

Decision No. 24890.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
S.C. BOOKS, E.C. CONKLIN, C. HOAGLAND,
TED HOAGLAND, C.E. JACKSON and
J.C. RUSSELL, doing business under
the firm name and style of UNITED
TRANSPORTATION SERVICE, for a cer-
tificate of public convenience and necessity
authorizing the operation of a motor
truck freight service between San
Francisco and the East Bay Cities, and
Manteca, Ripon, Salida, Modesto, Ceres,
Keyes, Turlock, Delhi, Livingston,
Atwater, Merced, Riverbank, Oakdale,
Waterford, Empire and Hughson.

ORIGINAL

Application
No. 17313.

Decoto & St. Sure by Ezra W. Decoto, for Applicant.
Sanborn, Roehl and Brookman by A.B. Roehl and
W.E. Kessler, for Valley Motor Lines, Inc.,
Protestant.
E.W. Hobbs and W.S. Johnson for Southern Pacific
Company and Pacific Motor Transport Company,
Protestants.
Edward Stern for Railway Express Agency, Inc.,
Protestant.
E.T. Lacey and W.F. Brooks for The Atchison, Topeka
and Santa Fe Railway, Protestant.
H.C. Lucas and Orla St. Clair for Pacific Greyhound
Lines, Protestant.

STEVENOT COMMISSIONER:

OPINION

Applicants herein seek a certificate of public convenience
and necessity authorizing the operation of motor truck freight
service between San Francisco, Oakland and East Bay cities and
Manteca, Ripon, Salida, Modesto, Ceres, Keyes, Turlock, Delhi,
Livingston, Atwater, Merced, Riverbank, Oakdale, Waterford, Empire
and Hughson. Originally the applicants were S.C. Books,
E.C. Conklin, C. Hoagland, Ted Hoagland, C.E. Jackson and
J.C. Russell, a copartnership under the fictitious name of United
Transportation Service. During the progress of the hearings the
partnership was incorporated under the name Jackson Transportation
Company Ltd. and by stipulation the corporation was substituted

as the applicant in place of the partnership and an amended application was filed. Subsequently the Hoaglands withdrew their interests in the corporation. Public hearings herein were conducted at San Francisco, Modesto and Merced, the matter was duly submitted and now is ready for decision.

Applicants propose rates in Exhibit "A" attached to the amended application both by class and commodity, which rates appear to be normal rates for such class of service as proposed. The time schedules show daily operation between termini and intermediate points and the equipment proposed include ten trucks and five trailers with a total capacity in excess of 100 tons.

Applicants have been in the business of transporting products of agriculture between San Joaquin Valley points and the Bay region separately as individuals for a number of years prior to forming a partnership. In the conduct of this business they felt the need of return movement from San Francisco and East Bay points to prevent waste movements of a one way transportation business. About two years ago they pooled their equipment and business under the fictitious name of United Transportation Service and solicited generally among shippers the transportation of all commodities between the San Joaquin Valley points named in the application and cities of the Bay region. The operation has been directly under the supervision of C.E. Jackson of Modesto and has expanded until it assumed very large proportions. Early in 1931 applicants were advised by counsel that their operations required a certificate of public convenience and necessity and application therefor was made. Applicants did not, however, modify their business to comply with any advice showing that all or part of their operations were improper except under authority of this Commission but continued to expand their business.

According to the testimony of Mr. Jackson the business of the partnership in 1927 amounted to \$4,000. or \$5,000. gross revenue. In 1928 it increased to \$16,000.; in 1929 to \$46,000.; in 1930 it increased to approximately \$75,000. and Mr. Jackson estimated the earnings for 1931 based on nine months of actual operation at \$100,000. The records appear to justify the conclusion that this rapid increase was made possible solely by the fact that applicants acquired and conducted transportation from San Francisco and the Bay region and that it was this traffic that accounts for the increases. The record seems clear that this business developed by solicitation on the part of the manager of the partnership. Applicants did not seek to comply with the law requiring a certificate for such movements until April 1931.

During the hearings conducted over 170 witnesses were examined, of which 99 were presented by applicant and 74 by protestants. About 75 witnesses' testimony was received by stipulation.

Witnesses presented by applicant were invariably persons who had used and were using the service by applicants. No witnesses not using the service of applicants or any other authorized or unauthorized service were presented to demonstrate necessity for its continuance. The testimony largely was affirmative of the service already performed and the satisfaction of those using it with the rates and efficiency. Also the bulk of the witnesses testifying for applicants used other services competitive in character and long established under authority of this Commission, particularly rail service.

