

ORIGINAL

Decision No. 25831

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of ALFRED R. KELLY, JR., operating under the fictitious name and style of REDWOOD MOTOR FREIGHT, for a certificate of public convenience and necessity to operate an automotive trucking line. ) Application No. 18247

Reginald L. Vaughan for applicant,

E. W. Hobbs for protestants Northwestern Pacific Railroad Company and Pacific Motor Transport Company.

Edward Stern for protestant Railway Express Agency, Inc.

BY THE COMMISSION:

O P I N I O N

This is an application of Alfred R. Kelly, Jr., operating under the name and style of Redwood Motor Freight, for a certificate of public convenience and necessity authorizing him to operate an automotive trucking line for the transportation of all classes of freight between San Francisco, Petaluma, Santa Rosa and Willits, on the one hand, and Garberville and intermediate points of Longvale, Laytonville, Cummings, Piercey, Hartsook and Benbow, on the other hand. The fares and rates proposed to be charged and the service proposed to be rendered are shown in Paragraph No. 6, as amended, and Paragraph 7 of the original application.

Public hearings were held in the above entitled matter on September 22, 1932, in San Francisco; December 20 and 21, 1932, at Garberville; December 22, 1932, at Willits; and March 7, 8 and 13, 1933, at San Francisco.

At the first hearing held in San Francisco, the applicant demonstrated his ability to perform the service requested, both from a financial and operative standpoint and further proved that he could secure a large volume of traffic and operate for a fair profit in the event such certificate was granted. The applicant having shown the necessary financial ability to carry out the proposed operations and his willingness to purchase suitable and adequate equipment, the hearing was then adjourned to the Redwood Highway to hear witnesses on behalf of the public.

At the two days' hearing at Garberville, a large number of witnesses were called who represented practically all resorts located on the Redwood Highway between Willits and Garberville and a majority of the merchants and shippers of Garberville. These witnesses indubitably proved that there is an urgent need for a common carrier truck service such as is proposed by applicant for the transportation of all kinds and classes of freight between the points above mentioned. It was proved that there is no existing certificated truck line between San Francisco and any of the points involved. It was proved, without any evidence to the contrary, that the existing truck service between San Francisco, Petaluma, Santa Rosa and Willits on the one hand, and Garberville and the intermediate points above mentioned on the other hand, is being operated by illegal truck operators who are not subject to regulation by this Commission. It was demonstrated at these hearings, as well as at the hearing at Willits on the day following, that the present service, both by illegal truck operators and by the single certificated carrier who had been operating between Willits and Garberville, is irresponsible and irregular; and it was demonstrated that the class of traffic being transported by such illegal operators and irregular operators should be transported by a responsible certificated operator.

It was further proven and demonstrated that the truck service between Willits and Garberville and intermediate points is inadequate, insufficient, irregular, dilatory and inefficient, and does not meet the requirements of the shipping public in that territory, namely along the Redwood Highway between Willits and Garberville.

It was demonstrated at the Garberville and Willits hearings that the Railway Express Agency and the Northwestern Pacific Railroad did not furnish a useful service for the people located on the Redwood Highway off of the railway line. Most of the witnesses had never used the Railway Express service and few of them had used the Northwestern Pacific Railway for the transportation of freight or express north of Willits. The Northwestern Pacific along this route is located many miles from the Redwood Highway and the lateral highways connecting therewith are not in good condition nor are they paved routes nor maintainable in the winter season. The people living between Willits and Garberville must depend upon truck service for all kinds of transportation needs as they are well off the line of railway and yet located on one of the finest highways in California built and maintained at great expense by the state. These people who have not been rendered service by the Northwestern Pacific from 1915 to 1933, nor by the Railway Express Agency during that time, can not be expected to depart from the well known modern means of transportation upon highly improved highways and give that service to the Railway Company which has been greatly decreasing its service and would have to operate by means of a feeder truck line after a delay and inconvenience of transfer at the original terminal at Willits. Although protestants herein laid great stress upon the contention that this Commission should do everything possible to maintain the Northwestern Pacific Railroad in furnishing service to the north coast by not allowing them to lose any business on their feeder lines, yet it is impossible for this Commission to compel

people to revert to a less adequate and sufficient service after they have become accustomed to a suitable and adequate service furnished over high-speed highways maintained by the state.

The witnesses introduced by the protestants at Willits were merchants of Willits dependent upon railroad trains, who were fearful that the operation of any more trucks would stop the running of the railroad. But it should not be forgotten that these resorts and the people living in and around Garberville have been dependent upon trucks for the last 10 or 15 years and that they will still be dependent upon them whether they have to patronize illegal operators or operate a system of trucks themselves, as contended by some. It would be far better, as testified to in this case, to have a certificated operator under the regulation of this Commission carrying the Redwood Highway business along this route than to have the present chaotic condition of affairs there.

A great deal of testimony was introduced by the protestants and a large amount of time consumed in cross-examination in endeavoring to show that the business emanating from San Francisco and going to points north of Willits as far as Garberville would not produce a reasonable profit, or any profit at all, to a carrier such as Kelly. On the other hand, the protestants endeavored to prove that the deprivation of this little business between Willits and Garberville would cause the Northwestern Pacific Railroad Company to consider the abandonment of their entire service. In fact, in all the exhibits introduced herein, both as to the amount of business transacted by the railroad company and the probable amount of business that is carried over this route, the disparagement seems so great that the relationship between the two requires the greatest exercise of the imagination.

It is probable that the testimony of Mr. Geary, Superintendent of the Railroad, as to past and contemplated abandonment of branch lines, would be more pertinent to an inquiry by the Interstate Commerce Commission or a hearing before the new Federal Consolidation Board than on this application. The same is probably true of the testimony of the merchant witnesses at Willits who were fearful of their northern neighbors depriving them of railway service. The testimony of Willits citizens was strongly objected to by the applicant's attorneys as being irrelevant to this inquiry since they were not expecting to be served in any way by the applicant herein. Such testimony should probably have been ruled out the same as testimony that was offered by the Pacific Motor Transport Company that they were now furnishing, since February 10, 1933, some similar service without any application or certificate being obtained from this Commission.

It is our opinion that the application should be granted, except as to Longvale which is a non-agency station of the Northwestern Pacific Railroad.

Alfred R. Kelly, Jr., is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

#### O R D E R

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY  
DECLARES that public convenience and necessity require the operation

by Alfred R. Kelly, Jr. of an automotive passenger stage service for the transportation of all classes of freight between San Francisco, Petaluma, Santa Rosa and Willits, on the one hand, and Garberville and intermediate points of Laytonville, Cummings, Piercey, Hartsook and Benbow, on the other hand, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such a service be, and the same hereby is granted to Alfred R. Kelly, Jr. subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant shall file in triplicate and make effective within a period of not to exceed thirty (30) days from the date hereof, on not less than ten days' notice to the Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the application in so far as they conform to the certificate herein granted.
3. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from date hereof, on not less than five (5) days' notice to the Commission and the public, time schedules, according to form provided in General Order No. 83, covering the service herein authorized, in a form satisfactory to the Railroad Commission.
4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.
5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order

shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 10<sup>th</sup> day of May, 1933.

W. J. Seaver  
Leon C. ...  
M. J. ...  
M. B. ...  
W. H. ...  
Commissioners.