

Decision No. 8786

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

In the Matter of the Application
of Peninsular Railway Company, a
corporation, for an order author-
izing discontinuance of less-than-
carload freight service between all
points on its line.)

APPLICATION NO. 6370.

Louis Oneal and William P. James, for Applicant;
Archer Bowden, City Attorney of San Jose, for San Jose;
Norman E. Malcolm, City Attorney of Palo Alto, for Palo Alto;
W. D. Wall, for San Jose Chamber of Commerce;
C. C. Coolidge, District Attorney Santa Clara, for
County of Santa Clara.

LOVELAND, COMMISSIONER:

O P I N I O N

This is an application filed by the Peninsular Railway Company for authority to discontinue the forwarding and delivering of less-than-carload freight between all points located on its rails.

The application recites that since 1916 the tonnage has decreased by 83 per cent and the gross revenue by approximately 60 per cent. During the twelve months, May 1, 1915 to April 30, 1916, the total weight of less-than-carload shipments was 10,509,875 pounds, while during the period May 1, 1919 to April 30, 1920 the tonnage amounted to but 1,821,088 pounds, and testimony presented

at the hearing was to the effect that the gross weight has been decreasing since April 30, 1920 and is now materially less than during the prior period shown. On some days no freight at all is received, although the carrier has its freight station employees on duty at San José and other points prepared to handle traffic. The gross revenue secured at the present time from this class of traffic is less than \$10.00 per day, while the actual out-of-pocket cost for performing the service is in excess of \$20.00 per day, making a net loss, roughly estimated, as between \$2,500, and \$3,000. per year.

Prior to June 25, 1918 the freight rates of this applicant for movement of less-than-carload shipments was upon a very low basis, the first four class rates being 8, 7, 6 and 5 cents per 100 pounds. In June 1918, the minimum scale prescribed by the Director General of Railroads in his General Order No. 28 was put into effect, the first four classes being 25, 21, 17½ and 15 cents per 100 pounds. This minimum scale continued until December 12, 1919, when the rates were reduced to 9, 7, 7 and 7 cents per 100 pounds. During the interim, however, shippers transferred their tonnage either to common carrier automobile transportation companies, or hauled the freight themselves and the result of the high scale of rates was to reduce the tonnage handled prior to June 25, 1918 by approximately 60 per cent.

The applicant has, apparently, since the rates were reduced December, 1919, made every effort to secure a return of the traffic, but without satisfactory results; this notwithstanding the fact that its transportation charges are materially lower than the charges assessed by the competing automobile trucks. This situation

may be accounted for by reason of the fact that the auto trucks perform a pickup and delivery service at both ends of the line. Applicant established the practice, at stations where its tracks run through the main streets of towns, of making curb deliveries in front of the places of business of the consignees. However, the trucks continued to have the advantage, their charge including the picking up of the freight at San Jose, the principal point of shipment, which service this applicant is not in a position to render. The competition suffered through automobile trucks has proven formidable, and with the building of good roads such competition will increase rather than diminish, resulting in further and greater losses, a burden which the passenger service would have to carry. There is not now a sufficient tonnage of freight offered to yield even the out-of-pocket cost for performing this this branch of the service and, apparently, there is no possible method by which the freight traffic can be increased.

The applicant now has before the Commission another proceeding, by which it seeks authority to readjust certain of its passenger fares. In that proceeding it presented the income and expense account for the twelve months ending December 31, 1920; this statement shows that the total railway operating revenues were \$354,416.90, and the total railway operating expenses \$356,010.29, leaving a net deficit from railway operations for the year 1920 of \$1,593.39. The taxes assignable to railway operations were \$18,786.35, leaving a total operating loss of \$20,379.74. Its receipts from non-operative income totaled \$34,028.10, making the gross income \$13,668.36. The total deductions from gross income,

including interest on funded debt of \$331,005.11, was \$334,458.82, leaving an income loss for the twelve months' period of \$320,790.46.

The Commission has made no valuation of the Peninsular Railway, but in Case No. 144 the company submitted a valuation as of June 30, 1914 of the operative property only, amounting to \$4,048,798.17. Since June 30, 1914 there have been additions and betterments amounting to \$178,822.72, making a total claimed value of the property of \$4,227,620.89, upon which there was a gross income, as stated above, available for interest on funded debt, etc., of \$13,668.36, or about one-third of one per cent upon the claimed reproduction value of the property.

While the Peninsular Railway was organized in the first instance for both freight and passengers, the service now rendered is primarily that of a passenger line, although the company will continue to handle freight in carload shipments.

Acting upon instructions from the Commission, notice was given the general public through advertisements in the daily press, posting notices in cars and depots, and circularizing all of the shippers regularly forwarding less-than-carload freight. Notwithstanding this wide publicity no one appeared in opposition to the granting of the application.

The territory traversed by this applicant is served almost in its entirety by the Southern Pacific Company, and where there are no stations of the Southern Pacific, automobile truck lines are in operation.

The interests of the public should be protected, but it is well established by Commission and Court decisions that a

common carrier cannot be compelled to continue indefinitely operations resulting in loss, particularly, as in this instance, where the public would suffer no loss by reason of the curtailment of the service. In Brooks-Scanlon Company vs Railroad Commission of Louisiana, 251, U.S. 396, February 2, 1920, the Supreme Court of the United States said: "A carrier cannot be compelled to carry on even a branch of business at a loss, much less the whole business of carriage". There are many decisions of similar importance, but the one quoted appears to be the latest.

There is no necessity for a continuation of the less-than-carload freight service of this applicant, the entire territory, as heretofore stated, being served by other means of transportation.

I am of the opinion that the application should be granted and submit the following form of order:

O R D E R

The Peninsular Railway Company having made application to this Commission to discontinue receiving and delivering less-than-carload freight at all stations upon its line, the Commission being fully advised in the premises, and being of the opinion that the application should be granted,

IT IS HEREBY ORDERED that this application be and the same is hereby granted, and that this order will become effective as of May 1, 1921.

IT IS HEREBY FURTHER ORDERED that this applicant post notices at its principal stations setting forth the date upon which the service will be discontinued.

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 28th day of March, 1921.

Frank DeWitt
H. H. Ireland
Dwight Martin

Commissioners.