

Decision No. 10369

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
LESTER-HUBERT COMPANY for certificate
of public convenience and necessity
to operate motor truck service between
Gilroy and San Francisco. } Application No. 6102.

Sidney S. Johnson, for Applicant.

L. N. Bradshaw, for Southern Pacific
Company, Protestant.

John Kelly, for American Railway Ex-
press Company, Protestant.

BY THE COMMISSION:

OPINION

C. C. Lester, J. J. Hubert and John Fortado, doing business under the name of Lester-Hubert Company, have petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by them of an automobile truck service as a contract carrier of through freight between Gilroy and San Francisco.

A public hearing on this application was conducted before Examiner Satterwhite at Gilroy, the matter was submitted and is now ready for decision.

Applicants propose to charge rates and to operate one round trip a week, in accordance with Exhibits A and B, attached to said application, and to use the equipment described in Exhibit C, attached to said application.

The Southern Pacific Company and the American Railway Express Company opposed the granting of this application.

Applicants have conducted for some time a motor drayage business in, and in the vicinity of, Gilroy. The application at the time of its filing alleged that applicants were under contract with two cheese factories at Gilroy to transport their output to San Francisco, and also were under contract with four other mercantile firms at Gilroy to transport for them goods, wares and merchandise from San Francisco at least once a week.

The testimony shows that applicants, about a year and a half ago, commenced this service by transporting to San Francisco the cheese manufactured by these two Gilroy factories and by hauling from San Francisco various supplies for the Gilroy merchants mentioned in the application. Applicants have operated a pick-up and delivery service in connection with their operations, and it has been their practice to call on these Gilroy merchants, get their orders and purchase from San Francisco firms the supplies needed and thereby make their return haul profitable. At the hearing of this proceeding applicants presented in evidence other contracts, making now a total of nineteen which they have entered into with various Gilroy merchants and business men, agreeing to transport their goods and merchandise as freight in both directions between Gilroy and San Francisco. It appears that the north haul from Gilroy consists chiefly of the cheese from the above-mentioned factories, and that the return haul consists primarily of the supplies hauled from San Francisco to the Gilroy merchants. The record shows

that all of the contracts which applicants have entered into are solely with the larger and leading merchants of Gilroy. There are many other small merchants engaged in business at Gilroy, but applicants hold no contracts with any of them and have no desire to extend their operations in order to serve other merchants or business men of Gilroy, save and except the nineteen with whom they hold contracts.

This Commission has recently expressed its views and laid down certain principles in other applications similar to the present one under consideration, and in its Decision No. 9903, on Application No. 7186, the Commission said:

"A misapprehension seems to have arisen as to the intent of the amendment to the statute at the 1919 session of the legislature. It seems to be assumed that the intent was to provide, in addition to regulation of common carriers, regulation of a class which has come to be known as 'contract carriers,' operating under contracts for the carriage of goods, even though these contracts might, for illustration, be discriminatory in terms as between different contract shippers, or might result in limiting carrier's facilities to present equipment or to operation at his convenience, or enable him to confine his service to a limited selected class, thus discriminating between shippers, or in other manner to restrict the nature and therefore the value of his service to the community; and that all that is necessary to procure authority to act as a contract carrier is to procure and present such contracts. We are satisfied that such was not the intent of the legislature, but rather to extend the regulatory powers of this Commission by the amendment, to all those 'engaged in the business of transportation of persons or property over any public highway in this state between fixed termini, or over regular routes not operating exclusively within the limits of incorporated cities or towns,' but excepting taxicabs, hotel busses or sightseeing busses. Public necessity and convenience rather than the private convenience or benefit of the carrier or shipper must still be shown. The method of proof is not changed by the amendment.

"It has not yet been found necessary in the course of such regulation to separate into classes those placed by the legislature under the Commission's jurisdiction. Those desiring to carry special commodities, such as milk, and those desiring to engage in seasonal operations, such as carriage of fruits, can be authorized to operate as common carriers of those commodities under appropriate limitations or conditions."

Also, in its Decision No. 10065, on Application No. 7440, this Commission said:

"In previous decisions this Commission has expressed the opinion that the establishment of a so-called contract hauler is not in the public interest in that such a transportation concern may then limit its service to such shippers as it desires to contract with. The establishment of such a class of haulers would permit an operator to contract and haul only for the larger and more profitable shippers in a given district and would permit him to refuse to contract or refuse to accept shipments from the smaller and less profitable shippers."

It is very clear, therefore, that the proposed service of these applicants as a contract carrier only for the merchants and business men named in the contracts presented in this proceeding fall squarely within the doctrine established by the foregoing decisions.

If applicants are of the opinion that the public necessity and convenience require the operation of their service as a common carrier of goods, wares and merchandise between Cilroy and San Francisco, it is suggested that they file, if they so desire, such an application with this Commission, which application will be given full and careful consideration.

Applicants admitted at the hearing that they had commenced their proposed operations as a contract carrier and had conducted them without securing any authority from this Commission, which of course is an unlawful operation, and we

suggest that immediately upon the receipt of this order such operations be discontinued. We are of the opinion that said application must be denied.

ORDER

A public hearing on the above entitled matter having been held, the matter being submitted and being ready now for decision,

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

Dated at San Francisco, California, this 23th day of April, 1922.

A. W. Prudig

Irving Martin

A. W. Prudig
Commissioners.