

Decision No. 23748

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ANGELO PICCARDO and ANDREA PICCARDO, doing business under the firm name and style of PICCARDO BROTHERS, for a certificate of public convenience and necessity to operate an auto truck line for the transportation of property, for compensation, and as a common carrier over the public highways between Stockton, San Joaquin County, and Jackson, Amador County, California, and intermediate points, via Waterloo, Lockeford, Clements, Ione and Martell, California.

ORIGINAL

Application
No.17085

In the Matter of the Application of ANGELO PICCARDO and ALBERT L. SCHNEIDER, for a certificate of public convenience and necessity to operate an auto truck line for the transportation of property, for compensation, and as a common carrier over the public highway between Sacramento, Sacramento County, California, and Jackson, Amador County, California, via Perkins, Slough House, Michigan Bar, Central House, Drytown, Amador City, Sutter Creek and Martell, California.

Application
No.17086

OSCAR SCHNEIDER, ALBERT L. SCHNEIDER, WALTER SCHNEIDER and FRANK SCHNEIDER, a co-partnership doing business under the firm name and style of Amador Stage Lines, and ANGELO PICCARDO and ANDREA PICCARDO, a co-partnership doing business under the firm name and style of Piccardo Bros.,

Complainants,

Case No.2998

vs.

GEORGE BONNEFOY, doing business under the firm name and style of Bonnefoy Drayage and Fuel Co.,

Defendant.

- A. B. Roehl and William G. Snyder, for Complainants in Case No.2998.
 A. B. Roehl for applicants in Applications Nos.17085-17086.
 W. S. Johnson, for Southern Pacific Company and Railway Express Agency, Inc., Protestants.
 E. O. Erickson, for Amador Central Railroad Company, Protestant.
 Ralph Mc Gee and L.J.Smallpage, for George Bonnefoy, Defendant in Case No.2998; and for Stockton-Jackson Stage Line, et al., Protestants in Applications Nos.17085-17086.

STEVENOT, Commissioner -

O P I N I O N

In Case No.2998 Oscar Schneider, Albert L. Schneider Walter Schneider and Frank Schneider, co-partners doing business under the name of Amador Stage Lines, and Angelo Piccardo and Andrea Piccardo, co-partners doing business under the name of Piccardo Bros., have charged that George Bonnefoy, doing business under the name of Bonnefoy Drayage and Fuel Co., is conducting the business of a transportation company between Sacramento and Jackson and intermediate points within the meaning of Chapter 213, Statutes of 1917, without proper authorization from the Railroad Commission. The Commission is asked to issue an order directing said Bonnefoy to cease and desist the operation complained of and is also asked to impose on said defendant the fines and penalties provided by said Chapter 213, commonly known as the Auto Stage and Truck Transportation Act.

By Application No.17085, as amended, Angelo and Andrea Piccardo, co-partners, seek authority to establish a common carrier trucking service for the transportation of property between Stockton and Jackson and intermediate points, via Waterloo, Lockeford, Clements, Ione and Martell.

By Application No.17086, as amended, Angelo Piccardo and Albert L. Schneider, seek authority to establish a common carrier trucking service between Jackson and Sacramento and intermediate points via Perkins, Slough House, Michigan Bar, Central House, Drytown, Amador City, Sutter Creek and Martell.

Public hearings on the two applications, which were consolidated for hearing, were conducted on February 17 and 18, 1931, by Examiner Williams at Jackson. Examiner Williams,

on March 31 and April 1, 1931, also conducted public hearings in Case No.2998 at Jackson. In such instance evidence was taken and an order of submission made.

On April 14, 1931, George Bonnefoy, defendant in Case No.2998, petitioned the Commission for a "new hearing" in Case No.2998, alleging that he did not receive a fair and impartial trial.

On April 16, 1931, the Commission made its order setting aside the order of submission in Case No.2998 and the matter was set for further hearing on Wednesday, May 6, 1931, at the court house in Jackson.

Counsel for defendant Bonnefoy requested at the hearing on May 6th that the entire matter be considered anew. The motion was denied, counsel being advised that a reading of the entire record in the three proceedings had failed to substantiate the charge that the presiding examiner was biased against the defendants or protestants. Attorney Mc Gee for defendant thereupon advised that he had nothing further to present.

Counsel for complainants then asked that the record made in the proceeding involving Application No.17025 and Application No.17026 be considered in connection with Case No.2998. The motion was acquiesced in by defendants and an order consolidating the records made. In the light of the consolidation of records, the decision and order of the Commission herein will be based on the record covering all the proceedings and will be determinative of all three matters.

