

Decision No. 10976

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
BENJ. TONINI and E. L. McCONNEL for
an order authorizing a transfer of
right, permit and franchise to trans-
port passengers and freight between
San Luis Obispo and San Simeon, and
intermediate points, all in San Luis
Obispo County.

Application No. 8003.

S. V. Wright for Benj. Tonini and E. L.
McConnel, Applicants.

Albert Nelson for Cambria Truck Company
and Coast Truck Company.

M. A. Fitzgerald for Cambria Stage Line.

BY THE COMMISSION.

O P I N I O N

In the above entitled application, Benjamin Tonini asks permission to transfer to E. L. McConnel for a consideration of \$50.00 a certificate granted him on October 28, 1919, to operate a passenger and freight service between San Luis Obispo and San Simeon in San Luis Obispo County, serving as intermediate points, and in the order named, Morro, Cayucos and Cambria. San Simeon is a community of about 30 persons, and is located 10 miles beyond Cambria. Tonini has been carrying the United States mail over this route for some years. Since the expiration of the mail contract on June 30, 1922, and pending our decision on the

transfer, Mr. McConnel has been operating for Tonini under a power of attorney.

The transfer was opposed by Henry Minetti operating the Coast Truck Company between San Luis Obispo and Cayucos under authority of this Commission granted about two years ago, and under which decision he is not permitted to handle freight to or from Morro. The application was also opposed by Fillipponi and Maggoria who operate the Cambria Truck Company between San Luis Obispo and Cambria. D. S. Roza, who operates a passenger automobile line between San Luis Obispo and Cambria, also opposed the transfer.

On September 20, 1918, Tonini filed with us an application for a certificate of public convenience and necessity to operate passenger and freight service between San Luis Obispo and San Simeon, stating that the mail contract was about to expire and that the government would be at a disadvantage in making a new contract if the mail operator could not also carry passengers. An exhibit submitted with the application showed that "Packages and excess baggage" would be carried at a rate of one cent per pound, minimum charge of 25 cents to Cambria, etc. Our decision in that proceeding showed that Tonini possessed the mail contract over the route in question and "desires to transport such freight and passenger traffic as may be offered at the time the mail stage is scheduled to leave the respective terminals."

When Tonini began operating, he used in the service a Ford car with a delivery body. Some months thereafter, he purchased a Packard car, which was later remodeled by removing the back seat. This change was necessary in order to make room for the increasing volume of mail. The record shows clearly that since securing the certificate Tonini has transported only such

passengers and light freight as could be conveniently handled along with the mail, and that his service to the public was merely incidental to the mail contract. If more than two passengers presented themselves for a given trip, it was the practice of Tonini to turn the extra passengers over to the Cambria Stage Line. At times the mail was so heavy that he declined to handle either freight or passengers. During the three months prior to July 1, 1922, Tonini, because of the large quantities of mail, was compelled to refuse all packages except some bread and a few small packages for the stores. It is said the passenger traffic has also declined because of the number of automobiles owned by people along the route.

Upon the expiration of the mail contract on June 30, 1922, Tonini himself ceased operations. Since that date, McConnell, under a power of attorney from Tonini, has been operating a Cadillac touring car over the route and upon a more frequent schedule than that operated by Tonini. The "freight" business handled by him has consisted of perishable goods, small machine parts and merchandise requiring prompt delivery. The record makes it clear that Tonini has regarded the passenger and package traffic only as an incident to the mail contract and that at no time has he attempted to render service as a common carrier of freight or passengers as that term is ordinarily used. Having secured the mail contract, he came to us for a certificate of public convenience and necessity to operate a passenger and freight service. The certificate secured, he accepted such package freight as could be piled on top of the mail, which ordinarily filled the body of the car, and sometimes had to be strapped to the running boards. He accepted only such passengers as could be accommodated on the seat beside the driver or who were willing to ride on top of the sacks of mail. No effort was made to

accommodate the public by putting on such additional facilities as might be necessary to properly handle passengers and freight. Although operating under a certificate of public convenience and necessity, the service to the public was subordinated to the carrying of the mail and his operations have not been conducted as a common carrier of passengers and freight, as provided in our order of October 28, 1919. Indeed, so far as the public is concerned, he may be said to have abandoned the line three months prior to the expiration of the mail contract when the volume of mail became so heavy as to make it necessary for him to decline to receive passengers or freight. The operations of McConnel since July 1 have not cured this situation.

The Cambria Stage Line makes two round trips a day between San Luis Obispo and Cambria; the Cambria Truck Company operates on Tuesdays, Thursdays and Saturdays, except during the summer months when daily trips are made. The equipment of these two lines and of the Coast Truck Company is sufficient to take care of all the traffic, both passenger and freight, between San Luis Obispo, Cambria and intermediate points. No one of the three lines named is authorized to operate to San Simeon. The record, however, shows that the proprietor of the Cambria Stage Line has made it a practice to transport passengers between Cambria and San Simeon, a service that is illegally performed and should be immediately discontinued.

We conclude and find that Mr. Tonini has not, in fact, been operating as a common carrier of passengers and freight between San Luis Obispo and San Simeon under the certificate granted him on October 28, 1919, and it is recommended that the order granting said certificate be revoked because of his failure to render service, particularly during the three months prior to July 1, 1922.

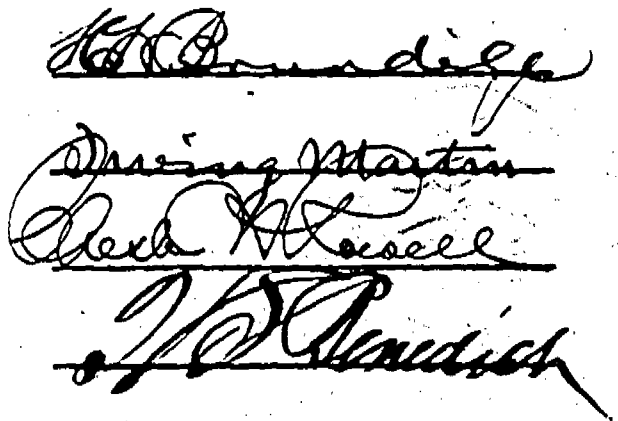
Permission to transfer the certificate will, therefore, be denied.

ORDER

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

IT IS HEREBY ORDERED that the application of Benjamin Tonini to transfer to E. L. McConnell a certificate granted him on October 28, 1919, to operate a passenger and freight service between San Luis Obispo and San Simeon, San Luis Obispo County, be and it is hereby denied.

Dated at San Francisco, California, this 9th day of September, 1922.



Commissioners.