

Decision No. 11296

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

YREKA RAILROAD COMPANY, a corporation
of Yreka, California,
Complainant,

vs.

HUGO V. MILLER, PERCY P. GRISEZ
and GEORGE HOOVER,
Defendants.

ORIGINAL

Case No. 1781

Taylor and Tebbe, by R. S. Taylor, for Complainant

J. P. McNamara for Hugo V. Miller and Percy P.
Grisez, Defendants.

BY THE COMMISSION:

O-P-I-N-I-O-N

Yreka Railroad Company, a corporation, complains of defendants and alleges that defendants are drivers of automobiles for hire and that such defendants, and each of them, have during the past six months carried passengers between fixed termini for compensation, particularly between the fixed termini of Montague and Yreka in competition with the railroad operated by complainant; that defendants solicit patronage from the public and charge a fare of seventy-five cents between Yreka and Montague; that defendants have no right or authority from this Commission authorizing operation and that such operation is in violation of the provisions of Chapter 213, Statutes of 1917; that complainant by reason of the alleged unauthorized operation of defendants is suffering a material reduction in its earnings and unless complainant can be protected against unlawful operation, it will be obliged to cease its operations as a common carrier, its railroad having been operated for the last two years at a loss. Complainant prays that defendants, and each of them, be restrained from operating their automobiles in the manner complained of.

Defendants, Hoover and Grisez, filed answers herein denying the material allegations of the complaint.

A public hearing on the above entitled matter was conducted by Examiner Handford at Yreka, the matter was duly submitted and is now ready for decision.

At the hearing counsel for complainant requested a dismissal as to George Hoover, defendant herein, and the dismissal requested will be cared for in the succeeding order.

Witnesses for complainant testified as to specific trips made by defendants, Miller and Grisez, between Yreka and Montague such trips carrying passengers to or from the trains of the Southern Pacific Company arriving at Montague. The president of the Yreka Railroad, complainant herein, testified that in his opinion one-third of the passenger business properly accruing to the railroad was being transported by automobile carriers between Montague and Yreka. There was no direct evidence presented by complainant definitely establishing the carriage of passengers between Yreka and Montague upon the payment of individual fares.

Percy P. Grisez, one of the defendants, testified that he operated an automobile on a "for hire" basis, and had been so engaged since January, 1922. His car stands on the street in Yreka with a "for hire" sign displayed, and he makes trips from Yreka to any point desired by patrons who may employ him. This witness states that he does not make a practice of operating his car between Yreka and Montague, or of meeting the trains of the Southern Pacific Company at Montague, and that such trips are only made when he is engaged by patrons, or has received telegraphic or telephone requests to meet patrons at Montague. Two-thirds of the trips to Montague are made at hours when no scheduled trains of the Yreka Railroad are available, and all trips are made on the

basis of renting the entire car, no individual fares being accepted. It appears that this defendant charges a minimum of \$1.50 for a trip from Yreka to Montague.

Hugo V. Miller, a defendant, testified that he operated a "for hire" automobile, having his stand in front of one of the banks in Yreka. Telephone calls are received for his account at the Clarendon Hotel and he transports passengers to any point desired on a "for hire" basis which includes a flat price for the trip. The price varies, however, in proportion to the number of people hauled, and as regards business between Yreka and Montague, the points specifically before the Commission in this proceeding, his rates are \$1.50 for one or two passengers; \$2.25 for three passengers; \$3.00 for four passengers; \$3.75 for five passengers; and \$4.50 for six passengers. This witness claims to make no trips between Yreka and Montague unless his car is hired as a whole on a "for rent" basis and that no individual fares are collected by him from his patrons, although it will be observed that his rates on a "for hire" basis vary in proportion to the number of passengers carried and are on a basic minimum of \$1.50 for the trip, such rate being applicable when one or two passengers are transported.

The town of Yreka, county seat of Siskiyou County is located eight miles west of the main line of the Southern Pacific Company, and the Yreka Railroad operates between Yreka and the Southern Pacific Station at Montague. Three trains in each direction are operated connecting at Montague with Southern Pacific trains Nos. 16, 13, 14, and 15. The freight, express and passenger business of the Yreka Railroad is not voluminous and any diversion of business from the line of the railroad reduces its ability to satisfactorily meet its requirements as a common carrier. The automobile competition herein complained of is alleged to have depleted the passenger revenue which normally should accrue to the railroad;

and the complaint appears to have been brought for the purpose of establishing, by a finding and order of this Commission, a determination of the question as to whether the character of operation heretofore conducted by the defendants is such that falls within the provisions of the statute governing automobile stage and truck transportation (Chapter 213, Statutes of 1917, and amendments thereto.)