A careful and comprehensive review of this record, as consolidated, shows that formally answering the allegations contained in the complaint in Case No.2998 herein defendant Bonnefoy denies that he is transporting property as a common carrier for compensation between Jackson and Sacramento and intermediate points in violation of Chapter 213. He admits having performed the hauling services specifically alleged in the complaint herein, claiming that in each instance he performed the service at the special instance and request of patrons; "that he has at no time held himself out to the public as a public carrier."

Thirty witnesses were called by complainants in Case No.2998. They all testified that they called upon Bonnefoy to transport goods for them from Sacramento to Jackson, but rarely requesting him to haul from Jackson to Sacramento. Each testified that Bonnefoy had never refused to haul for them. They paid him for the service and used the Bonnefoy trucks regularly, some of them once or twice a week and others oftener. They regarded his service as dependable.

Few of the shippers had "contracts" with Bonnefoy, Exhibit 4 showing that he had "contracts" with T. L. Cassinelli, Safeway Stores, J. L. Chichizola and Alfred Malatesta. Each of these "contracts" carries a statement that the same may be canceled on twenty four (24) hours' written notice by either party. They call for payment to Bonnefoy of a rate of 30 cents per 100 pounds with provision for an extra charge (not fixed), for bulky packages. The Safeway Stores, Inc. contract or agreement provides for a minimum of 250 tons; Cassinelli 125 tons. In the other "contracts" the tonnage is not specified, the space for the tonnage being blank. Exhibit 4 also shows a "contract" or agreement between Bonnefoy and A. L. Levy and J. Zentner Co. of Sacramento under which Bonnefoy agrees to transport for the firm for thirty (30) cents per 100 pounds "merchandise generally

consisting of fruits and vegetables from the warehouse of the said shipper located at Sacramento, California, as and when requested to the town of Martell, Amador County, California." The agreement provides that "said shipper shall endeavor to deliver to the said drayman not less than five tons in one load." It further provides that "no other commodity of any kind whatsoever shall be hauled by the said George Bonnefoy in the truck which handles the merchandise of said shipper." Bonnefoy Drayage & Fuel Co. also has a "contract" or agreement (Exhibit 4), with Smith Trucking Service under which he agrees to deliver freight which Smith Trucking Service may have for "transportation to and from San Francisco to merchants of the following towns: viz: Jackson, Sutter Creek, Ione, Dry Town, Amador City, West Point, Pine Grove and Volcano." The rate to or from San Francisco is fixed by the agreement at 50 cents per CWT. This agreement is dated January 1, 1931, and may be terminated on five (5) days notice. None of the agreements or contracts contains a penalty clause. They are but little, if any, more than rate quotations.

Bonnefoy, testifying in his own behalf, said he had been in the trucking business about two years. He originally conducted a wood business, hauling his own wood from the Jackson territory to Sacramento. He first began hauling merchandise for merchants to whom he was indebted, working out bills incurred as the result of the destruction of his wood crop by fire. He named six merchants to whom he was indebted. In 1930 the hauling he had done for Smith Trucking Service and Levy-Zentner had been performed under verbal agreement; since January 1, 1931, under the "contract" shown in Exhibit 4. He rents space in the Sacramento depot of the Smith Trucking Service. Goods destined for the Jackson district are delivered there by Sacramento shippers, and he hauls them to destination along with goods from San Francisco delivered at the depot by the Smith Service, the through charges from San Francisco to delivery point being divided equally between himself and Smith.

Several witnesses in Applications Nos.17085-17086 testified that they used the Bonnefoy trucking service.

A review of the testimony in Application No.17085 and No.17086, as amended, which were consolidated for hearing, with particular reference to public convenience and necessity, shows that Application No.17086 was amended at the hearing to place Michigan Bar intermediate to Slough House and Drytown and to insert the following rates for the four classes of commodities proposed to be transported:

Between Sacramento and Michigan Bar:

Less ton lots - 28, 24, 21 and 18 cents per 100 pounds,

 Ton lots - 23, 20, 18 and 15 cents per 100 pounds,

also a commodity rate of 25 cents for any quantity of grain and flour between Sacramento and Jackson and Sutter Creek.

Application No.17085 was amended to include a rate of 25 cents for the same commodities between Stockton and Jackson.

The first witness called by applicants was J. J. Dalo, a merchant of Jackson, receiving groceries, grain and hardware from both Sacramento and Stockton. He testified both Bonnefoy, defendant in Case No.2998, and one Arata, a non-certificated carrier, had made deliveries to his place for "about a year." The volume amounted to about 4 or 5 tons monthly. The witness expressed satisfaction with the service of each operator and also that he did not need any better service. A small amount was received over the Stockton-Jackson Stage Line with equal satisfaction. Some rail service is received, also satisfactory. The witness also testified that he would give some business to applicants as "Mr. Piccardo is a friend of mine."

