

Decision No. 25846.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

RAILWAY EXPRESS AGENCY, INCORPORATED,
OF CALIFORNIA and RAILWAY EXPRESS
AGENCY, INCORPORATED, OF DELAWARE,
Complainants

vs.

Case No. 3344.

R. CASTAGLIO, a corporation and/or
partnership, or as an individual,
and FIRST DOE, SECOND DOE, THIRD
DOE, FOURTH DOE and FIFTH DOE, doing
business under the firm name of
R. CASTAGLIO,
Defendants.

ORIGINAL

Edward Stern and H.W. Hobbs for Complainants.

D.W. and L.B. Hone for Defendants.

BY THE COMMISSION:

O P I N I O N

By complaint filed September 13, 1932, complainants charge R. Castaglio and Marie Castaglio with unlawful common carrier operations by auto truck between Santa Rosa, Bodega, Hamlet and San Francisco and intermediate points.

Public hearings were had before Examiner Satterwhite on December 27, 1932 and on January 25, 1933 at which time the case was submitted upon briefs.

The facts developed at the hearings may be summarized as follows:

The complainants called R. Castaglio and Miss Marie Castaglio, defendants in the above named proceeding, and three or four other witnesses in support of their complaint. The evidence shows that Marie Castaglio on September 20, 1932, entered into separate written contracts with A. Paladini, Inc. and three other fish dealers at San Francisco to transport by truck the fish of these four dealers to San Francisco from Bodega Bay. The

transportation service was to be rendered for a period of one year and Miss Castaglio was to receive as compensation one cent per pound for all fish transported. These written contracts were a continuation of a truck service which she had rendered for about six months previously under verbal arrangements.

Marie Castaglio owns and personally drives a one and one-half ton Ford truck in the performance of this service and averages about six trips weekly. Defendant R. Castaglio is the father of Marie Castaglio and is a fish peddler and dealer at Santa Rosa.

The record shows that A. Paladini, Inc. and the other three fish dealers by whom Miss Castaglio is employed purchase the fish from various fishermen at Bodega Bay points and payments for the fish are made at the point of origin to the fishermen by the dealers. Miss Castaglio has no dealings whatever with the fishermen, but picks up the fish at Bodega Bay points from the different fishermen as directed by the dealers. The price of the fish is based on the market conditions and the amount paid the fishermen is based on the price at which the fish sell and no part of the transportation cost is deducted from the price. The testimony shows that, in accordance with the fish trade practice, relative to the accounts between the fish dealers and the fishermen, the fishermen are paid the market price and no deduction is made for transportation charges.

It appears that Miss Castaglio has always refused to haul for other dealers than those with whom she has contracts, save and except on one occasion when she hauled one consignment for F.E. Booth, a fish dealer at San Francisco. No evidence at all was offered by complainants to show in the slightest degree that said defendant R. Castaglio had at any time transported fish from Bodega Bay points to San Francisco for any of the San Francisco fish dealers.

Complainants contend that the written contracts made by Marie Castaglio with A. Paladini, Inc. and the other three fish dealers are a subterfuge, pure and simple, designed to make it appear that these fish dealers of San Francisco are transporting their own fish by private carrier. There is no evidence in the record to support this charge of subterfuge. The complainants called one fisherman, Nick Kogich, who testified to the effect that the defendant R. Castaglio had solicited the hauling of his fish to San Francisco with his own trucks, but R. Castaglio denied this and on the contrary testified that his daughter Marie owned and drove her own truck and that on a few occasions he had driven the truck for his daughter when she was ill. There is not one scintilla of evidence in the record to show that any of the fishermen who delivered their fish to Miss Castaglio were in collusion with her or the dealers at San Francisco for the purpose of entering into any arrangements whereby defendant could defeat regulation.

Contracts and arrangements such as those here present could well be utilized as a means and a device for covering up common carrier operations and thus defeat the requirements of the law for certification. However, in view of the facts here presented it appears equitable to dismiss the complaint without prejudice to the filing of another complaint if by the nature and extent of her operations defendant crosses the line of demarcation between a private carrier and a common carrier.

There is no evidence to justify a cease and desist order and the complaint should be dismissed.

O R D E R

A public hearing having been had,

IT IS HEREBY ORDERED that the above entitled complaint
be and the same is hereby dismissed without prejudice.

Dated at San Francisco, California, this 17th day of
April, 1933.

W. J. Curran
Leon Overider
W. J. Curran
M. B. Harris
W. J. Curran
Commissioners.