



Smalley now operates a stage line between Jackson and Stockton over the route involved under the authority of certificate. This line carries property to the maximum weight of 100 pounds.

Giving due consideration to all the testimony presented I cannot find a satisfactory showing of affirmative need of the service as proposed. Applicant bases his estimate of business largely on the tonnage that has been transported by Bonnefoy, which Bonnefoy estimated at 1500 tons annually, or 4.8 tons per business day. While many witnesses gave estimates of their own tonnage on annual or other bases it is safe to assume from all the testimony that no greater tonnage annually is available for transportation between termini. This tonnage has moved by truck by unauthorized carriers one of whom was Bonnefoy, who is under orders to cease and desist similar service between Sacramento and Jackson (Decision No. 23748, dated June 1, 1931, Case No. 2998). There is also evidence that part of the tonnage thus accounted for came from Sacramento to Stockton and thence (via Bonnefoy) to Jackson and, strangely too, at the rate of 30 cents for the entire haul, or the same as if it originated at Stockton. The movement from Sacramento to Stockton was also made by an unauthorized truck carrier. The conclusion appears inescapable that applicant bases his estimated available business wholly on that now moving by illicit service (disguised as "contract" operation) and almost wholly to be secured by diversion from the rail carriers now serving the territory. This conclusion is supported by the testimony of Smalley that he would employ Bonnefoy at a salary of \$200. a month and that Bonnefoy's business ("contracts") would inure to the benefit of the Smalley business.

A few months before filing his application Smalley protested Application No. 17085 of A.L. Schneider and Angelo Piccardo

to establish similar freight operation. In that proceeding Smalley testified he had made a survey of freight available at Stockton for transportation to Jackson by truck and found that only an amount equal to \$13. a day revenue was available. Also that of this sum \$5. a day would be diverted from his stage line. It is difficult to reconcile this with the enlarged tonnage which Smalley estimated at \$38. a day a few months later.

The record shows that not only Bonnefoy but Arata and Walker were conducting unauthorized operations from Stockton to Jackson. The number and persistence of these operations, the record shows, has reduced rail L.C.L. tonnage to only a few hundred pounds a day. The expressed attitude of shippers was that they would use any carrier whose rates presented advantage and many of them would not use the proposed service at all. Those who might use it were already using other authorized or unauthorized services.

The application was protested by Southern Pacific Company and Amador Central Railroad, connecting carriers at Ione; by Railway Express Agency, Inc. operating over the rail lines; by Amador Stage Line, Sacramento-Jackson Stage Line (since acquired by Smalley). The last two were affected only as to service to Sutter Creek and Jackson.

The record does not present affirmative proof that the operation as proposed is required in addition to existing lawful facilities representing large investment and capable of continuing a long period of adequate service. Nor is the proffer of Smalley attended with the reassurance that, if established, his operation would be efficient or any solution of the transportation problem presented.

This problem involves the protection of the existing lawful services and is not to be solved equitably by establishing a new service. The present instrumentalities should first exhaust their ability to meet the problem by enlargements

or alteration of facilities before new operations are permitted.

I therefore find as a fact that public convenience and necessity do not require the establishment of the service as proposed and recommend that the application be denied.

The following form of order is presented:

O R D E R

John Smalley having made application to the Railroad Commission for a certificate of public convenience and necessity to operate auto truck service for the transportation of property between Stockton and Jackson, via Lockeford and Ione; 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 operations as proposed herein by applicant; and

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

The above Opinion and Order are hereby approved and adopted as the Opinion and Order of the Railroad Commission of the State of California.

The effective date of this order shall be twenty (20) days from date hereof.

Dated at San Francisco, California, this 24<sup>th</sup> day of October 1932.

C. Deane  
Leon Whitney  
M. A. C.  
M. B. L.  
Fred G. Peterson  
COMMISSIONERS.