Similar testimony was given by fourteen other shippers of Jackson, varying only as to the quantities received or shipped.

Each witness testified to his satisfaction with the existing services, and only half a dozen said they would use applicant's proposed service, if established. Similarly, six merchants of Sutter Creek testified as to their needs, satisfaction with existing services, including rail, Amador Stage Lines, Bonnefoy and Walker, another non-certificated carrier, and expressing the belief that the proposed service was not needed in addition. W. L. Kurtz, grocer and grain dealer at Michigan Bar, an intermediate point, testified that if the proposed service were established, he would use it to the extent of approximately 100 tons a year. Further, that he would use the service instead of his own trucks.

When applicants' presentation of testimony was completed, protestants Southern Pacific Company and Railway Express Agency, Inc. moved that all testimony as to operations of Bonnefoy, Walker and Arata be stricken out. The motion was denied at the time and the ruling is sustained.

Applicants, through the testimony of A. L. Schneider and Angelo Piccardo, explained the basis of the two operations proposed. The estimate of Mr. Schneider that 3000 tons will be available to the run between Jackson and Sacramento is doubtful as it includes about 1000, or more, tons that there is no proof would move, if at all, by a public carrier, particularly those amounts from the Slough House district. He testified that he estimated a revenue of \$6.00 per ton; that the investment in equipment will be approximately \$12,000 (two 5-ton pneumatic trucks), and that the operating cost will be 28 cents per mile over all - in annual gross \$16,800. Under his estimate of 3000 tons movement, the revenue will be \$18,000. per year, at a profit of \$1600.00. These estimates were based on experience of United Motor Transport Lines, in which he is interested, operating variously from Sacramento under authority of this Commission, and the experience shows a net per ton of 56.9 cents. Mr. Schneider also presented estimates made by him for Piccardo

Bros. in Application No.17085, between Stockton and Jackson, via Martell. His estimate of tonnage is 700 tons annually, an investment in a truck of \$1500.00 and cost per mile of 13.5 cents. At an average revenue of \$7.00 per ton, he estimated the receipts at \$4900 and the expense at \$4506.30, showing a profit of \$393.70 during a year.

Mr. Schneider also testified as to the operations of the Amador Stage Lines, operating under certificate between Sacramento and Jackson. This line, (certificated), transports passengers and express. Its approximate revenue during 1929-1930 from both was \$6000.00 each year. Mail was also transported but this contract has expired. Mr. Schneider testified that much express business, formerly bestowed on the line, has been shipped for the past year over Bonnefoy's service. The detail given is not large. The stage line rate on express is one (1) cent per pound (minimum 25 cents), while Bonnefoy's rate, he testified, was about 40 cents per 100 pounds. The proposed freight rates carry a minimum of 50 cents. Bonnefoy has no minimum. It was the opinion of the witness that the minima of both truck and express would protect the express patronage. During the last two months of 1930, the business of the stage line had shown loss, and although passenger revenue had before this increased 52 percent, the express business must improve to bring the operation out of loss. Four schedules are operated each way daily.

Protestant John Smalley, operating the Stockton-Jackson Stage Line since 1919, has an express right limited to 100 pounds, with a rate of one (1) cent a pound, minimum 25 cents. Only 30 percent of his business is packages weighing 50 pounds, or more. His receipts during 1930 for express were \$2370.00. The freight minimum proposed by applicants is 50 cents. Mr. Smalley said he had investigated freight movements in 1927

and found that he could depend on only \$13.00 a day revenue, of which \$5.00 would be diverted from his express business. He was supported in his protest by several witnesses from Clements and Lockeford who testified the Smalley service is adequate.

Protestant Southern Pacific Company maintains daily (except Sunday) service on its Ione branch with less than carload cars from both Sacramento and Stockton. Each car leaves its point of origin at night and is deposited at Galt. At noon each day the cars are transported from Galt to Ione, where their contents for Martell, Sutter Creek and Jackson are received by protestant Amador Central Railroad for delivery at destination. It is practically a 24-hour service as no shipments are received at Sacramento or Stockton ^{after} 4 P.M. In addition, all shipments for Sutter Creek and Jackson must be transported from Martell by trucks. The rail service is a mixed train also carrying passengers and express. Movements in reverse are on an 18-hour basis.

Protestant Amador Central Railroad Company, by its Exhibits Nos. 1 and 2, showed that it has operated at a loss since 1923, except in 1930, when it had unusual revenue of \$52,474 (exclusive of less than carload) from movements of material for the construction work of the Pacific Gas & Electric Co. at Salt Springs, Tiger Creek and Bear River in the Sierras, fifty miles from Martell. This volume was moved from Martell to point of use by Piccardo Bros., applicants herein, under contract. While much of the movement is continuing, it is expected to terminate during the present year, or at least be reduced to a very small amount. These exhibits also show that the corporate loss up to December 31, 1929, was \$250,947. Protestant operates twelve (12) miles of main track and its sole connection is with the Southern Pacific at Ione. Its

chief volume is furnished by the mines in and about Jackson.