It is the contention of defendants that by the conduct of the so-called "for hire" service as regards the operation between Yreka and Montague, the provisions of the statutory law are not applicable, for the reason that they rent their automobiles as a whole and accept no individual fares from passengers. There appears no contest as to the fact that the operation is conducted "over a regular route and between fixed termini" as referred to in sub-division "c" of Section 1 of the statutory enactment. It further appears undisputed that the operation is "for compensation", and such operation does not require it to become that of a "common carrier" to be subject to the regulation of this Commission as provided for in the enactment.

We believe that it is clear from the evidence in this proceeding that both defendants, Grisez and Miller, are operating a "for rent" service with their headquarters in the town of Yreka, that they hold themselves out to the general public to go anywhere and at any time provided satisfactory arrangements can be made with their prospective patrons. There appears to be no specific holding out of service particularly as to the operation between Montague and Yreka or any definite offer of protection of a regular service between such points, and it is to be therefore assumed that if more distant trips were available and patrons offered for such trips that the defendants, or either of them, would prefer to rent their cars in the service which promised the greater remuneration. Montague, however, being the nearest point to Yreka and a point at which connection is

made with the main line trains of the Southern Pacific Company, possibly results in some demand from the public for transportation by the "for rent" cars of the defendants. This demand, if the letter and spirit of the statutory law is to be fairly met, must be cared for by the defendants so operating their equipment that they will not conflict with the statutory provisions, and in the opinion of the Commission any operation on a "for rent" basis, which sets a certain minimum price at which one or two passengers will be carried, and requires an additional specific price for each passenger over two, and until the carrying capacity of the car is reached, is not a legitimate "for rent" service, particularly if the individual fares be collected from the passengers so transported. Cars rented on a "for hire" basis should be rented by the trip, irrespective of the number of passengers transported, and the holding out by the operator should be on the basis of an individual transaction with the party hiring the car, otherwise such operation conducted with a degree of regularity sufficient to warrant the cars being classified as "used in the business of transporting persons or property*** for compensation," as referred to in the statutory enactment, would subject the operator, in the opinion of the Commission, to the penalties prescribed in Section 8 of the enactment upon complaint and conviction before the proper tribunal.

At the commencement of the hearing on this complaint, the attorney for defendants, Grisez and Miller, offered to either supplement the answers filed herein or to stipulate that his clients would, without the introduction of testimony, accept a "default judgment". The matter, however, appearing to be one that should be fully set forth by sworn testimony and the subsequent decision of the Commission after its submission, evidence was duly received and has been carefully considered.

The Commission hereby finds as a fact,

1. That defendants Percy P. Grisez and Hugo V. Miller and each of them operate and control automobiles used in the business of transporting persons for compensation over a public highway in this state between fixed termini and over a regular route.

2. That said Percy P. Grisez and Hugo V. Miller and each of them have begun to operate and are now operating said automobiles for the transportation of persons for compensation on a public highway of this state without first having obtained from the Railroad Commission a certificate declaring that public convenience and necessity require such operation.

3. That said Percy P. Grisez and Hugo V. Miller each of them were not operating in good faith on May 1, 1917 between the fixed termini or over the route hereinbefore referred to and said operations are not exclusively within the limits of an incorporated city, town, or city and county.

O-R-D-E-R

A public hearing having been held in the above entitled proceeding, the matter having been duly submitted and the Commission being fully advised and basing its order on the findings of fact as set forth in the opinion which precedes this order,

IT IS HEREBY ORDERED that Defendants Hugo V. Miller and Percy P. Grisez and each of them immediately cease the operations of automobiles for the transportation of persons for compensation on a highway of this state between the fixed termini of Yreka and Montague and over the regular route connecting such communities and that unless said defendants cease said operations within ten (10) days from the receipt of this order the attorney of this Commission shall cause proceedings to be instituted as provided by law.

IT IS HEREBY FURTHER ORDERED that, at the request of attorney for complainant, this complaint, insofar as it refers to defendant, George Hoover, be and the same hereby is dismissed.

This order shall become effective immediately upon its service upon defendants herein.

Dated at San Francisco, California, this 1st day
December
of ~~December~~, 1922.

H. P. Brundage
Chief of Police

Dwight Martin
J. J. [unclear]
Commissioners.