

Decision No. 23533

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PETALUMA AND SANTA ROSA RAILROAD
COMPANY, a corporation,

Complainant,

vs.

ARNOLD ROBERTON,

Defendant.

ORIGINAL

Case No. 2960

Geary & Geary and C. J. Tauzer, by Donald Geary,
and H. S. Graham, for Complainant.

Arnold Robertson, in propria persona, Defendant.

Geary & Geary and C. J. Tauzer, by Donald Geary,
for Northwestern Pacific Railroad Company,
Intervenor.

BY THE COMMISSION -

O P I N I O N

Petaluma and Santa Rosa Railroad Company, a corporation, has filed complaint against Arnold Robertson alleging that said Robertson is now, and for some time last past has been, engaged in the business of controlling, operating, conducting and managing automobile trucks as a common carrier for compensation over the public highways of the State of California and over a regular route between Santa Rosa and San Francisco and intermediate points including Petaluma; that said Robertson has not heretofore obtained from this Commission or otherwise acquired, and does not now own, hold or possess any certificate to operate as a transportation company, or to engage in the transportation business as a common carrier between the above mentioned points; that the operations by said Robertson of said business as a common carrier are in violation of the laws of the State of California and of the rules and regulations of this Commission.

Complainant further alleges that the operation of said Roberton between San Francisco and Santa Rosa and intermediate points, and particularly Petaluma, is in direct unlimited competition with the complainant and that the aforesaid operations of said Roberton have, and the same are now, resulting in a diminution of freight available to be transported by the complainant.

Complainant prays for an order of this Commission directing defendant to forthwith discontinue the operation of an auto truck service between San Francisco and Santa Rosa and intermediate points.

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

A public hearing on this complaint was conducted by Examiner Handford at Petaluma, the matter was duly submitted and is now ready for decision.

Arnold Roberton, defendant herein, called as a witness for complainant, testified that he had been operating trucks for a period of one and one-half years, operating between San Francisco and Santa Rosa and intermediate points. Witness was employed by Edgar Pomeroy as a driver for about a year over this territory. On May 25, 1929, witness was appointed active manager of Pomeroy's trucking service and continued as such manager until August, 1929, when he began operation as an individual. Witness now operates two Dodge trucks, one being purchased new, and one formerly used by Pomeroy. Witness had contracts with some of the former patrons of Pomeroy as well as with new customers procured since personally commencing the operation. Witness has hauled merchandise for the following parties between San Francisco and Santa Rosa and intermediate points:

Hills Brothers	-	San Francisco
A. H. Meyer	-	San Rafael
Robert Ross	-	Cotati
Cudahy Packing Co.	-	San Francisco
Alex Ballard		
Reid, Murdoch Co.	-	San Francisco

O'Brien, Spotorno, Mitchell		
& Compagno Bros.	-	San Francisco
Robert Mc Gowan	-	San Francisco
Hillside Garage	-	Petaluma
Taylor's Tire Shop	-	Petaluma
Tiedeman & Harris	-	San Francisco
Jerry Grinn	-	Petaluma

Witness states that he has transported goods for the foregoing not only to or from San Francisco but between San Francisco and Mill Valley, San Rafael, Petaluma and Santa Rosa, also eggs from Santa Rosa, Cotati and Petaluma to San Francisco and San Rafael.

H. S. Graham, Assistant General Manager of complainant company, testified that he knew of the firms and individuals for which defendant was hauling and that formerly such firms and individuals used the service of complainant for transportation of their products but that such shipments are now infrequent and in small volume, and witness is of the opinion that shipments are now being forwarded by the defendant's trucks.

We have carefully considered the evidence in this proceeding. It is the contention of defendant that all goods transported by him are under contract with shippers or receivers; that in the handling of shipments he acts as the agent or employee of the shipper or receiver of the merchandise; that shipments are picked up at mercantile establishments in San Francisco or at poultry farms in and about Santa Rosa, Cotati and Petaluma and delivered at the store door of the consignee; and that the nature of the shipments and the method of handling same is such that they would not be offered to the complainant for carriage and that complainant would be unable to make the store door delivery required by shippers.

Since the hearing on this complaint, defendant has filed three contracts now in effect and under which defendant has hauled shipments over the route as herein complained of. Assuming these contracts to be representative of those under which the hauling has been performed, the contracts are not such as would relieve the defendant from compliance with the provisions of the statutory law (Chapter 213, Statutes of 1917, and effective

amendments) and the securing of a certificate of public convenience and necessity from this Commission.

The so-called contracts, of which three typical instances have been filed herein, do not obligate the shipper to forward any shipments by the truck line of the defendant and they appear to be nothing further than a formal tentative quotation of rates between the specific points mentioned in the contract.

We are of the opinion and hereby find as a fact that the service heretofore and now being rendered by defendant Arnold Robertson is that of a common carrier, for compensation, over the highways between San Francisco and Santa Rosa and intermediate points including San Rafael, Cotati and Petaluma, and that the defendant as operator of such service should cease and desist said operation unless and until a certificate of public convenience and necessity is procured from this Commission in accordance with the provisions of Chapter 213, Statute of 1917, and effective amendments.

O R D E R

A public hearing 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 finding of fact as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED that Arnold Robertson, defendant herein, be and he is hereby ordered to immediately cease and desist from the operation of an automobile truck service as a common carrier of property over the highways of this state between San Francisco and Santa Rosa and intermediate points, including San Rafael, Cotati and Petaluma, and not resume said operation unless or until said Arnold Robertson will have secured a certificate of public convenience and necessity from the Railroad Commission after proper application and in accordance with the provisions of Chapter 213, Statutes of 1917, and effective amendments, and

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be and he hereby is directed to forward a copy of this order, by registered mail, to the District Attorneys of the counties of Marin and Sonoma, and to the District Attorney of the City and County of San Francisco.

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

Dated at San Francisco, California, this 23rd day of March, 1931.

C. C. Deane
Leon White

W. J. Carr
W. B. Harris
Fred G. Stewart
COMMISSIONERS.