

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
M. HAYDIS for certificate of public
convenience and necessity to operate
motor truck express service between
San Diego and El Centro, California.

ORIGINAL

Application No. 4174

In the Matter of the operation by
WM. E. SMITH of an automobile truck
line as a common carrier of freight
between San Diego and El Centro,
California.

Case No. 1813

In the Matter of the Application of
W. E. SMITH, doing business under
the name of MOUNTAIN EXPRESS,
operating a motor freight line between
San Diego and El Centro, for permis-
sion to sell and transfer his operative
rights therein to PHILIP WAMPLER, who
desires to do business under the name
of MOUNTAIN EXPRESS.

Application No. 8265

In the Matter of the Application of
P. G. COCHRAN for an order granting
permission to sell and transfer his
right, title and interest in an
Automobile Freight Line operating
between Boulevard and San Diego,
California, to WILLIAM C. GREENLEAF,
and for permission to discontinue
his service; and Application of
WILLIAM C. GREENLEAF for an order
granting permission to purchase and
operate said automobile freight line
thereafter.

Application No. 8249

In the Matter of the Application of
WILEY J. GIBSON for a certificate of
public convenience and necessity to
extend his motor truck line from
El Centro, California to San Diego,
California as a freight carrier.

Application No. 8203

Warren E. Libby for Wiley J. Gibson, Applicant.
E. C. Liggett for P. G. Cochran and W. C. Greenleaf,
Applicants.
E. J. Bischoff for W. E. Smith, Defendant, and
W. E. Smith and Philip Wampler, Applicants.
J. W. Puterbaugh for W. J. Lusted, Protestant.
F. B. Dorsey for San Diego and Arizona Railway,
Protestant.
M. C. Binnard for Jas. P. Larsen, Protestant.
C. A. Council for American Railway Express,
Protestant.

BY THE COMMISSION :

O P I N I O N

Under date of September 20th, 1922 this Commission issued its Order to M. Haydis to appear and show cause, if any he had why the certificate heretofore granted him under Decision No. 6318 on Application No. 4174 (decided May 12th, 1919) should not be revoked and annulled because of alleged transfer of said certificate to other parties without written consent of this Commission.

Under date of September 20th, 1922 this Commission issued its Order to Wm. E. Smith to appear and show cause, if any he had why the certificate heretofore granted him under Decision No. 10144 on Application No. 7435 (decided March 6th, 1922) should not be revoked and annulled because of alleged permission to another party to operate under said certificate without first securing the written authorization of the Railroad Commission to the transfer thereof.

W. E. Smith has applied to the Railroad Commission for approval of a sale and transfer of his operative rights heretofore granted by the Railroad Commission by Decision No. 10144 to Philip Wampler for and in consideration of the sum of \$1168.89. Wampler joins in the application.

P. G. Cochran has applied to the Railroad Commission for authority to sell and transfer the operative rights granted to him by this Commission under Decision No. 8947 to William C. Greenleaf for and in consideration of the sum of \$500.00. Greenleaf joins in the application.

Wiley J. Gibson has applied to the Railroad Commission for a certificate of public convenience and necessity to extend his motor truck line from El Centro to San Diego.

A public hearing was conducted by Examiner Williams at San Diego at which the foregoing matters were by stipulation of all parties consolidated for the receiving of evidence and decision and were duly submitted following the filing of briefs by counsel.

This hearing brought before the Commission a review of automobile transportation between San Diego and Imperial Valley since 1918. The distance between the points over what is known as Mountain Grade is, approximately 117 miles. There are two divisions on the route, one between San Diego and Boulevard, which is of ordinary operation, the other between Boulevard and El Centro which involves somewhat difficult mountain operation. The testimony was exhaustive in character and puts the Commission in complete possession of all the facts relating to regulated service over this route under the law for several years.

It is apparent from the testimony that since 1918 a great deal of the freight moved between the termini has been transported

by illegal operation. The effect of this illegal operation has been an injury to the established operation of legal carriers. Under this disadvantage their businesses were conducted largely at a loss and frequently passed from one operator to another in an effort to establish profitable operation. It is fair to conclude from the testimony that regulated operation seldom was profitable.

The testimony abundantly and conclusively shows that illegal operation was conducted at various times by P. G. Cochran, William C. Greenleaf and Philip Wampler, each an applicant in the present proceedings. The attitude of ignorance of the law herein assumed by these applicants is not, we believe, fairly supported by the testimony and the recital of the circumstances surrounding their operation. It is also evident that some of those entrusted with legal certificates permitted such certificate rights to be used as cloaks for illegal operation and that sales of operating rights, without authorization of this Commission, were made to some of the very persons who now claim ignorance of knowledge of their legal duty to present the transaction before this Commission for approval.

