

ORIGINAL

Decision No. 2489

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ATLANTIC TRANSFER COMPANY,

Complainant,

vs.

Case No. 730.

LOS ANGELES TRANSFER COMPANY,
and PACIFIC ELECTRIC RAILWAY
COMPANY,

Defendants.

Nathaniel R. Rutherford, Jr., for complainant.
Gray, Barker and Bowen for Los Angeles Transfer Company.
Frank Kerr for Pacific Electric Railway Company.

THELLEN, Commissioner.

O P I N I O N.

The complaint herein alleges in part that Pacific Electric Railway Company is a common carrier engaged in the business of transporting passengers and freight for hire over its various lines of railway, particularly over its line of railway running from Los Angeles City to Los Angeles Harbor; that Atlantic Transfer Company and Los Angeles Transfer Company are engaged in the business of carrying for hire baggage, trunks, valises and parcels from place to place in the City of Los Angeles, and that Los Angeles Transfer Company does business in and through every county in California; that Los Angeles Transfer Company and Pacific Electric Railway Company have entered into a contract which in its practical operation amounts to an absolute monopoly, in violation of sections 1673, 1674 and 1675 of the Civil Code; that said contract provides in part that Los Angeles Transfer Company shall have the sole right to check baggage at hotels and residences in Los Angeles to points reached over the lines of Pacific Electric Railway Company, for a compensation of 50¢ per

trunk and 25¢ for small baggage and parcels; that said prices are as reasonable as could be expected to pay a reasonable profit on the service, but that in the reasonableness of the compensation together with the exclusive character of the privilege lies the monopolistic feature thereof; and that complainant will upon the trial produce affidavits from many hotels and rooming houses in Los Angeles to the effect that the service of Los Angeles Transfer Company has been unsatisfactory in that the company does not promptly attend to its duties and at times seriously inconveniences its patrons. Complainant thereupon asks this Commission to declare the contract between Los Angeles Transfer Company and Pacific Electric Railway Company to be void in so far as it relates to and reaches out of the possessions, stations, lines and trains of Pacific Electric Company.

Los Angeles Transfer Company and Pacific Electric Railway Company each filed an answer denying the Commission's jurisdiction and making other defenses.

A public hearing was held in Los Angeles on June 1, 1915.

At this hearing, complainant offered to prove that the service of Los Angeles Transfer Company has been the subject of considerable complaint and that baggage frequently is not called for by the company for periods of as long as 24 hours. The complainant admitted that this Commission has no power to declare the contract between Los Angeles Transfer Company and Pacific Electric Railway Company to be void and asked and was granted leave to amend its prayer to ask that Los Angeles Transfer Company be compelled to give better service or else that Atlantic Transfer Company be ~~also~~ permitted to compete in the business of checking baggage at homes and hotels.

The definitions of "public utility" and "common carrier" given in Section 2 of the Public Utilities Act do not include

companies such as Los Angeles Transfer Company. While the company is undoubtedly a common carrier at common law, there are classes of common carriers, including baggage and transfer companies, jitney busses and others over which this Commission has not been given jurisdiction. The complaint must accordingly be dismissed in so far as it asks relief against Los Angeles Transfer Company.

The remaining question under the head of jurisdiction is whether this Commission, by reason of its jurisdiction over Pacific Electric Railway Company, has any power to compel that company to take any action in the premises. The question of this Commission's authority with reference to contracts such as that between Los Angeles Transfer Company and Pacific Electric Railway Company was fully considered by this Commission in Red Line Tourists Agency vs. Southern Pacific Company (Vol. III, Opinions and Orders of Railroad Commission of California, p. 526), decided on August 30, 1915, to which decision reference is hereby made. This case dealt principally with soliciting on the premises, trains and boats of the railway company. Complainant in the present proceeding seeks to distinguish its case, by asking relief only with reference to the checking of baggage at residences and hotels, off the premises of Pacific Electric Railway Company.

As the Commission has no jurisdiction over Los Angeles Transfer Company, it follows that it has no jurisdiction whatsoever in this case unless it has jurisdiction over Pacific Electric Railway Company with respect to this particular service. On this point, Mr. D. W. Pontius, Pacific Electric Railway Company's Traffic Manager, testified that the company had never held itself out as performing the service of checking baggage at residences and hotels and that none of its tariffs on file with the Railroad Commission refer to Los Angeles Transfer Company or to this service.

In a similar case which came before the Interstate Commerce Commission, Cosby vs. Richmond Transfer Company, Vol. 23 I.C.C.R. 75, Commissioner Franklin K. Lane said:

"If there was a duty imposed by law upon the railroad to provide such service, as has been afore-said, the interposition of an agent would not withdraw the carrier in providing such duty from governmental control. But there is no such duty arising either under statute, common law or custom. The carrier has performed what is required of it when it accepts baggage at its depot, transports it and makes delivery at destination upon its own terminal."

So here, in the absence of a more extended undertaking to the public, Pacific Electric Railway Company has performed its duty when it accepts baggage at its depot, transports it and makes delivery at destination upon its own terminal. When provision is made for anything further, such action is taken voluntarily and not in performance of a duty which can be enforced against the railway company.

As there is no evidence to show that Pacific Electric Railway Company has become obligated to provide for checking baggage at residences and hotels, this Commission has no jurisdiction over this service.

After careful consideration, I conclude that this action must be dismissed, because of want of jurisdiction in this Commission.

I submit the following form of order:

O R D E R.

A public hearing having been held in the above entitled proceeding and the Railroad Commission finding that it does not have jurisdiction to grant the relief requested,

IT IS HEREBY ORDERED that said complaint be and the same is hereby dismissed.

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 17th day of June, 1915.

Max Heeler
H. D. ...
...
Edwin O. Edgerton
Frank R. ...

Commissioners.