

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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Petaluma & Santa Rosa Railway Co.,
a corporation,

Complainant,

vs.

Paris P. Lawson, Frank G. McSherry
and San Rafael Freight & Transfer
Company,

Defendants.

Case No. 1601.

ORIGINAL

Northwestern Pacific Railroad
Company, a corporation,

Complainant,

vs.

Paris P. Lawson, Frank G. McSherry
and San Rafael Freight & Transfer
Company,

Defendants.

Case No. 1608.

BY THE COMMISSION:

Geary & Geary, by Donald Geary, T. J. Geary,
and A. H. Maggard, Attorneys for Complain-
ant in Case No. 1601.

J. J. Geary, Attorney for Complainant in
Case No. 1608.

Sanborn & Roehl, by A. B. Roehl, Attorneys
for San Rafael Freight & Transfer Co.

S. S. Knight, Attorney for Petaluma Grange,
Sebastopol Grange, Bellevue Grange, Poultry
Keepers' Association, the Poultry Producers
of Central California, and Sonoma County
Farm Bureau.

Fred Martin, Attorney for Petaluma Chamber of
Commerce, Sebastopol Chamber of Commerce,
and Santa Rosa Chamber of Commerce.

Sheridan W. Baker, President of Sonoma County
Farm Bureau.

C. A. Bodwell, Master of the Petaluma Grange.

O P I N I O N

On April 16, 1920, Paris P. Lawson, filed an application
(No. 5581) with the Railroad Commission asking permission to
establish service for the transportation of light freight, express
and parcels by auto truck between Sausalito and Santa Rosa and all
intermediate points. At the hearing on this application, represen-

tatives of the American Railway Express Company and the Northwestern Pacific Railroad Company were present and offered no objection to the form of service proposed to be carried on by Lawson as described in his application. On June 8, 1920, the application was granted. (Dec. No. 7694) The order of the Commission granting such application contained the following language:

"The Railroad Commission hereby declares that public convenience and necessity require the operation by Paris P. Lawson, of an automobile express service as a common carrier of express and light freight between Santa Rosa and Sausalito and intermediate points."

On December 8, 1920, the Railroad Commission authorized the transfer by said Paris P. Lawson of such operative rights as were covered by said certificate to F. J. McSherry. (App. No. 6351, Dec. No. 8422).

On May 2, 1921, said F. J. McSherry made application to the Commission (No. 6665) for permission to transfer such operative rights as he possessed by virtue of said certificate to the San Rafael Freight & Transfer Company. A public hearing was held on this application and the Northwestern Pacific Railroad Company, and the Petaluma & Santa Rosa Railway Company appeared and protested against the transfer. The protest of these railroads was based on the alleged facts that the original certificate of Lawson was intended to permit only the transportation of newspapers, small parcels or packages and some dairy products, whereas, McSherry was carrying freight of every description. Protestants sought to have the original certificate amended or modified and the term "light freight" defined as meaning newspapers, parcels and dairy products. The application to transfer the operative rights from McSherry to the San Rafael Company was granted and in the Commission's decision

(No. 9126) the following statement was made.

"The contentions of protestants have no status in this proceeding the protests of the Northwestern Pacific Railroad Company and the Petaluma & Santa Rosa Railway Company being matters to be properly brought before the Commission by formal complaint or petition for a re-opening of the proceedings in application No. 5581."

On May 14th and May 24th, 1921, respectively, formal complaints were filed by the Petaluma & Santa Rosa Railway Company and the Northwestern Pacific Railroad Company, asking that the original permit granted to Paris P. Lawson, in response to Application No. 5581, be amended to permit only the operation of an "express and parcel delivery" service as contemplated in that application and as intended by the Commission when the permit was issued. It was also asked that the term "express and parcel delivery" be defined as to weight and size of parcels and express packages to be handled. On July 11, and August 17, 1921, respectively, the said complaints were amended and on September 19th the cases were consolidated for hearing before Examiner Geary at Santa Rosa.

Before it can be determined whether plaintiffs are entitled to the relief they ask or to any relief, we think it must first be determined what was meant by the term "light freight" in the original certificate issued to Lawson and now held by the San Rafael Company. This can only be determined by an inspection of the pleadings and records in Application 5581. We believe that when doubt or uncertainty exists as to the meaning of a previous decision or order, the Commission may consult the pleadings and records in the proceeding to enable it to settle the doubt. Certainly where a complaint is made specifically asking that a previous order be changed or amended to show its true meaning the Commission may consult the record on which the order thus assailed was predicated.