Jackson, the terminal point in both applications, is 48 miles from Sacramento, and 50.2 miles from Stockton. It is the center of a mining district. It is not directly served by any railroad. The rail terminus of Amador Central Railroad, protestant herein, being at Martell, two miles east of Jackson. Amador Central Railroad connects with the Southern Pacific at Ione, 12 miles east, and which is the terminus of the Southern Pacific Galt-Ione Division. Freight between Jackson and Martell is moved by Piccardo Brothers under certificate of this Commission. Jackson is also served by the Stockton-Jackson Stage Lines, John Smalley, proprietor, and which serves practically all the points between Galt and Martell served by rail, with an express service limited to 100 pounds; also by Amador Stage Lines between Sacramento and Jackson, via Drytown and Sutter Creek with express service limited to 200 pounds. No other public services to Jackson are established. The record shows, however, that transportation to Jackson has been conducted by one Arata, between Stockton and Jackson, one Walker between Sacramento and Sutter Creek, and George Bonnefoy between Sacramento and Jackson and some intermediates, particularly Sutter Creek.

The witnesses produced were all receivers of freight at either Jackson or Sutter Creek. All the witnesses are served by Bonnefoy, or Walker or Arata, or by two of them. Objection was made by protestants to the admission of testimony as to the use of non-certificated carriers. The objection was overruled, properly.

Carefully and fully considering all the evidence in the three proceedings herein and the exhibits, I conclude and find as a fact that:

George Bonnefoy, defendant in Case No.2998, is operating an auto trucking service as a common carrier between Jackson and Sacramento and intermediate points without having secured a certificate of public convenience and necessity from the Railroad Commission and, therefore, in violation of Chapter 213, Statutes of 1917, as amended, and

That public convenience and necessity require the operation by Angelo Piccardo and Albert L. Schneider, co-partners, of an automobile service for the transportation of property between Sacramento and Jackson and intermediate points, and

That public convenience and necessity does not require the operation by Andrea Piccardo and Angelo Piccardo, co-partners, of an automotive service for the transportation of property between Stockton and Jackson and intermediate points.

In accordance with the above finding, an order will issue directing said George Bonnefoy to cease and desist from the operation of the trucking service he is now and has been proposing between Jackson and Sacramento and intermediate points until he shall have obtained from the Railroad Commission a certificate of public convenience and necessity authorizing such a service as is required by Chapter 213, Statutes of 1917, and granting to Albert Schneider and Angelo Piccardo, co-partners, a certificate of public convenience and necessity authorizing them to operate a common carrier trucking service between Sacramento and Jackson and intermediate points.

Albert Schneider and Angelo Piccardo, co-partners, are hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

Application No.17085 will be denied.

I recommend the following form of order:

O R D E R

Public hearings having been held in the above entitled proceedings, evidence taken and an order of submission made and the Commission being fully advised,

IT IS HEREBY ORDERED that George Bonnefoy be and he is hereby ordered to cease and desist from the operation of the trucking service he has been and is now conducting between Jackson and Sacramento and intermediate points until such time as he shall have obtained from the Railroad Commission a certificate of public convenience and necessity for such a service in accordance with the requirements of Chapter 213, Statutes of 1917, and effective amendments thereto, and

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by Albert L. Schneider and Angelo Piccardo, co-partners, of a common carrier trucking service between Jackson and Sacramento and intermediate points, via Perkins, Slough House, Michigan Bar, Central House, Drytown, Amador City, Sutter Creek and Martell, and

IT IS HEREBY FURTHER ORDERED that a certificate of public convenience and necessity for such a service be and the same is hereby granted to Albert L. Schneider and Angelo Piccardo, co-partners, subject to the following conditions:

- 1- That no local service shall be performed between Sacramento and Perkins.
- 2- Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
- 3- Applicants shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from the date hereof a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules, which, in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the application insofar as they conform to the certificate herein granted.

4- Applicants shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from the date hereof time schedules, covering the service herein authorized, in a form satisfactory to the Railroad Commission.

5- The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

6- No vehicle may be operated by applicants herein unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that Application No. 17085 be and the same is hereby denied.

IT IS HEREBY FURTHER ORDERED that a copy of the order herein be forwarded by registered mail to the District Attorneys of the Counties of Sacramento, San Joaquin and Amador.

The effective date of this order is hereby fixed at 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 1st day of

January, 1931.

Clarence
Leon
W. A. Linn
M. B. Higgins
Jess G. Stewart
COMMISSIONERS.