

Decision No. 8298

ORIGINAL

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

RICKWICK STAGES, Northern
Division, a corporation,

Complainant,

-vs-

V. W. MAREHU, WHITE STAR STAGE
LINE, JOHN DOE, RICHARD ROE
STAGE COMPANY, F. LOPEZ and
G. H. HARTER,

Defendants.

Case No. 1420.

N. C. Folsom, J. E. McCurdy and
Chas. F. Wren, for Complainant.

J. B. Peckham, Harry A. Encell and
T. D. O'Donnell, for Defendants.

BY THE COMMISSION:

O P I N I O N

The second amended complaint filed during the hearings alleges that defendants operate a passenger stage service between San Jose, Hollister, San Juan and Watsonville and intermediate points; that defendants entered into various agreements providing for the operation of said stage line, and praying the Commission to enter its order declaring that as a result of the agreements and operations not previously authorized by the Commission defendants have abandoned their rights to operate said line and that persons other than the defendants, claiming the right to operate it, be ordered to desist and refrain from any such operation of that part of the line between San Jose and

Hollister, and for further relief. It was stipulated at the hearing that the allegation of facts therein contained be deemed denied.

Public hearings in the case were held by Examiner Westover at Salinas and at San Francisco. Final briefs have recently been filed, and the matter is now ready for decision.

It appears from the testimony that the operation of the line between San Jose and Hollister has been continuous and of a character satisfactory to the traveling public.

By Application No. 5741, filed sometime after the above numbered complaint was filed, Messrs. Mathen and Lopez asked authority to transfer the stage line operated by them between San Jose and Hollister to seven individuals composing the Peerless Stage Association, or to a corporation formed or to be formed by them. No question is raised as to the ability of the association or its members, long engaged in the passenger stage business, to successfully operate the line so far as the service to the public is concerned. The application was set for hearing with the above case, but during the hearing, upon suggestion of counsel, it was stipulated that order upon the application might be made pro forma after decision herein upon the above case, and that procedure will be followed.

The second amended complaint contains no allegation concerning defendant Harter, and he is not mentioned in it after the caption. However, it appears from his testimony, without objection, when called as a witness by complainant, that on or about February 20, 1920, he contracted to sell his line, including operative rights and equipment, to said Lopez, who, at that time, took charge of the operation of the line for witness Harter, pending action of the Commission upon

formal Application No. 5389, made and filed about that time to transfer the line between Salinas and Hollister. Action upon the above Hartor application to transfer has been delayed upon stipulation of the parties pending the hearings, filing of briefs and decision herein.

The prayer is that the Commission determine that the purported operative rights of defendant have been abandoned, and that they be canceled and rescinded.

The alleged abandonment is claimed by complainant to have been brought about by certain transactions of Mathen with Emycart subsequent to May 1, 1917 and prior to July 22, 1919, which complainant contends amounted to a leasing of the line to Emycart. We find that these transactions, as disclosed by the evidence, did not constitute an attempted transfer of operative rights, or that any other person as the successor of Mathen should carry on the operations of this stage line. While we conclude, therefore, that that was not an abandonment of operative rights, we add, however, that this Commission will not look with favor upon leasing or employment contracts which may, in effect, operate to transfer the responsibility of actual operations from the holder of operative rights to one who has not received a certificate of public convenience and necessity from this Commission for the operation of a transportation company.

The evidence herein justifies the conclusion that Mathen was, at all times, the owner of the operative rights and the person on whose behalf this stage line was operated under the name of White Star Stages.

ORDER

Public hearings having been held in the above-entitled case, briefs of counsel having been filed, and the matter having been submitted and carefully considered,--

IT IS HEREBY ORDERED that the second amended complaint herein be, and it is hereby dismissed.

Dated at San Francisco, California, this 28th day of October, 1920.

H. H. ...
Frank ...
H. H. ...
Dwight ...
Commissioners.