

Decision No. 23484

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

BOB ARUTOFF, Complainant,

vs.

DWIGHT SAVAGE, Defendant.

Case No. 2704

ORIGINAL

Frank Waters and A. M. Astor, for Complainant.

R. T. Eddy, for Defendant.

BY THE COMMISSION -

O P I N I O N

Bob Arutoff, a certificated hauler of milk, under decision of this Commission, between points in the vicinity of Athens, Rosecrans, Gardena, Wilmington and San Pedro and intermediate points and creameries located in San Pedro and Long Beach, has filed an amended complaint against Dwight Savage of Bellflower. This complaint alleges that said Savage is now conducting a freight service in the territory authorized to be served by the complainant, and is offering said service as a common carrier to the public in the district authorized to be served by the complainant, and is specifically hauling milk and dairy products from various dairies to the Adohr Creamery and the Bay Creamery Company. Complainant further alleges that defendant has offered a full and complete motor truck service to the shippers and creameries in the district in which complainant is authorized to operate, and at rates which are lower than the tariff rates of complainant.

Complainant prays for an order of this Commission restraining defendant from his alleged operation as a common carrier within the district covered by the certificate of complainant.

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

Public hearings on the issues raised by this complaint were conducted by Examiner Handford at Los Angeles, the matter was duly submitted upon the receipt of evidence and the filing of briefs, and is now ready for decision.

Dwight Savage, defendant herein, testified that he was formerly a truck driver but had been conducting his own business since March 19, 1929. Witness has contracts with the Adohr Creamery and with the Bay Creameries-Holland Farms, Inc. The hauling of milk and empty cans returning are the only commodities handled by defendant. Witness has done no hauling unless so directed by creameries with which he has contract, and such hauling is done twice daily from the producing dairies. Hauling for other dairies has neither been solicited nor performed, the instructions of the creameries with which witness has contracts governing the operation of the witness. Hauling from dairies which have ceased shipment to the contracting creameries has been declined by witness where the hauling was from the dairy to a creamery other than that with which witness has contract. All compensation for hauling is paid for by the creameries with which witness has contracts.

Two dairymen, called as witnesses for the complainant, testified that defendant had hauled and was still hauling milk from their dairies. It appears, however, that such hauling is only done to the creameries with which defendant has contracts, and that whenever the dairymen have disposed of their product to other creameries, not having contract with defendant, other carriers have performed the transportation service. None of the dairymen called as witnesses have employed defendant in the hauling of their product, the creameries have sent defendant's trucks to the various dairies and have made payment for transportation to the defendant.

We have carefully considered the entire record in this proceeding. It appears therefrom that all the hauling performed by defendant has been milk and returning empty containers from various ranches to creameries with which defendant has contract; that written contracts exist, that defendant has never held himself out as a common carrier of milk or any other commodity but has confined his operation to the carriage of milk only to the creameries with which he has contracts, and that he has refused to haul milk to creameries other than those with which contracts exist, although milk has been offered by the dairymen for carriage to such other creameries. The record further shows that all payments for this transportation are made directly to defendant by the creameries with which defendant has contracts.

Complainant contends that the creameries with which defendant has contracts merely act as agents for the defendant in the collection of transportation charges in that a deduction is made by the creameries for transportation when settlement is made for the milk shipped. The evidence shows that no milk nor other products are transported except by order of the two creameries with which the defendant has contracts.

After fully reviewing and considering the record and briefs filed herein we are of the opinion and hereby find as a fact, upon the record herein, that defendant is not rendering service, or offering to render service as a common carrier of property between fixed termini or over a regular route but has rendered, and is now rendering service under valid contracts with two specific creameries as hereinabove mentioned. The complaint herein will, therefore, be dismissed.

ORDER

Public hearings having been held on the above entitled complaint, the matter having been duly submitted following the filing of briefs, 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 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 9th day of March, 1931.

C. A. Lewis
Leon Whidney
M. A. Lewis
M. B. Lewis
Fred G. Stewart
COMMISSIONERS.