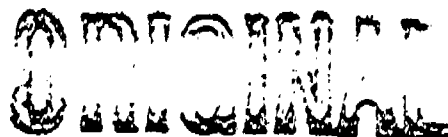


Decision No. 23785



BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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| In the Matter of the Application of |) |
| A. W. CUSTER to sell and transfer, |) |
| and RAILWAY EXPRESS AGENCY, INCORPOR- |) |
| ATED OF CALIFORNIA, a California cor- |) |
| poration, to acquire an automobile |) |
| freight line between Petaluma, |) |
| California, and Camp Meeker, California, |) |
| and intermediate points in California. |) |

Application
No. 17443

BY THE COMMISSION -

OPINION and ORDER

A. W. Custer has petitioned the Railroad Commission for an order approving the sale and transfer by him to Railway Express Agency, Incorporated of California, of an operating right for an automotive service for the transportation of property between Petaluma and Camp Meeker and intermediate points, and Railway Express Agency, Incorporated of California, has petitioned for authority to purchase and acquire said operating right and to hereafter operate thereunder, the sale and transfer to be in accordance with an agreement, a copy of which, marked Exhibit "A", is attached to the application herein and made a part thereof.

The consideration to be paid for the property herein proposed to be transferred is given as the nominal sum of \$1.00.

The operating right herein proposed to be transferred was granted to A. W. Custer by Decision No. 22271, dated April 1, 1930, and issued on Application No. 16395. It authorized applicant Custer to operate an auto trucking service for the transportation only of property delivered to him by Railway Express Agency, Inc., between Petaluma and Camp Meeker and the intermediate points of Tomales, Marshall, Fallon, Valley Ford, Bodega Roads and Occidental.

The operating right is subject to the following conditions:

- 1- That the route to be followed shall be as follows:

Starting at Petaluma, via Two Rocks, west to Tomales, south through Camp Pistolessi, Hamlet and Mc Donald, to Marshall, returning north from Marshall via Tomales to Fallon, Valley Ford, Bodega Roads, Freestone and Occidental, to Camp Meeker.

- 2- That the service to Camp Meeker shall be seasonal, that is, during the summer season.

- 3- That operation shall be started only if and when trains are withdrawn by Northwestern Pacific Railroad Company.

- 4- That no service shall be given to off-highway points.

We are of the opinion that this is a matter in which a public hearing is not necessary and that the application should be granted.

Railway Express Agency, Incorporated of California,^{1S} 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.

IT IS HEREBY ORDERED that the above entitled application be, and the same is hereby granted, subject to the following conditions:

- 1- The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission or any other rate fixing body as a measure of value of said property for rate fixing, or any purpose other than the transfer herein authorized.

- 2- Applicant A. W. Custer shall immediately unite with applicant Railway Express Agency, Incorporated of California, in common supplement to the tariffs on file with the Commission covering service given under certificate herein authorized to be transferred, applicant A. W. Custer on the one hand withdrawing, and applicant Railway Express Agency, Incorporated of California, on the other hand

accepting and establishing such tariffs and all effective supplements thereto.

3- Applicant A. W. Custer shall immediately withdraw time schedules filed in his name with the Railroad Commission, and applicant Railway Express Agency, Incorporated of California, shall immediately file, in duplicate, in its own name time schedules covering service heretofore given by applicant Custer, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicant A. W. Custer, or time schedules satisfactory to the Railroad Commission.

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

5- No vehicle may be operated by applicant Railway Express Agency, Incorporated of California, unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

Dated at San Francisco, California, this 15th day of June, 1931.

C. L. Seaver
Leon Whitely
W. A. Lewis
M. B. Kamin
Fred G. Cleveland
COMMISSIONERS.