

Decision No. 23723

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 G. W. DECKER for certificate of
 public convenience and necessity to
 operate motor truck service between
 San Francisco and Garberville.)
) Application
) No. 17172
)
)

ORIGINAL

Chas. Kash, for Applicant.

Frank B. Austin, for A. Harwood, Protestant.

Edward Stern, for Railway Express Agency, Inc.,
 Protestant.

H. W. Hobbs, for Northwestern Pacific Railroad Company
 and Southern Pacific Company, Protestants.

E. M. Mc Kee, for Association of Split Producers,
 Protestant.

Richard N. Mather and T. Finkbohner, for Pacific
 Greyhound Lines, Inc., Interested party.

BY THE COMMISSION -

O P I N I O N

G. W. Decker has applied for a certificate of public convenience and necessity authorizing him to transport property by auto truck as a common carrier between San Francisco and Garberville and certain intermediate points. Northbound, applicant proposes to pick up freight only at San Francisco, Petaluma and Santa Rosa for delivery to points north of Willits only, excluding Willits. Southbound, applicant proposes to pick up freight at points between Willits and Garberville, both inclusive, for delivery at all points between Willits and San Francisco.

The rates proposed to be charged and the service proposed to be given are shown in amended Exhibits A and B, which exhibits are attached to the application and made a part thereof. The equipment proposed to be used is shown in Exhibit C, also attached.

Public hearings were held at San Francisco, Garberville and Willits, evidence taken and an order of submission made.

Applicant Decker testified that he is now operating between the points covered by his application, hauling such freight as is offered him by shippers along the proposed route. He is engaged in the business of producing and selling redwood splits and his freight hauling activities are incidental to that business. He stated that he did not believe he could operate profitably as a common carrier, as proposed, unless the common carriage service was performed in connection with his business as a producer and hauler of redwood splits. He estimated that the northbound haul as a common carrier would amount to twenty five (25) or thirty (30) tons a week, and that the southbound traffic would be extremely light, "less than five hundred (500) pounds a month." He estimated his cost of operation at twenty (20) cents a mile, and said that he had two trucks "about half paid for."

The service he is now performing, exclusive of his split business, he said, is performed "under contract" with several Garberville merchants and others, the "contracts" consisting of verbal agreements to haul freight for them. The "contracts" do not cover a definite time nor do they fix the amount of tonnage to be hauled at the rate agreed upon. He said he had entered into his first "contract" (with a Mr. Look), about three weeks before filing his application for a certificate. He said he had never refused to haul for anyone seeking his service and that after his first "contract" he had solicited business from three or four other shippers and performed the service under the same type of verbal agreement. He is now hauling, he said, about five (5) tons a week from San Francisco.

Nine witnesses testified in support of the Decker application at Garberville. They represented resorts, restaurants, service stations, stores and other interests located on the Redwood Highway. They all testified that they received freight from San Francisco, using the Decker service. None had contracts with the applicant. They testified that they had never complained against the combination service given by Harwood between Willits and Garberville, and that of the Northwestern Pacific Railroad and Railway Express Agency, Inc., between San Francisco and Willits. They said they found the through service at present performed by Decker, and for which he seeks a certificate of public convenience and necessity, a convenience, and in the minds of some of the witnesses, it is a necessity, particularly for perishables. With some of the witnesses the rates charged and proposed by Decker are a large factor; with others, the through service decided their choice of service. Their testimony as to service southbound indicated little, if any, demand. A petition signed by forty four (44) residents of the Redwood Highway district endorsed Decker's application.

Protests against the granting of the Decker application were entered by the Northwestern Pacific Railroad Company, Railway Express Agency, Inc., Southern Pacific Company, Willits-Garberville Truck Line (A. Harwood) and Eureka-Garberville Truck Line. In support of their protests, five witnesses testified at the Garberville hearing, and the testimony of three others was entered by stipulation. This testimony was all to the effect that the service given by the Northwestern Pacific Railroad Company, Railway Express Agency, Inc., and the Harwood line, also that of Pacific Greyhound Lines, Inc. between the points proposed to be served by applicant was adequate and efficient, fully satisfying their shipping needs. They said there was no need for more service.

E. M. Mc Kee, on behalf of the Association of Split Producers, protested the granting of the Decker application on two grounds, namely, that operation by Decker would impair the service given by Northwestern Pacific Railroad Company and Harwood, and that Decker's service as a common carrier would give him an advantage over other producers of splits, in that purchasers of splits using the Decker service would be given more favorable terms. As a witness, Mc Kee so testified, and he further expressed the opinion that public convenience and necessity does not require the additional service proposed by Decker.