In the original application of Paris P. Lawson for a certificate, the following statement appeared:

"The petitioner proposes to take light freight and express and parcels to be delivered at points along the road as above set forth and along the route proposed herein. No other transportation company will handle the work proposed to be done along the line, between the points herein named".

At the hearing of this application, Mr. Lawson testified as follows: (Transcript, Appl. 5581, p. 3)

"I propose to carry express and light packages, such as express packages, where you take an order, they give you an order and you fill it along the road at those places as you come to, and fill it."

The representatives of the American Railway Express Company and the Northwestern Pacific Railroad Company were present at this hearing and after Mr. Lawson had stated the kind of service he intended to engage in, the following statements were made: (Transcript, Appl. 5581, p. 10)

"Mr. Rogers: (Attorney for American Railway Express Company) Mr. Commissioner, the American Railway Express Company take no exception to the service. It is a service that we do not give to any extent. As I understand, it is simply a parcel delivery in this particular territory."

Mr. Maggard: (General Manager of the Petaluma & Santa Rosa Railway, Transcript, Appl. 5581, p. 15) I would like to ask the Commission if the application could be confined to parcel delivery service, excluding express, the term 'express'? The idea of that is this, that if this application should be granted and limited whereby the service can not be extended, and the franchise cannot be transferred or disposed of for a different kind of service without another hearing before the Commission.

EXAMINER GEARY: Mr. Maggard, the application simply requests authority to transport small articles, expressage.

MR. W. F. GEARY: (Attorney for the Petaluma & Santa Rosa Railway) What you mean is, if the application were granted for the limited purpose, permitting him to handle the nature of packages that he has testified he is now handling, and without increasing his equipment or increasing his schedule, and giving him, -- limiting and preventing the transfer of the franchise, such a limited franchise as the Commission might grant him, you would have no objection?

A. That is the point.

EXAMINER GEARY: Well, Mr. Geary, the application is limited to just that thing, to express packages.

MR. W. F. GEARY: Right here, for instance, this is the point, Mr. Examiner, that the Company he runs run one round trip a day at a time when the company that I represent and Mr. Maggard is interested in does not render service. He should not, however, without having to apply for a new permit, be enabled to increase his business so as to put on additional carriers and operate an extended schedule; then we would object.

EXAMINER GEARY: Well, that cannot be done without making a new application, unless more business is developed, more express business.

THE WITNESS: In other words, then, Mr. Examiner, this application might be limited to the schedule shown there, and made non-transferable, without another formal hearing and we could then make our objections.

EXAMINER GEARY: Well, those conditions are incorporated in every order of the Commission, they cannot be transferred unless on a formal order of the Commission."

In the order of the Commission granting Mr. Lawson the certificate for which he asked, the following statements appear:

"It is not the intention of applicant to change the character of the business being done, but rather to place the operations within the law and by tariff publication establish fixed rates to be collected for the service performed which appears to be nothing more nor less than the delivery of newspapers and small packages of merchandise, ice cream and dairy products.

"The Northwestern Pacific Railway, Petaluma & Santa Rosa Railway, and the American Railway Express entered appearances, but introduced no testimony in opposition to the application, it being the general opinion that Mr. Lawson's service did not sufficiently interfere with any business which was or could be handled by the regularly established transportation companies.

"After consideration of the evidence in this proceeding, we are of the opinion that there is a public convenience and necessity for the operation by Paris P. Lawson of an automobile express and parcel delivery service between Santa Rosa, and Sausalito and the intermediate points."

It will be seen from the above that Mr. Lawson himself intended to carry on an express and parcel delivery service and that all the parties to the hearing understood that that was the nature of the business. The Commission then defined in the opinion the service which Mr. Lawson was to be permitted to carry on and described it as an "automobile express and parcel delivery service". Only when it came to the order itself did the Commission use the expression "express and light freight".

In view of these facts, we think it is entirely clear that the terms "express and light freight" were intended to mean the same as the terms "express and parcel delivery" which were used in the opinion of the Commission preceding the order itself.

When Mr. Lawson obtained his certificate he was operating a one-ton truck with a thousand pound trailer. (Transcript Appl. 5581, p. 6). At the hearing on the complaint now under consideration, Mr. Marks, Managing partner of the San Rafael Freight & Transfer Company, testified that the company had three two-ton trucks, one two and one-half-ton truck, besides a Ford that was supposed to carry two tons under a big load and a one-half-ton truck. (p.10) Mr. Marks also testified that they were hauling everything they could get, including groceries, vegetables, provisions of all kinds, and that they placed no limit upon the weight of articles which they carried, except that they had not had anything except one-man loads. It was also shown in the evidence that the San Rafael Freight & Transfer Company was hauling regularly large quantities of chickens. These chickens were packed in crates or coops $4\frac{1}{2}$ feet long and 18 inches high and 30 inches across, weighing from 200 to 250 pounds. It was shown that for loads of this character, an extra man was used to assist in the loading and unloading of the chicken coops.

