

Decision No. 11103

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

In the Matter of the Application of Mark R. Monzie and Samuel G. Teter, co-partners, operating under the fictitious name of Owners Transportation Company, to sell, and H.E. Holmes and Philbrook W. Holmes, copartners, to purchase, an automotive freight line operating between San Francisco-San Jose and intermediate points; between San Jose and Campbell and between San Jose and Agnew.

APPLICATION NO. 8239.

In the Matter of the Investigation on this Commission's own motion of the operative rights held by Mark R. Monzie and Samuel G. Teter, co-partners, under the fictitious name of Owners Transportation Company, to operate automotive freight service between San Francisco-San Jose and intermediate points; San Jose and Campbell, and San Jose and Agnew.

CASE NO. 1810.

Louis V. Crowley, for applicants in Application No. 8239
Don W. Richards, for creditors of Samuel G. Teter.
E. M. Bradshaw, for Southern Pacific Company, Protestant.
Theo. Hart and James Moore, Jr., for Western Pacific Railroad Company, Protestant.
James E. McCurdy, for Highway Transport Company, Protestant.
Walter H. Robinson, for Pioneer-Gibson Express, Protestant.
Samuel G. Teter. In propria persona in Case No. 1810.

BY THE COMMISSION:

O P I N I O N

The two proceedings entitled as above were, by stipulation of counsel, consolidated for hearing and decision. The evidence and testimony submitted will be considered as applying to

both proceedings, the issues being joined and involving the same adjustment.

Application No. 8239 seeks authority to transfer the operative rights held by Mark R. Monzie and Samuel G. Teter, copartners, operating under the fictitious name of the Owners Transportation Company, to Henry E. Holmes and Philbrook W. Holmes, as purchasers, of the automobile truck service between San Francisco, San Jose and intermediate points, as per Decision No. 7959, Application No. 5812, August 5, 1920; between San Jose and Campbell, and between San Jose and Agnew, authorized by Decision No. 8280, Application No. 6040, October 25, 1920.

The application to transfer is signed by only one of the copartners, S.G. Teter. There is attached to the application, however, a sworn statement signed by H.E. Holmes, one of the purchasers, to the effect that Mark R. Monzie had personally stated that for some time past he had not had any interest in the freight line and for such reason would not sign the application to the Railroad Commission asking for a transfer of the operative rights.

Case No. 1810 is a proceeding on the Commission's own initiative, directed against Mark R. Monzie and Samuel G. Teter, copartners, doing business under the fictitious name of Owners Transportation Company, to show cause why the operative rights granted to said copartnership under Decisions Nos. 7959 and 8280 should not be revoked and annulled.

A public hearing was held in the above entitled proceeding before Examiner Geary on October 2, 1922, at San Francisco, at which time the matters were submitted and they are now ready for decision.

The testimony of Samuel G. Teter in Application No. 8239 was that the copartnership had not been dissolved, but was still in effect, although the testimony clearly indicated that to all intents

and purposes Mark R. Monzie withdrew from active participation in the operation of the truck line shortly after October 25, 1920, when a certificate was issued in Application No. 6040 to operate between San Jose and Campbell and between San Jose and Agnew. Subsequent to October, 1920 Mr. Teter was the sole manager of the property, but there having been no legal dissolution of the copartnership, Mr. Teter continued to treat Mr. Monzie as a copartner.

On or about August 1, 1922, Samuel G. Teter became insolvent and on that date, without authority or notice to the Railroad Commission, abandoned all service, closed his terminal stations and refused to further accept or transport any tonnage. Furthermore, the said Samuel G. Teter during the operation of the service permitted owners of automobile trucks sold on time payments to operate under the certificate issued to the copartnership on a percentage basis, this action being in direct violation of the rules and regulations issued by the Railroad Commission for the operation of automobile truck companies under the provisions of Chapter 213, Statutes 1917 and as amended.