The pioneer of the auto freight operators between San Diego and El Centro was M. Haydis. After several years of so called "contract" hauling between these points and others enroute, Haydis made application to the Commission in October, 1918 and received a certificate under Decision No. 6318 in May, 1919. Before this C. D. Boynton had established the Boulevard Express which possessed prescriptive rights between San Diego and Boulevard. The Mountain Express which was operated by C. H. Hemme between San Diego and El Centro under a prescriptive right existing at the time the Haydis

certificate was granted. By the terms of the Haydis certificate he was restricted from doing business between San Diego and Boulevard. Testimony shows that in May, 1921 Haydis purported to sell to Philip Wampler, applicant herein, this operative right. Wampler paid \$100.00 down and subsequently paid \$50.00 for attorney's fee in order that the application for transfer could be prepared. Later, however, Wampler was advised by Haydis that the certificate had been sold to W. C. Greenleaf and others, the said Greenleaf being now an applicant herein. Shortly after this, P. G. Cochran one of the applicants herein, through a similar transaction took over the operation of the Boulevard Express from C. D. Boynton and later he and Wampler formed a partnership and continued the operation under alleged rights as contained in the Haydis certificate and Boulevard prescriptive right. After operating about a year Cochran applied to the Commission for a transfer of the certificate to him and this application was granted, ex parte, by the Commission, Decision No. 8947 on Application No. 6745. December 28th, 1921, Haydis made application No. 6439 to this Commission to transfer his certificate to Steele Brothers but this application subsequently was dismissed (Decision No. 8719, dated March 9th, 1921). During all this period no attempt was made by Haydis to either operate under his certificate or legally transfer the same except as shown by the Steele application. Nor did he answer the order of the Commission to appear in the present proceeding and show cause why the certificate should not be revoked. The evidence is conclusive that the Haydis operation was abandoned by him on or about May, 1921, without the authority of the Commission, and that because of such unauthorized discontinuance

the certificate granted him under Decision No. 6318 should be revoked and annulled and an order will so be made.

It is also found that for a year or thereabouts before filing Application No. 8249, to transfer his certificate for the operation of the Boulevard Express P. G. Cochran, applicant herein, had abandoned his operation under the purported sale of his certificate to W. C. Greenleaf without authority of the Commission. In considering the application to now transfer to Greenleaf the operating rights we hereby find as a fact that Cochran has now no operating right that may be transferred and Application No. 8249 therefore must be denied. Cochran testified at the hearing and his testimony fully justified the Commission in revoking the certificate granted to him by Decision No. 8947, dated May 6th, 1921 and the order will so provide.

In Case No. 1813, William E. Smith is ordered to appear and show cause why his certificate under Decision No. 10144 dated March 6th, 1922 should not be revoked. In Application No. 8265 Smith seeks to transfer the certificate thus questioned to Philip Wampler. Smith did not appear at the hearing, except by attorney, and no request for a continuance to give the Commission the benefit of his testimony was made. Whatever testimony is before us in Case No. 1813 was produced indirectly in behalf of applicants Wampler and Gibson.

Smith's certificate rights which were operated under the fictitious name of the Mountain Express, were acquired by him under proper authority from Thomas M. and Maude Turner by Decision No. 10144 on Application No. 7435, decided March 6th, 1922. Testimony introduced in this proceeding showed that the Turners were badly in debt and had not accounted to shippers for many C.O.D. collections.

Smith assumed all of the debts then existing as a consideration for the transfer of the certificate. It appears that soon after Smith became the possessor of these rights he moved to the Wampler terminal and thereafter, at least for several months, Wampler's equipment was utilized, a large part of the time exclusively, in operating under Smith's rights. During this period the testimony shows that Wampler conducted the operation of the Mountain Express; that he collected monies due it, and banked the funds in his own name; that his trucks were known over the route as "Wampler's Truck Line"; that consignees made checks payable to "Wampplers Truck Line", or to Wampler individually. The testimony of C. L. Camp, L. W. Smith, M. D. Johnson, J. R. Fowble and others and the testimony of Wampler, himself, support this conclusion.

In his testimony Wampler said:

My equipment was all leased to them (Mountain Express) and I made collections throughout the hills. I worked for them. I received no salary, I had all my trucks leased to the Mountain Express and part of my work was to take care of my own equipment.

Wampler further testified that he began hauling in July, 1920 over a part of the distance between San Diego and El Centro.

He testified:

I first operated the Mountain Division of the Boulevard Express, the Cochran line.

What was your relation with Mr. Cochran?

