

LW

Decision No. 23492

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

F. A. WERMUTH, doing business under the name of Wermuth Transfer, and Bay Rapid Transit Company,

Complainants,

vs.

C. E. STAMPER, ZANNETTA DRAYAGE, CHARLES WHITE, JOHN DOE and RICHARD DOE, JOHN DOE CORPORATION and the RICHARD ROE PARTNERSHIP,

Defendants.

ORIGINAL

Case No. 2975

George D. Pollock, representing the Complainants.

Edward Stern, for Railway Express Agency, Inc., intervenor in behalf of complainants.

W. S. Johnson for Southern Pacific Company and Pacific Motor Transport Company, intervenors in behalf of the complainants.

C. E. Stamper, one of the defendants, appearing in his own behalf.

HARRIS, Commissioner -

OPINION

In this proceeding F. A. Wermuth, doing business as a transportation company under the name of Wermuth Transfer, and Bay Rapid Transit Co., operating a service for the transportation of passengers and property between points on the Monterey Peninsula, have in an amended complaint alleged that C. E. Stamper, Zanetta Drayage, Monterey Peninsula Drayage Co. and E. F. Zanetta are operating a transportation service for the transportation of property by automobile as a common carrier between San Francisco, Oakland, San Jose and Monterey on the one hand and Carmel, Pacific Grove, Marina, Seaside and other peninsula points on the other. The records of the Commission show that notwithstanding proper

service of the complaint was made upon C. E. Stamper and Zanetta Drayage no formal answer to said complaint was filed by any or either of the defendants.

Public hearings were held at Carmel, testimony heard and an order of submission made. It is now ready for decision.

At the public hearings the defendants were not represented by counsel, appearing in propria persona. The complaint was amended by the substitution of E. F. Zanetta as a defendant in the place and stead of Charles White, and Monterey Peninsula Drayage Co. in the place and stead of Richard Roe. An order was made including as part of the record in this proceeding the record in Case No. 2935, a proceeding before this Commission involving the trucking operations of E. F. Zanetta, one of the defendants herein.

C. E. Stamper was called as a witness by complainants. He testified that he is the owner and manager of Zanetta Drayage; that he is operating a service for the transportation of "anything he can get to haul" between Peninsula points and Oakland and San Francisco, and between Monterey and Carmel, operating six days a week. He testified that he had not obtained a certificate of public convenience and necessity authorizing him to conduct such a service and that he had never sought one from the Railroad Commission. He said he had no equipment of his own employed in the service, using six trucks he leased from E. F. Zanetta. He stated that he had established the business in August, 1930, when it had been given up by E. F. Zanetta, operating under the name of Zanetta Drayage, Zanetta having obtained a certificate of public convenience and necessity from the Railroad Commission (App. 16000), authorizing him to operate a limited transportation service only between San Francisco and the territory in the vicinity of Monterey. He continued the use of the name Zanetta Drayage, later adopting the name Monterey Peninsula Drayage Co., as is evidenced by the testimony of witness Frank Lobes, a driver in his employ, who testified that he had given to consignees a printed receipt for freight charges and goods bearing the name "Monterey Peninsula

Drayage Co., (successor to Zanetta Drayage)" Exhibit No.1 offered by complainant is a receipt by Lobes, for the Monterey Peninsula Drayage Co., for charges paid for a shipment delivered by him. Exhibit No.2 is a desk calendar carrying the name "Zanetta Drayage" a supply of which, for advertising purposes, was admitted by Stamper to have been ordered by him. He could not, however, recall having ordered the printing of the Monterey Peninsula Drayage Co. shipping receipts. Certain disbursement entries carried in the books of Zanetta Drayage as "payments" were identified by witness Stamper as payments made by him to E.F.Zanetta for the use of equipment covered by a lease agreement.

Defendant E. F. Zanetta was also called as a witness by complainants. He testified that shortly after receiving authority from the Railroad Commission to operate a service for the transportation of certain commodities between San Francisco and territory in the vicinity of Monterey he had "given up" the business he conducted under the name Zanetta Drayage and had sold his office equipment to Stamper, and agreed to lease equipment to the latter with the understanding that Stamper would not haul goods for which he, Zanetta, had a certificated right to haul.

The admissions of Stamper make it unnecessary to consider in detail the testimony of several Monterey and Carmel business men who testified that they used the service of Zanetta Drayage; that the service is the same today as it was when operated by E. F. Zanetta before he "gave it up" and it was re-established by Stamper. According to these witnesses the change in name and ownership did not affect the service and driver Lobes testified that when he was told by Zanetta that his services were no longer required he promptly entered the employ of Stamper. The latter testified that he had also taken over Zanetta's bookkeeper, his own bookkeeper taking care only of his garage accounts, Stamper being proprietor of the Class A Garage located at the same point as the depot for the trucking operations of himself and Zanetta.

After full consideration of the record consisting of evidence and exhibits herein, I conclude and hereby find as a fact that C. E. Stamper, doing business under the fictitious name and style of Zanetta Drayage and/or Monterey Peninsula Drayage Co., has operated, and is now operating, automobile trucks as a common carrier of property between San Francisco and Oakland and San Jose on the one hand and Monterey and Carmel and other points set forth in the complaint herein on the other, serving also points intermediate thereto 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 full 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 C. E. Stamper, doing business under the fictitious name and style of Zanetta Drayage and/or Monterey Peninsula Drayage Co., 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 San Francisco and Oakland and San Jose on the one hand and Monterey and Carmel and other points set forth in the complaint herein on the other, serving also points intermediate thereto 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 Monterey, Santa Clara, San Mateo, San Francisco and Alameda.

IT IS HEREBY FURTHER ORDERED that as to the operations of E. F. Zanetta the complaint herein be and the same is hereby dismissed.

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

The above opinion and order are hereby approved and adopted as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of March, 1931.

A. J. Sawyer
Leon C. Whittier
W. A. Carr
W. B. Kincaid
Frederic G. Stewart
COMMISSIONERS.