

Decision No. 24833.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of Railway Express Agency, Incorporated, of California, for certificate of public convenience and necessity to operate motor vehicles for the transportation of passengers, mail, baggage, express, milk and cream and other traffic that may be offered by and for the Atchison, Topeka & Santa Fe Railway, a corporation, between Riverbank, Oakdale and intermediate points.

Application No. 18098.

In the Matter of the Application of the Atchison, Topeka and Santa Fe Railway Company, a corporation, for authority to discontinue its railway motorcar service between the stations of Riverbank and Oakdale, California, and to substitute therefor such services by the Railway Express Agency by means of highway motortruck and/or motorbus.

Application No. 18099.

M. W. Reed, for applicant, The Atchison, Topeka and Santa Fe Railway Company.

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

Gwyn E. Baker, for Protestant.

SEAVEY, COMMISSIONER:

O P I N I O N

In Application No. 18099, The Atchison, Topeka and Santa Fe Railway Company requests authority to discontinue the operation of motor car service between Oakdale and Riverbank, on its Oakdale Branch, in Stanislaus County.

In Application No. 18098, the Railway Express Agency,

Inc. of California seeks a certificate of public convenience and necessity to operate a motor vehicle between Oakdale and Riverbank, for the transportation of passengers, baggage, mail and express offered by said railway company.

A public hearing was held in these matters in Oakdale on May 24, 1932. By stipulation of the interested parties, the matters were consolidated for receipt of evidence and decision.

The Atchison, Topeka and Santa Fe Railway Company now operates a motor car between Oakdale and Riverbank, a distance of 6.5 miles, providing three round-trips per day. It is alleged by the railway company that the primary purpose of effecting the changes proposed herein is to cut down operating losses, as the revenue now derived is materially less than out-of-pocket cost of providing the service. The Company's Exhibit No. 1 shows that during the twelve-month period ending April 30, 1932, there were 206 passengers carried between Riverbank and Oakdale, and 201 in the reverse direction, making a total of 407. With respect to revenue, the records show that during this twelve-month period the average monthly revenue was \$76.16, \$4.61 of which was derived from passenger business, \$49.05 from mail and \$22.50 from express. The monthly expense in connection with operation of this motor car service was shown to be \$700.00, which resulted in an operating deficit of \$623.84 per month, or in other words, the operating expense is over nine times the revenue.

It is the proposal of the express company to provide motor vehicle service between Oakdale and Riverbank with no intermediate points of service and handle only passengers, baggage, express and mail offered by the Santa Fe upon a schedule

substantially the same as that now maintained by the railway company.

With respect to the express company's Application No. 18098, Willis M. Kleinenbroich, operator of the Modesto-Riverbank-Oakdale Stage Line appeared to oppose the granting of this application on the ground that his stage line could take care of this business if the motor car service were discontinued. Mr. Kleinenbroich operates a stage line between Modesto and Oakdale via Riverbank and other intermediate points offering three round trips per day carrying passengers, baggage and express (the latter being limited to packages weighing not more than 100 pounds). This operation does not contact the railroad station at either Oakdale or Riverbank and the operation proposed herein by the express agency has not heretofore been performed by the Modesto-Riverbank-Oakdale Stage Line. It was also shown that it would not be practical for this stage company to attempt to meet the Santa Fe trains at Riverbank as in cases where trains were late such a plan of operation would work a hardship on the other patrons of the stage company.

It appears that an agreement has been entered into between applicant companies whereby the railway company pays the express company the total cost of providing the proposed stage service, plus 15%. It is proposed to operate a school type bus which appears to be of sufficient capacity to handle all the passengers, baggage, express and mail that will be offered for transportation.

No opposition was presented to the granting of Application No. 18099 filed by the railway company.

After carefully considering the record in this proceeding it is concluded that these applications should be granted and the order will so provide.

Railway Express Agency, Inc. of California hereby is 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.

O R D E R

The Atchison, Topeka and Santa Fe Railway Company having made application to abandon its motor car service between Oakdale and Riverbank and the Railway Express Agency, Inc. having made application for a certificate of public convenience and necessity to operate motor vehicle service between Oakdale and Riverbank, Stanislaus County, a public hearing having been held and the matter having been duly submitted and being now ready for decision, therefore,

IT IS HEREBY ORDERED that authority be and it is hereby granted to The Atchison, Topeka and Santa Fe Railway Company to discontinue motor car service between Oakdale and Riverbank on its Oakdale Branch, Stanislaus County, to become effective upon the initiation of said substitute service by the express agency, provided, however, that five (5) days' notice of said discontinuance of operation be given to the travelling public by posting

notice in all stations and trains on said branch.

The Railroad Commission of the State of California hereby declares that upon the abandonment of motor car service authorized above public convenience and necessity will require the establishment by Railway Express Agency, Inc. of an automotive passenger stage service for the transportation of passengers, baggage, express and mail offered by The Atchison, Topeka and Santa Fe Railway Company between the stations of Oakdale and Riverbank over the following described route:

From depot of The Atchison, Topeka and Santa Fe Railway Company, Oakdale, to State Highway, via West Railroad Avenue; State Highway, via Condrey Avenue to depot of The Atchison, Topeka and Santa Fe Railway Company, Riverbank.

IT IS HEREBY FURTHER ORDERED that a certificate of public convenience and necessity for such service is hereby granted to Railway Express Agency, Inc. of California subject to the following restrictions and limitations:

- (1) Applicant shall file with this Commission within twenty (20) days from the date hereof, its written acceptance of the certificate herein granted.
- (2) Applicant shall file, in duplicate, within a period not to exceed twenty (20) days from the date hereof, time schedules and tariff of rates, such tariff to show reference by C.R.C. numbers to the tariffs of The Atchison, Topeka and Santa Fe Railway Company and of Railway Express Agency, Incorporated, in which the rates, rules and regulations to be observed by applicant will be found.
- (3) The rights and privileges herein authorized may not be sold, leased, transferred or 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.
- (4) No vehicle may be operated by applicant under the authority herein granted unless such vehicle is owned or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.
- (5) The authority herein granted shall lapse and become void if not exercised within one (1) year from the

date hereof unless further time is granted by subsequent order.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

The foregoing Opinion and Order is hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 6th day of June, 1932.

Cl Lewis
Leon Whidney
W. J. Carr
W. B. Harris
Fred G. Stewart
Commissioners.