We were operating a partnership business, he supplying the franchise or permit to haul from the Boulevard Express on the mountain division. We operated that way until, I think it was May of the following year, 1921. I made an agreement with Mr. Haydis to purchase the Haydis franchise and I operated on the Haydis franchise until he informed me that he had found another purchaser and that he had never made an application for a transfer.

The testimony of Wampler further showed that he had paid Haydis \$100.00 in May, 1920 on the making of the agreement and later paid Haydis's attorney \$50.00 to prepare the application for transfer which, he admitted, Haydis said would be necessary.

It is clear that Wampler knew generally how to validate such a transaction in May, 1920, yet in July of that year he began operation with Cochran as far as Boulevard. The testimony further shows that Cochran left San Diego in the fall of 1921 and that Wampler continued to operate thereafter under the Cochran certificate until he abandoned the Boulevard service to Greenleaf.

The testimony is convincing that Wampler, since July, 1920 has been operating his trucks over all or part of the route between San Diego and El Centro; that he operated first under color of the Haydis certificate, then for a time under both Haydis certificate and Boulevard prescriptive right, later under the Cochran certificate and finally under the Smith certificate, under the fictitious name of Mountain Express. In view of the fact that he was aware in May, 1920 that the law required the necessary authorization by this Commission to make any such operation valid we must assume that he knew what he was doing and that he preferred to illegally operate rather than to seek either a valid transfer, or an original certificate to operate. It is also fair to assume that his "lease" to Smith, which included his equipment, his own service without salary, and his ability to divert the accounts due Smith, or the Mountain Express, into funds payable to "Wampler Truck Line"

or Wampler individually, was a continuation of the same kind of illegal relationship previously maintained by him with other certificate rights.

The testimony shows that Smith made a failure of the operation of the Mountain Express. The trucks taken over from the Turner's were forfeited to their legal owners because of delinquent payments and other property he had was attached by creditors; he did not pay his employees and it is in testimony that some collected C.O.D. charges were not turned over to consignors. Finally, according to the testimony of L. H. Dunbar, bookkeeper for both Smith and Wampler, Smith refused to accept any obligation against the line after August 25th, 1922 on which date Smith designated Wampler as manager.

The verbal lease arrangement existing prior to August 25th, 1922 by which the Wampler trucks were used by Smith in the operation of the Mountain Express called for a rate per trip, per truck, between termini and as has been noted previously in this decision Wampler collected the money due, or at least a large part of same on a number of shipments. The evidence shows that no accounting was had at any time between Wampler and Smith, nor had there been an accounting after August 25th, 1922 up to the time of hearing hereon as to Wampler's alleged management of Smith's "operation". Wampler agreed to assume \$1168.00 of Smith's debts, some of them being due to employees for wages or truck hire as the consideration for the transfer. These were all obligations prior to August 25th, 1922. The application of Smith to transfer to Wampler bears a signature

date of September 6th, 1922 but was not verified until September 18th, 1922 and was not filed with the Commission until September 20th, 1922. These dates assume some importance, -or interest at least, - because Application No. 8203 of Wiley J. Gibson, to operate between San Diego and El Centro, was filed with the Commission August 25th, 1922.

We find as a fact, and established by the testimony herein, that Smith did turn over and abandon to Wampler the operation of the Mountain Express under certificate granted by Decision No. 10144 on or before August 25th, 1922 and that because of such action and other facts heretofore stated, the certificate as granted should be revoked and the order will so provide. Further, this conclusion must carry with it denial of Application No. 8265 of Philip Wampler to transfer. According to the testimony Wampler is not a proper person to be entrusted with such a privilege.

The conclusions so far reached eliminate all the present operators between San Diego and El Centro and leaves only for consideration: Application No. 8203 of Wiley J. Gibson, as consolidated herein for determination. This applicant is now operating a freight service between Holtville and El Centro and is familiar with the operative needs between El Centro and San Diego. He proposes daily service, except Sundays and holidays, from each terminal, with a ten hour schedule in transit between termini. He proposes to serve Seeley, Dixieland, Coyote Wells, Mountain Springs, Jacumba, Boulevard, Newtown, Indian Reservation, Campo, Bingville, Potrero, Dalzura, Jamul and intermediate points.

He proposes to use four trucks of ten tons total capacity and to add such other equipment as may be necessary. Question as to his financial ability to conduct this operation and to provide adequate equipment was raised at the hearing but we are of the opinion based on the evidence that his present equipment with reasonable additions, which he apparently is able to make, will give a satisfactory service if same is supported by the patronage of the shipping public. Applicant, Gibson, comes before the Commission with clean hands and with a demonstrated operating efficiency as regards his present route and it is our opinion that the certificate sought should be granted, under such conditions and obligations as will be set forth in the following order.

