

Decision No. 24425.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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COAST TRUCK LINE,
a corporation,

Complainant,

vs.

J. B. GRAHAM, doing business
as Air City Trucking Co.,

Defendant.

Case No. 3115.

ORIGINAL

H. J. Bischoff for complainants.

Phil Jacobson for defendant.

C. J. Gemble for San Diego Forwarding Company,
Intervenor in behalf of complainant.Harold W. Dill for Oppenheimer Truck Line,
International Express Inc., and the
Warner-Julien-Cuyamaca Truck Line,
Interested parties.James Pierce for Railway Express Agency, Inc.,
interested party.

BY THE COMMISSION:

O P I N I O N

Complainant, Coast Truck Line, alleges that defendant J. B. Graham, doing business as Air City Trucking Company, is conducting transportation of property between fixed termini and over regular route, to-wit: Between San Diego and Los Angeles and Long Beach as a common carrier without having secured from this Commission a certificate of public convenience and necessity as required by the Auto Stage and Truck Transportation Act.

A public hearing thereon was conducted by Examiner Kennedy at San Diego.

The testimony produced by complainant does not, we believe, affirmatively sustain the allegations of the complaint. The movements testified to by witnesses were all admitted by defendant in his explanation of the business he conducts. From the testimony we adduce these facts: That defendant is engaged in the trucking business in the City of San Diego, and that sixty-five per cent of his business is hauling within the municipality and its environs. The other thirty-five per cent, by his own admission, is business that moves irregularly between Los Angeles, Los Angeles Harbor, Long Beach and San Diego. Defendant traverses two routes between these points, one by way of Santa Ana, and the other by way of Laguna Beach and Long Beach. The testimony of witnesses produced by complainant does not show the frequency of movements, the extent of operations was not fixed, nor was it shown that any offer was made by defendant to subject his business to public servitude, thus making defendant a common carrier.

It appears from the testimony of witnesses that defendant is called by telephone and asked to transport certain shipments from Los Angeles or from San Diego to Los Angeles County points. Three witnesses testified to such use of defendant's trucks approximately once a month, a part of which movement is the transportation of magazines to San Diego, and their distribution among dealers. One witness used defendant's trucks twice, once one and one-half years prior to the hearing, and only once or twice since. The most frequent user was a tire dealer who used the service approximately once a week to and from the factory at Los Angeles. Another witness, a dealer in beverages, purchases his supplies in Oakland. They are shipped by water to Los Angeles Harbor and some hauls have been made by defendant, particularly five cases of con-

centrates in October.

Defendant, in testifying in his own behalf, stated that all these movements came to him as a part of the "on call" business of his office and were not solicited. This was confirmed by witnesses. In addition he had frequently transported oxygen gas tanks from Huntington Park to San Diego on a basis of charge per trip. He further testified that he has no written or verbal contracts with any shipper or receiver of freight, and that he accepts or rejects the business as circumstances may justify; that he is not obligated to perform any service for any person. Defendant also stated that he had paid a tax of five per cent to the state upon that portion of his movements not confined exclusively to the City of San Diego. He also testified that on many of his shipments he had fixed a rate of fifty cents per one hundred pounds, but that others had moved on truck-hire basis.

It is apparent from the above recital that defendant can not be regarded as a common carrier as defined in the Auto Stage and Truck Transportation Act, and that, therefore, the prayer of the complainant that he be ordered to cease and desist cannot be granted.

O R D E R

The above numbered complaint having been heard at public hearing, testimony having been produced, the matter

having been duly submitted, and the Commission being fully advised of all the facts in the premises, and the matter being now ready for decision,

IT IS HEREBY ORDERED that the complaint be and the same hereby is dismissed.

Dated at San Francisco, California, this 25th day of January, 1932.

C. L. Seaver
Leon Whiteley
M. A. Van
M. B. Harris
Fred G. Stewart
Commissioners.