

Decision No. 25119

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MISENER MOTOR DRAYAGE COMPANY,
a corporation,

Complainant,

vs.

BAY CITY HAULING CO., a co-
partnership composed of Chew Chick
and Chew Gong: CHEW CHICK, CHEW
GONG, JOHN D. MAYNARD, FIRST DOE,
SECOND DOE, THIRD DOE, FOURTH DOE,
FIFTH DOE, FIRST DOE CORPORATION,
SECOND DOE CORPORATION, THIRD DOE
CORPORATION, FOURTH DOE CORPORATION
AND FIFTH DOE CORPORATION,

Defendants.

Case No. 3276.

Cedric L. Brash, for complainant.

Samuel T. Bush, for Bay City Hauling Company.

Reginald L. Vaughan and Scott Elder, for
Regulated Carriers.

CARR, Commissioner:

O P I N I O N

Misener Motor Drayage Company, a certificated carrier authorized to transport fruit, vegetables and farm produce between San Jose, Sunnyvale and vicinity and Oakland, complains of Bay City Hauling Company, alleged to be a co-partnership composed of Chew Chick and Chew Gong, the individual partners, and John D. Maynard and various fictitious named defendants, alleging that said defendants, without certification, are engaged in common carrier operations between Santa Clara, Mountain View, Sunnyvale and Cupertino and Oakland. Chew Chick and Bay City Hauling Company answered the complaint, alleging that Chew Chick

is now the sole owner of the business operated by Bay City Hauling Company, admitting the transportation of a considerable volume of produce between the section referred to and Oakland, but denying that this represented a common carrier operation.

A public hearing was had on August 18th, at which complainant asked that the complaint as against John D. Maynard be dismissed without prejudice, it appearing that counsel for Maynard, because of illness, was unable to be present at the hearing. Request was also made by the complainant that the complaint as against the fictitious named defendants be dismissed.

The facts respecting the operations of the Bay City Hauling Company (sometimes called the Bay City Hauling and Express Company) and Chew Chick, the owner of the business operated under these fictitious names, were very fully developed at the hearing. Bay City Hauling Company, under its certificated rights, had developed a substantial business between various ranches in the Santa Clara Valley and San Francisco.¹ About 1930 the complainant began to divert some of the shipments from these ranches to Oakland. In July, 1931, Edward Chew, a son of Chew Chick and manager of the business, went to the management of the Piggly Wiggly Stores in Oakland and asked for some of this concern's hauling from the Santa Clara Valley. Chew Chick was formerly a produce merchant in Oakland and apparently was favorably known among the produce dealers there. His son's appli-

1. The certificate was granted by Decision No. 8228 of date October 11, 1920, for the operation of an "automobile truck line as a contract carrier of freight for those certain producers named in said application between Sunnyvale, Mountain View, Palo Alto and San Francisco and intermediate points." Copies of contracts were required to be filed.

cation to Piggly Wiggly was favorably received and resulted in a verbal arrangement by which the Bay City Hauling Company was hired to pick up, daily except Saturday, from among the ranchers in the Santa Clara Valley produce for a part of the daily demands of the Piggly Wiggly concern. Notice of the Piggly Wiggly requirements was given each morning. Definite rates for hauling were agreed upon. In August and September following, young Chew was successful in making somewhat similar arrangements with G. Bonora Company, Western Produce Company, A. Galli Fruit Company and with the Hunt Hatch Company. These latter concerns were commission merchants, and, under the arrangements made, the Bay City Hauling Company each morning ascertained from them the amount of produce required and the same day the Hauling Company would bring in from the ranches in the Santa Clara Valley enough produce to fill their specified requirements, as well as those of the Piggly Wiggly Stores. For handling the business a 2-ton truck was leased from Western Produce Company, which truck was not operated with public service plates. Trips were made daily, except Saturday. Sometimes in season the truck was filled. The business thus secured was diverted from the complainant. There was a certain element of personal service involved, as young Chew, who personally drove the truck, saw to it that the requirements of what he termed his employers were satisfactorily filled.

A few days after the instant complaint was filed the defendant company, on the advice of its attorney, entered into written contracts with Safeway Stores, Incorporated, covering what was termed the Piggly Wiggly business, G. Bonora Company, Western Produce Company and A. Galli Fruit Company. The Hunt Hatch business was dropped at about this time. The contracts

imposed certain obligations on the defendant but little or none on the other parties. The Safeway Stores could terminate upon ten days' notice. The other contracts were each for one year but, as very frankly pointed out by young Chick, the commission houses could in effect terminate the contracts at any time by not directing any hauling.

Billings were made weekly by the defendant. On the trip back empty crates and containers were returned. No Oakland business other than that specified is desired by the defendant or will be taken.

No element of fraud, concealment or evasion appeared. Young Chick, the manager of the business, with commendable frankness, answered all questions as to its history, extent and character. It cannot be said that he intended to operate in violation of law.

The case thus presented is a border line one. Contracts and arrangements such as those here present could well be utilized as a means and device for covering up common carrier operations and thus defeat the requirements of the law for certification. However, in view of the element of personal service here present, the closely confined operations and the absence of any element of bad faith, it would seem appropriate to give to this defendant the benefit of the doubt as to the character of the operations complained of and to dismiss the complaint without prejudice to another complaint if by the nature or extent of the operations this defendant crosses the line, not always easy to draw, separating common carrier from private contract operation.

The following form of order is recommended:

O R D E R

Public hearings having been had herein,

IT IS HEREBY ORDERED that the complaint as against Chew Chick, operating under the fictitious name of Bay City Hauling Company or Bay City Hauling and Express Company be dismissed without prejudice.

IT IS FURTHER ORDERED that the complaint as against John D. Maynard also be dismissed without prejudice and as to the other named defendants be dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 29th day of August, 1932.

C. S. Shively
Leon Whitwell
M. G. Case
M. B. Karpis
Frederic G. Stewart
Commissioners.