The testimony of witnesses for protestants is also of users of protestant's services, that they find them adequate and efficient and the rates satisfactory and were of the opinion that

no need existed for the additional service.

To enter into details of the testimony of such a large number of witnesses, I believe, is unnecessary in this proceeding as the import of their testimony can be rather tersely stated. As a whole the witnesses for applicant were of three classes (1) the farmer shipper from the San Joaquin Valley points, (2) the wholesale shipper of merchandise from San Francisco to the points involved and (3) the shipper of commodities from the larger points of assembling in the San Joaquin Valley to Bay region points. The testimony of these witnesses ^{was} that the producer of perishable commodities required immediate shipment to the Bay cities markets and canneries and that applicants provided such transportation. This may be called a seasonal service for the transportation of farm products. Many of the witnesses testifying for applicant were the receivers of these commodities at the wholesale markets or at canneries. Other witnesses were merchants of various places who received merchandise from San Francisco wholesalers by applicants' service with dispatch and at moderate rates. The testimony was supported by that of the shipper who in most cases followed the directions of the consignee at San Joaquin Valley points. By the solicitation of the receiver of freight at one end and the shipper of freight at the other applicants developed the business which, according to Jackson's testimony, brought an income of \$100,000. for transportation service alone.

Applicants' early business for the transportation of farm products seems to have been of sporadic character of seasonal operation. When, however, competition for this volume of business became sharp applicants had to meet the rates of others and found that a one way operation could not be conducted profitably. As is usual in such matters back haul was built up to sustain the business. The back haul thus built up deprived existing carriers of a large

portion of their business to their injury and apparently did not prove highly profitable to applicants' operation as the increased business and increased revenue was almost offset by the additional cost of operation. This was the testimony of applicants' manager, C.E. Jackson.

The main question involved is whether a transportation system, for which originally a certificate is required by law, begun and built up to large proportions as a common carrier without legal authority can now be treated as one justifying the privileges it asks. There have been instances where condonation is justifiable but this does not seem to me to be in this class. The business was built up not in ignorance of the law but by systematic intrusion in the fields of those carriers who were operating within the law and obedient to regulation thereunder. While there might appear reason for condonation as to the transportation of the products of husbandry during harvesting applicants' manager, C.E. Jackson testified that the operations could not exist for such movements only, in view of the multitude of seasonal contract carriers always available for such emergencies. In other words the application must be granted in toto or not at all. To do this would be to sanction methods that now have been shown to injure other valid carriers and impair their ability to improve their services to meet all requirements. Multiplicity of carriers is not improvement unless the inadequacy is shown.

The record very clearly shows that the rail services of Southern Pacific and Santa Fe railroads are adequate; that Southern Pacific, by its subsidiary, Pacific Motor Transport, has improved service, even to store door pickup and delivery; that Santa Fe has provided the same auxiliary store door service; that Railway Express Agency, Inc. has long provided such service --- all this in communities that presented reasonable use thereof. In

addition the Commission has by its Decision No. 23949 on Application No. 16176 authorized Valley Motor Lines, Inc. to furnish additional truck service from the Bay cities to Manteca and Fresno and all intermediate points, via Modesto and Merced, and vice versa. There is also the service of Pacific Greyhound Lines between the same points for express shipments up to 100 pounds per shipment. All of these services are available to those in or adjacent to the main lines and examination of their rates as compared with those proposed by applicant shows little advantage to the shipper, except in direct pickup at field or orchard, which can be efficiently and cheaply done by local carriers. The record shows that all these carriers are trying to meet the needs of the territory which they serve and their success in doing so is materially affected by the intrusions such as applicants herein have made, particularly as to shipments other than emergency hauls of the products of husbandry in harvest time.

Therefore, I find as a fact that public convenience and necessity do not require the establishment of the service by automotive transport as proposed by applicant and that the application therefor should be denied.

O R D E R

Jackson Transportation Co. Ltd., successor to S.C. Books, E.C. Conklin, C. Hoagland, Ted Hoagland, C.E. Jackson and J.C. Russell, copartners, having made application for a certificate of public convenience and necessity authorizing the operation of a motor truck freight service between San Francisco and the East Bay cities, and Manteca, Ripon, Salida, Modesto, Ceres, Keyes, Turlock, Delhi, Livingston, Atwater, Merced, Riverbank,

Oakdale, Waterford, Empire and Hughson, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity do not require the establishment of the service proposed, and

IT IS HEREBY ORDERED that the application be and the same hereby is denied.

The foregoing Opinion and Order are 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 20th day of June 1932.

C. L. Weaver
Leon Anderson
M. A. Carr
W. B. Harris
Fred G. Stewart
COMMISSIONERS.