From this evidence we are satisfied that the defendant is exceeding the rights granted to its predecessor, Paris P. Lawson, to operate an automobile express and parcel delivery service.

The rights which the San Rafael Company now possess, by reason of its certificate are, of course, identical with those originally granted to Paris P. Lawson. The permit granted to Lawson authorized, as we have said, only an express and parcel delivery service. Regardless of what the San Rafael Company may

have believed it was acquiring, it actually acquired only this limited right possessed by Lawson, and later by McSherry.

We do not believe it can be said that the San Rafael Company is an innocent purchaser and has parted with a valuable consideration which will, in part, be taken away from it if its operations are now limited to express and parcel delivery. The San Rafael Company must be presumed to have known what the order granting Lawson permission to operate his service provided for. Although the order does use the somewhat indefinite expression, "light freight", the opinion of which it is part, and upon which the order is based, gives a clear indication of the nature of this permit. It describes the operation Lawson was previously carrying on; states that it is not the intention of applicant to change his existing service but to make it lawful by obtaining a certificate and filing tariffs, etc., and declares that the service is "no more nor less than the delivery of newspapers and small packages of merchandise, ice cream and dairy products". It is then stated that public convenience and necessity require "an express and parcel delivery service". We think this description of the right actually granted by the order was sufficiently clear to advise the defendant what it was acquiring when it obtained the operative right from McSherry.

Aside from this presumption, it appears that the San Rafael Company had actual notice of the facts that the complainants here contested the right of McSherry and would contest its right to operate more than an express and parcel delivery service. The transfer from McSherry to the San Rafael Company, was not, and could not have been consummated until the Commission made its order authorizing such transfer. Any negotiations had between the parties looking to a transfer could only have been contingent on final approval by the Commission. Final approval was not given until June 21, 1921. A hearing on the application to make the transfer was had May 3, 1921. At this hearing both

present complainants were represented and the question of the meaning of the term "light freight" was discussed. The order granting the original permit to Lawson was read in full by the attorney for the Santa Rosa & Petaluma Railway Company and it was pointed out that the term "light freight" could only mean small packages of merchandise, newspapers, ice cream and dairy products as described in the opinion. (Transcript, Appl. 6665, p. 46). This occurred a month and eighteen days before the San Rafael Company actually acquired the operative rights here in question. In no sense, therefore, can that company be considered an innocent purchaser.

If the San Rafael Company actually believed that it was getting a greater right than that described in the original Lawson order, it made the deal with full knowledge that the construction of that order which it contended for, would be attacked, and that complaints would be filed by the present complainants against which it would be called upon to defend itself.

Section 64 of the Public Utilities Act authorizes the Commission at any time, upon notice to the utility, and after hearing, to rescind, alter or modify any order or decision. The defendant herein has had notice and a hearing has been held. We are of the opinion that the original order should be modified for the purpose of correctly and clearly defining the nature of the permit as described in the opinion preceding such order. In modifying this order, we are neither adding to or taking away from the operative rights granted originally to Lawson and now held by defendant, but are simply making clear what is meant by the term "light freight" as used in said order and restricting defendant to the operative rights as originally granted.

In defining the operative rights ^{we are} of the opinion that there should be a weight limit upon packages. In the evidence taken

at the original Lawson hearing, it appears that Lawson was then carrying articles which weighed 50 or 60 pounds. There is nothing to show that he ever hauled anything of greater weight. We think 60 pounds is the proper limit for single articles of package merchandise.

It was alleged in the complaint that defendant was substituting other freight terminals for those named in the certificate and was ~~was~~ extending its service to new territory not described in said certificate. We think the evidence did not establish the truth of these contentions and no order will be made respecting them.

O R D E R

For the reasons above set forth:

IT IS HEREBY ORDERED that the order in Decision No. 7694, Application No. 5581, dated June 8, 1920, be amended and modified by adding to it the following:

The terms "express and light freight" as used in this order shall be deemed to mean; newspapers, ice cream, dairy products, and package merchandise. No single article termed "package merchandise" shall have a weight in excess of 60 pounds.

IT IS HEREBY FURTHER ORDERED that the San Rafael Freight and Transfer Company shall carry on its operations as a transportation Company in conformance with the terms of Decision No. 7694, as modified herein.

Dated at San Francisco, California, this 14th day of June, 1922.

H. B. Brundage
Chairman
Charles J. Lawrence

Commissioners