O R D E R

An order having been issued on September 20th, 1922 to M. Haydis to show cause why the certificate of public convenience and necessity heretofore granted to him under his Application No. 4174 by Decision No. 6318 should not be revoked, a public hearing having been held, the matter having been duly submitted and the Commission being now fully advised and basing its order on the findings of fact as set forth in the opinion preceding the order;

IT IS HEREBY ORDERED, that the certificate of public convenience and necessity heretofore granted by the Commission by its Decision No. 6318 on Application No. 4174 (decided May 12, 1919) granting to M. Haydis the right to operate an automobile truck line as a common carrier of freight between San Diego and El Centro and

Calexico, Heber, Holtville, Brawley, Imperial and intermediate points, be and the same hereby is revoked and cancelled, and that no further operation by M. Haydis may be given over the route as hereinbefore referred to.

An order having been issued on September 20th, 1922 to William E. Smith to show cause why a certificate of public convenience and necessity heretofore acquired by him from Thomas M. and Maude Turner should not be revoked, a public hearing having been held, the matter having been duly submitted and the Commission being now fully advised and basing its order upon the findings of fact as set forth in the opinion preceding this order;

IT IS HEREBY ORDERED, that the certificate of public convenience and necessity heretofore acquired by said William E. Smith by transfer from Thomas M. and Maude Turner, approved by this Commission by its Decision No. 10144 on Application No. 7435 (dated March 6th, 1922), granting and approving transfer of said certificate to operate automobile freight truck service between San Diego and El Centro, be and the same hereby is revoked and cancelled, and that no further operation by said William E. Smith may be given over the route as herein referred to.

William E. Smith having applied to this Commission for authority to transfer to Philip Wampler his certificate of public convenience and necessity to operate automobile freight service as a common carrier between San Diego and El Centro, as authorized by this Commission by its Decision No. 10144 on Application No. 7435 (decided March 6th, 1922), a public hearing having been

held, the matter having been duly submitted, the Commission being now fully advised and basing its order on the findings of fact set forth in the opinion preceding the order;

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

P. G. Cochran having applied to this Commission for authority to sell and transfer to W. C. Greenleaf all his right, title and interest in an automobile freight truck line between San Diego and Boulevard, acquired by said Cochran from C. D. Boynton by Decision No. 8947 on Application No. 6745 (decided May 6th, 1921), a public hearing having been held, the matter having been duly submitted, the Commission being now fully advised and basing its order on the findings of fact set forth in the opinion preceding this order;

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

IT IS HEREBY FURTHER ORDERED, good cause having been shown that the certificate of public convenience and necessity transferred from said Boynton to said Cochran by said Decision No. 8497 on Application No. 6745 (decided May 6th, 1921) be and the same hereby is revoked and cancelled and that no further operation by said Cochran or said Greenleaf may be given over the route herein above referred to.

Wiley J. Gibson has applied to this Commission for a certificate of public convenience and necessity to operate an automobile truck service between El Centro and San Diego, as a

common carrier, a public hearing having been held, the matter having been duly submitted and the Commission being now fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
HEREBY DECLARES that public convenience and necessity require the service as herein proposed by applicant over and along the following route:-

Leaving San Diego travelling east on Imperial Avenue, thence via County highway through Encanto and Lemon Grove, thence branching off on the Spring Valley road, thence over the County highway through Spring Valley, Jamal, Dulzura, Potrero and Campo, joining the State Highway at Newtown, thence over said State highway through Jacumba and Mountain Springs to El Centro

and that a certificate therefor be and the same hereby is granted upon the following conditions:-

- I - That applicant, Wiley J. Gibson, shall file within fifteen (15) days from date hereof, his written acceptance of the certificate herein granted, and shall file within thirty (30) days of the date hereof, duplicate tariff of rates and time schedules, in accordance with General Order No. 51 of the Railroad Commission, and shall begin operation within thirty (30) days from date hereof.
- II - That applicant, Wiley J. Gibson, shall not sell, lease, assign or discontinue the service herein authorized, unless such sale, lease, assignment or discontinuance shall have been authorized by the Railroad Commission.

111 - That no vehicle shall be operated by applicant unless such vehicles are owned by said applicant, or are leased under an agreement satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission be and he hereby is directed to forward by registered mail, a certified copy of this decision to the District Attorneys of Imperial and San Diego Counties.

Dated at San Francisco, California this 25th day of January, 1923.

C. Deane

H. B. Brundage

James Martin

J. T. Whitney

Commissioners.