing in San Francisco and employed as manager of Universal By-Products, testified that he knew defendant and had, some two or three years ago, made arrangements with him to handle the hauling of his company's products. Witness makes shipments from Visalia, Tulare, Fresno, Los Banos, Chowchilla and from any point where a creamery is located. Defendant hauls for witness five or six times per month and his hauling is to or from all points designated by witness who has also agreed to give defendant all of his hauling to and from points in the San Joaquin Valley.

E. Sargent, residing at Fresno and engaged in the wholesale grocery business, testified that he knew defendant and had used his service for the past one and one half years, the hauling being principally between Los Angeles and Fresno. Defendant makes distribution of goods to the customers of witness and has delivered at both city and county stores between Delano and Fresno, special arrangements being made for each consignment that may be hauled. Witness has never been refused service by defendant.

E. L. Fassett, manager of the Pacific Coast Paper Co. at Fresno, testified that he had used the truck service of defendant during the months of August and September, 1930. Witness has handled twine from Orange to Fresno and Tulare and has also had commodities^{hauled}/by defendant's trucks to Sanger, Reedley, Porterville, Delano, Wasco, Shafter and Bakersfield. Witness has now some commodities stored in defendant's warehouse for future delivery as witness may direct.

J. R. Murphy, residing at Fresno and manager of the Danish creamery, testified that his company operated creameries at Riverdale, Chowchilla and San Joaquin and that defendant had done hauling for each of said creameries. Witness ships by-products to the extent of five or six carloads monthly, and defendant transports such by-products in truckload lots. Witness has no written contract for the transportation of the products of his company, a verbal arrangement with defendant being the only agreement existing.

R. K. Wilson, a witness residing at Hanford and agent at that point for the Associated Oil Company, testified that he had verbal arrangements for the transportation of commodities with defendant. Witness further testified that on some occasions defendant had refused to haul goods, the arrangement being that defendant would not haul loads of less than ten tons, and witness has not been able to have defendant haul less than such quantity.

Mr. Ducrey, residing at Fresno and in the tire business, testified that he had offered defendant shipments of tires which were refused, the tonnage offered not being a truckload quantity.

A. R. Kelly, residing at San Francisco and employed as a salesman for the Morton Salt Company, testified that the main production plant of his company was located at Newark. Witness has known defendant for two years and made verbal arrangements with him for the delivery of his commodity to his customers in the San Joaquin Valley, the sales territory of witness extending from Stockton to the Mojave desert and from Santa Barbara to Redwood City. Many of the customers of witness are located at points not served by railroad and witness makes shipments by truck, shipments consisting of lots weighing fifteen tons, or more.

M. D. Moore, residing at Beverly Hills and engaged in the brokerage business at Los Angeles, testified that he had tendered shipments to defendant at Los Angeles which were refused. One shipment consisted of oil well pipe from Los Angeles Harbor to Kettleman Hills which witness claimed was refused because defendant stated that his trucks were not equipped to handle such commodity.

J. O. Bray, defendant herein, testified that he has been engaged in the trucking business since about 1916 or 1917, commencing operation with one truck and now operating twenty four trucks and twelve trailers. Witness has hauled material for the Peerless Pump Co. from Los Angeles to Riverdale at a rate of \$12.00 per ton, such hauling having been done under a verbal contract. Witness has handled shipments for the Los Angeles Soap Company from Los Angeles since 1926, handling from five to six loads per month at a rate of \$8.00 per ton. Witness formerly had a contract with the soap company but since the expiration has been hauling under a verbal agreement, although witness has never hauled other than a truckload lot. Witness has hauled a shipment for the Germain Seed Co. to Los Angeles at a rate of \$8.00 per ton, and has hauled shipments from the Riverdale Creamery two or three times per week since July, 1925. Hauling has been performed for the Danish Creamery, in truckload lots, but without a written contract, also from Tulare to Los Angeles for the Dairymen's Co-operative Creamery.

Hauling has been performed from Los Angeles to Bakersfield for Los Angeles Soap Company and for Haas Bros., Safeway Stores and the Goodrich Rubber Co., all of Los Angeles, to points in the San Joaquin Valley as far north as Fresno. Witness had a contract with Haas Bros. covering a paper haul. In December, 1929, hauling commenced for the Safeway Stores from Los Angeles to San Joaquin Valley points but no hauling has been done since June, 1930, such hauling having been done under a written contract. In the summer of 1929 witness began the hauling for Goodrich Rubber Co. from Los Angeles to Fresno, no written contract having been executed.

We have carefully considered all the evidence and exhibits presented herein.

The record shows that defendant as to his operation between Los Angeles and points in the San Joaquin Valley, and over the regular highway routes between such termini, operates primarily as a carrier, principally of milk and other commodities, in truckload lots to Los Angeles. On the return haul defendant brings back such returning empty containers and any other commodities that may be offered or which defendant can secure on such return movement. Originally these hauls were of truck or truck and trailer loads only, some of same having been under contract or verbal agreement. The practice has been continued until defendant has hauled mixed loads for delivery at a number of points along the route, and has taken or refused shipments of any commodity or of any weight depending only upon satisfactory compensation being available, or sufficient space being available on trucks, or the volume of shipments justifying defendant in making the haul. We find nothing which relieves the defendant from the allegation that he is operating as a common carrier, as even if it be his expressed intention to operate, transporting truckloads only, such limitation of the defendant does not relieve him of the necessity of compliance with the provisions of the statutory law. This Commission exercises its regulatory powers,

under the law, over many carriers of property who transport in truckload lots only. The record herein shows defendant to have been regularly engaged in the business of the carriage of property by motor truck between Los Angeles and points in the San Joaquin Valley, including Fresno and points adjacent thereto. The only refusals of business that are of record herein are shipments where the volume of tonnage offered was less than that desired by defendant or where insufficient space remained on equipment when returning from a loaded haul. The operation heretofore conducted has developed into an "on call" hauling, primarily in truckload lots and always at the discretion of the defendant and dependent upon the tonnage offered and the desire of the defendant as regards the hauling of any particular shipment. Such method of hauling is particularly evident regarding the transportation of return loads after a full load will have been hauled.

After full consideration of the record consisting of evidence and exhibits herein, we conclude and hereby find as a fact that J. O. Bray, doing business under the fictitious name and style of Bray Motor Drayage, has operated, and is now operating, automobile trucks as a common carrier of property between Los Angeles and Fresno and intermediate points over regular routes between the above mentioned fixed termini and without having secured a certificate of public convenience and necessity from the Railroad Commission as required by the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto.

O R D E R

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

IT IS HEREBY ORDERED that J. O. Bray, doing business under the fictitious name and style of Bray Motor Drayge, immediately cease and desist from the operation of an automotive service as a common carrier of property, for compensation, over the highways of this state between Los Angeles and Fresno and intermediate points and not resume such operation unless and until said defendant shall have secured a certificate of public convenience and necessity from this Commission after proper application therefor in accordance with the provisions of Chapter 213, Statutes of 1917 and effective amendments thereto, and

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be and he hereby is directed to forward by registered mail a certified copy of this order to the District Attorneys of the Counties of Fresno, Kings, Tulare, Kern and Los Angeles.

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

Dated at San Francisco, California, this 16th day of February, 1931.

C. Seawey
Leon C. Kelly
W. J. ...
M. B. ...
Jos. G. Stewart
COMMISSIONERS.