

Decision No. 34878.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

COAST TRUCK LINE, a corporation,
Complainant,

vs.

C. E. BOYLE AND SON,
Defendants.

Case No. 3172.

H. J. Bischoff for Complainant.

A. R. Honnold for Defendant.

BY THE COMMISSION:

O P I N I O N

Coast Truck Line, a corporation, complainant in the above entitled proceeding, complains and alleges in substance and effect that C. E. Boyle and Son is a copartnership operating auto trucks as a common carrier in the business of transporting property for compensation over the public highways between Los Angeles and Escondido without having obtained from the Railroad Commission of the State of California a certificate of public convenience and necessity authorizing such operation.

Defendant, C. E. Boyle and Son, by its written answer herein, denies generally and specifically all material allegations contained in said complaint and alleges, further, that it began operation as a carrier of property for hire over the public

highways in the State of California before the passage of the Auto Stage and Truck Transportation Act, approved May 10, 1917; and, also, as a further and separate defense, defendant alleges that it is operating as a private carrier under contract.

Public hearing was conducted by Examiner Kennedy at Escondido, the matter was duly submitted and is now ready for decision.

For several years last past, the defendant has been engaged in a local transfer and transportation business in Escondido. The evidence shows that for the past eight or ten years the defendant has been conducting a truck transportation business between Escondido and Los Angeles. With respect to defendant's contention that it had been operating prior to the passage of the Auto Stage and Truck Transportation Act, there is quoted the following from the testimony of defendant:

"Q. 'When did you begin hauling to Los Angeles?'

A. 'I judge - I could not say, I don't recollect.'

Q. 'Well, was it a year ago or twelve years ago or when?'

A. 'It was eight or ten years ago, I should judge, but not to any great extent.'"

It is clear from the record that the defendant did not begin his truck operation between Escondido and Los Angeles until several years subsequent to the effective date of the Auto Stage and Truck Transportation Act, which date was May 1, 1917.

Defendant, Harold B. Boyle, testified that defendant partnership owns seven trucks although using but two at the present time, due to the general falling off of business. He testified further that grapes, citrus fruit, rock, fertilizer and plumbing supplies are the principal commodities transported by defendant between Escondido and Los Angeles, and all ship-

ments move under oral agreement with the shipper.

The following witnesses testified on behalf of complainant: Walter G. Ross, agent for Southern California Fertilizer Company; Edwin L. Gilman, manager of Escondido Cooperative Citrus Association; Reginald G. Beck, manager of Escondido Lemon Association; Robert D. Lee, manager of A.L.A. Lumber Company, Escondido; Byron A. Sweet, owner of B. A. Sweet Plumbing Company, Escondido; Gordon Howell, of Howell Feed Company, Escondido and Walter L. Carson, manager Escondido Orange Association.

All of the testimony produced through these witnesses was to the effect that the defendant copartnership of C. E. Boyle and Son, had transported goods between Escondido and Los Angeles, averaging considerable tonnage over a period of about a year last past. There also was testimony to the effect that the defendant had carried goods for some of these shippers on the return haul from Los Angeles to Escondido. Testimony of these witnesses showed further that compensation was paid in accordance with terms of oral understanding had between shipper and defendant.

The testimony further shows that defendant copartnership, while not employing a solicitor, has held itself out through advertising in the newspaper (Exhibit No. 1) as willing to "move anything movable." In that connection, from the cross-examination of witness Howell by defendant's counsel there is quoted the following:

- "Q. 'Did you employ Mr. Boyle or did he solicit your business; how did you happen to employ him?'
- A. 'I think Mr. Boyle had told me over a period of a few years that he had back hauls coming back empty and any time when he was coming back empty and I had a chance to turn my business his way, he would like to have the business.' * * *"

It is contended on behalf of defendant that "defendants have been rendering a contract service as a private carrier only to a very limited number and a carriage rendering a special supervision or service and of a kind and character not easily or generally and in some cases at all procurable from a common carrier." This contention is not substantiated by the evidence. The record herein clearly indicates that the defendant conducts a common carrier operation. This Commission heretofore has held: "It is obviously not a prerequisite that, to be classed as a common carrier, one must undertake to serve all persons without limitation of any kind as to the place where his services are given or the class of goods which he professes to haul. Neither does a limitation imposed regarding the number of shippers served, or the requirement of an express contract in each case prior to the rendition of the service, necessarily fix a carrier's operations as purely private. In other words, if the particular service rendered by a carrier is offered to all those members of the public who can use that particular service, the public is in fact served, and the business is affected with a public interest, though the actual number of persons served is limited." (Re Jack Hiron, 32 C.R.C. 48, 51).

We therefore find as a fact that defendant copartnership C. E. Boyle and Son, and C. E. Boyle and Harold B. Boyle are conducting a trucking service as a common carrier for compensation between fixed termini and over a regular route, to-wit; between Escondido and Los Angeles and over the state highways, and that such operation is in violation of Chapter 213, Statutes of 1917

as amended, in that no certificate of public convenience and necessity therefor has been granted by this Commission. An order requiring him to cease and desist such operation should be entered.

O R D E R

Coast Truck Line, a corporation, having made complaint that C. E. Boyle and Son has been conducting an automotive trucking service for the transportation of property as a common carrier over the public highways of this state without having first obtained a certificate of public convenience and necessity from the Railroad Commission, a public hearing having been held, the matter having been duly submitted and being now ready for decision,

IT IS HEREBY ORDERED that C. E. Boyle and Son, operating as a copartnership, and C. E. Boyle and Harold B. Boyle, individually, cease and desist from all operation by automotive trucks for the transportation of property as a common carrier over the state highways between Escondido and Los Angeles until and unless it has first obtained a certificate of public convenience and necessity therefor from the Railroad Commission; that the Secretary of the Commission cause personal service of a certified copy of this Opinion and Order to be made upon C. E. Boyle and Harold B. Boyle; and that a certified copy of this Opinion and Order be mailed to the District Attorneys of Los Angeles and San Diego Counties, the Board of Public Utilities and Transportation of the City of Los Angeles and the State Department of Public Works, Division of Motor Vehicles.

FK

This decision shall become effective twenty (20) days from and after the date of service above mentioned.

Dated at San Francisco, California, this 13th day of June, 1932.

C. C. Seaver
Leon Whidley
W. A. Lee
W. B. Harris
Fred G. Stewart
Commissioners.