

Decision No. 24247.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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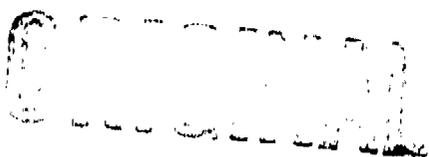
SAN RAFAEL FREIGHT AND TRANSFER
COMPANY, a corporation,

Complainant,

vs.

W. TOLENTINO,

Defendant.


 Case No. 3111.

McGettigan & Toland for Complainant.

H. W. Hobbs for Petaluma & Santa Rosa Railroad
and Northwestern Pacific Railroad, Intervenors.

William J. Tolentino, defendant, in propria persona.

BY THE COMMISSION:

O P I N I O N

Complainant operates as a water carrier and as a truck operator for the transportation of property between San Francisco and San Rafael, Petaluma and Santa Rosa under authority of this Commission with tariffs lawfully on file with this Commission. Complainant alleges that defendant is operating a truck as a common carrier for compensation between San Francisco and Sausalito, San Rafael and Santa Rosa without authority from this Commission and to the injury of complainant. The Commission is asked to order defendant to cease all such operations until he has obtained from this Commission valid authority therefor.

A public hearing thereon was conducted by Examiner Kennedy at San Francisco, at which time the matter was duly submitted.

Testimony by A. H. Marx, President of complainant company, and William Miller, its agent at San Rafael, together with bills of lading received in evidence, established the fact that defendant had transported property from the L. T. Snow Co. and Stiefvaters, of San Francisco, to San Rafael and Sausalito, and for others from San Francisco to Marin County points.

Tolentino, the defendant, testifying voluntarily on his own behalf, stated that he operates a trucking business at San Rafael; that merchants there asked him to go to San Francisco and bring cargoes back; that from a few movements of this type grew a business of practically daily trips between San Francisco and Marin County points, along the highway as far as Petaluma; that all such movements were made under written or verbal contract with either the shipper or receiver and that no property had been transported to San Francisco. He testified further that he had written contracts with Swift & Co., Puritan Groceries, Hostess Cake Bakery and others. Defendant also claimed that business solicitation had been made by the shippers or receivers rather than by himself.

Tolentino at the time of hearing was directed to file copies of all his contracts with the Commission. Only one was filed. It purported to be between Torino Bakery of San Francisco and called for six trips weekly for deliveries of bakery goods "in the territory extending from the town of Sausalito to and including the city of San Rafael" for a consideration of \$15. weekly. The contract fixed no term, quantity or obligation between the parties other than to transport "the produce of the bakery."

The contract contains this paragraph:

"The party of the second part has no regular route for transportation of this goods or any fixed termini, but will endeavor to deliver the same to accommodate, so far as possible, the business demands of the party of

the second part and of the patrons of the party of the second part."

When it is noted that this contract is dated "this _____ day of November, A. D. 1931" the subterfuge of the document is apparent as the hearing was held and the matter submitted on October 27, 1931. We must assume, therefore, that no written contracts ever existed.

Considering the facts as admitted by defendant at hearing and his failure to produce written contracts covering service rendered by him, we must find that he has been conducting the transportation of property for compensation as a common carrier between San Francisco and San Rafael and other points without authority from this Commission, and that, as complainant prays, he should be required to cease and desist all common carrier transportation for which he has no authority from this Commission.

ORDER

A public hearing having been held on the above entitled complaint, the matter having been duly submitted, the Commission now being fully advised and basing its order on the findings and conclusions in the opinion preceding this order;

IT IS HEREBY ORDERED that defendant William Tolentino be and he is hereby ordered to cease and desist from the operation of a service by automobile for the transportation of property between San Francisco, Sausalito, San Rafael, Petaluma and Santa Rosa, and points intermediate, until such time as he has been granted a certificate by this Commission according to the