Subsequent to abandonment of the service by the Owners Transportation Company, Henry B. Holmes, one of the applicants to purchase (Application No. 8259) undertook the operation of the line and did, on occasions, operate a service presumably as the agent of Samuel G. Teter, although testimony was offered to the effect that at no time was any accounting whatsoever made to said Teter either as an individual or as a member of the copartnership, nor was any demand made by the copartnership or individual members thereof for an accounting of the funds derived from the transportation of freight moved under the direction of Holmes.

It further appears that said operations by Holmes were conducted for several weeks at a loss, but at no time did the copartnership or the individual members thereof agree to reimburse

him for the losses incurred, nor did it appear that there was any understanding whatsoever that if a profit was earned from said operation it would revert to the copartnership holding the certificate.

Attention should be called to the fact that the Commission's order, Case 1810, directed Mark R. Monzie and Samuel G. Teter to appear before the Railroad Commission and show cause why the certificates heretofore issued to them should not be revoked and annulled.

A certified copy of said order to show cause was served upon Mark R. Monzie by registered mail, but the said Monzie failed to appear or to present any evidence whatsoever, why the certificates heretofore issued to the joint copartnership of which he was a member should not be revoked and annulled.

As heretofore stated, the petition in Application No. 8239 to transfer from Monzie and Teter (Owners Transportation Company) to H.E. Holmes and Philbrook W. Holmes was signed only by S. G. Teter, the remaining partner, Mark R. Monzie, refusing to sign the petition for the sale of the property.

We believe that to authorize the transfer of property belonging to a copartnership without the consent of both partners thereto would be in violation of Section 2450 of the Civil Code of California, which section of the Code provides:

"A partner, as such, has not authority to do any of the following acts, unless his co-partners have wholly abandoned the business to him, or are incapable of acting:

1. To make an assignment of the partnership property or any portion thereof to a creditor, or to a third person in trust for the benefit of a creditor or of all creditors;
2. To dispose of the good-will of the business;
3. To dispose of the whole of the partnership property at once, unless it consists entirely of merchandise."

Assuming, however, that the copartnership had been dissolved, as stated in the affidavit attached to the application, a transfer at this time from Teter to another party would be in violation of the terms of the original certificate, which provided that the operative rights granted to the copartnership would not be abandoned, transferred, assigned or leased without the written authorization of the Railroad Commission and since the application for such an authorization had never been made to the Commission, the right is not vested in Teter as an individual to transfer or lease the copartnership certificate to a third party; such action would be illegal and in violation of the provisions of the order granting these certificates. The application to transfer will be denied.

In view of the evidence submitted and directed to Case No. 1810, the Railroad Commission hereby finds as a fact that the conditions under which the certificates were granted to the copartnership composed of Mark R. Menzie and Samuel G. Teter in Decisions Nos. 7959 and 8280 have not been complied with and that by reason of such violation there are sufficient justifications for the revocation of said certificates, and an order will be entered accordingly.

O R D E R

A public hearing having been held in the above entitled proceedings, evidence submitted and the Commission being fully advised, and basing its order upon the findings of fact as contained in the opinion preceding this order,

IT IS HEREBY ORDERED that certificates of public convenience and necessity granted Mark R. Monzie and Samuel G. Teter, a copartnership, under Decision No. 7959 in Application No. 5812, and Decision No. 8280 in Application No. 6040, authorizing the operation of an automobile truck line as a common carrier of freight between San Francisco-San Jose and intermediate points; San Jose and Campbell, and San Jose and Agnew be and the same hereby are revoked and annulled, and

IT IS HEREBY FURTHER ORDERED that any individual or company operating automotive trucks under said certificates shall be and is hereby directed to discontinue said service within not to exceed five (5) days from the date of the decision herein.

IT IS HEREBY FURTHER ORDERED that Application No. 8239 be and it is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

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

Livingston M. Austin
Charles W. H. ...
J. H. ...

Commissioners.