At the hearing at Willits six witnesses were called by protestants. Each declared he was receiving adequate and satisfactory service from the rail and express companies and the Harwood truck and each was of the opinion that additional service is not needed. Each also expressed the opinion that he would not favor the granting of the certificate sought if it would impair the revenues of the existing carriers.

J. J. Geary, General Passenger and Freight Agent of the Northwestern Pacific Railroad Company, testified as to the diminishing revenues of the said line. Exhibit 5 of protestants shows that from the year 1921 to 1930, inclusive, the less than carload tonnage transported by the rail line had decreased from 125,692 tons to 58,789 tons; the revenue of the company in the same period decreasing from \$919,820 to \$434,738. According to Exhibit No.6 of protestant rail line, the company has operated at a loss for the last five years, the net loss in 1930 totaling \$1,445,388.71. The net operating revenue for the first three months of the year 1931 (Exhibit No.7) shows a deficit of \$356,314.

Exhibit No.3 of protestant companies comprizes copies of resolutions passed by the City Councils of Healdsburg, Willits, Santa Rosa, Ukiah and Cloverdale, the Chambers of Commerce of Cloverdale, Ukiah, Healdsburg and Santa Rosa and the Boards of Supervisors of Mendocino and Sonoma counties. They protest the

granting of the Decker application on the ground that the service proposed may diminish the rail service revenue and result in impairment of a service now satisfactory.

Protestant Herwood, as a witness in his own behalf, testified that he was able and willing to meet all service demands made upon him; that he would install a daily service, if the territory required it. He said further that he was now operating at a loss.

Applicant Decker offers a service "twice a week; more, if necessary," against an established authorized truck service between the off rail points performed three times a week in the busy season and twice a week in the less active period. Against the established service to all points, which is a combination rail-truck service, there has been no complaint even from the shippers now favoring the service proposed by applicant. This combination rail and truck service is given by companies engaged solely in the business of transportation, the success of which depends on retention of all the traffic available. On the other hand applicant is engaged in a private business using trucks which return empty. To reduce the cost of conducting his private business, he offers space on his empty trucks to shippers at a rate lower than that charged by the regular transportation companies plus a personal service and a through operation which has an element of convenience that is appealing. He admits that he cannot perform the common carriage service for which he seeks a certificate unless he conducts it in connection with his private business and he further states that in the event his private business necessitated divergence from his authorized route, he would transfer his common carrier loads at Petaluma, thus placing his operation, so far as through service is concerned, on a par with that of the existing combination service, which requires a change at Willits. This existing combination service has the added advantage of a daily service by rail between San Francisco and Willits. It does not appear from the record that there is sufficient tonnage to justify,

at this time, any increase in the thrice a week service by truck between Willits and Garberville. Harwood declares he is willing to establish a daily service in the event it is necessary.

There is also available (see Exhibit No.4), to the shippers on the Redwood Highway a boat service between San Francisco and Eureka, with a truck (authorized carriers) service between Eureka and Willits, a service taken advantage of by shippers who are willing to sacrifice speed for rates. There is also available a daily express service via Pacific Greyhound Lines, Inc., and several other services from the bay district to Fort Bragg and other points, all contiguous to the Willits-Garberville district.

Thoroughly reviewing all the evidence and exhibits in this proceeding, we conclude and hereby find as a fact that public convenience and necessity does not require the service proposed by applicant. His application should, and in the order herein, will be denied. It further appears that applicant is now operating the service between San Francisco and Garberville for which he seeks authorization. It is obvious that, in the light of the denial of said authorization, this service should be discontinued. This Commission has frequently and consistently held that the mere filing of an application should not be considered by the applicant as authority to operate, and it has in many instances held that operation of a service in anticipation of the legal authorization sought is sufficient ground for a denial of the application.

OR D E R

Public hearings having been held on the above entitled proceeding, an order of submission made and the Commission being fully advised,

IT IS HEREBY ORDERED that Application No.17172 be and the same is hereby denied.

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

Dated at San Francisco, California, this 25th day of May, 1931.

C. C. Seaver
Leon Whelan
W. J. Carr
W. B. Harris
Fred G. Bennett
COMMISSIONERS.