

ORIGINAL

Decision No. 8977.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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WILLIAMS MOTOR EXPRESS COMPANY,  
Complainant.

-vs-

SANTA FE EXPRESS AND DRAYAGE COMPANY,  
Defendant.

Case No. 1547.

J. W. SCOTT (Doing business under the  
firm-name and style of Williams Motor  
Express Company)  
Complainant.

-vs-

C. D. RASMUSSEN (Doing business under  
the firm name and style of Santa Fe  
Express and Drayage Company).  
Defendant.

Case No. 1556.

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Sanborn and Roehl, by A. B. Roehl for Complainant.

Myron Harris for Defendant.

BY THE COMMISSION:

O P I N I O N

In Case Number 1547, complainant alleges unlawful operation by defendant in the handling of shipments originating at San Francisco and destined to San Leandro and Haywards via the through route existing by a combination of the local service rendered by the Williams Motor Express Company and the Santa Fe Express and Drayage Company, and the Commission is requested to make its order restraining the Santa Fe Express and Drayage Company from handling any and all shipments destined to San Leandro and Haywards over its lines, pending a ruling of the Commission

and a decision in this case.

In Case Number 1556, complainant sets forth the correct parties in interest, both complainant and defendant being individuals operating under fictitious names. The allegations of the complaint and the relief requested in Case Number 1556 are practically identical with those contained in Case Number 1547 supra, the complaint in Case Number 1556 following more closely the requirements of the Commission as contained in its rules of procedure.

A public hearing on the above-entitled matters was conducted by Examiner Handford at San Francisco on April 21, 1921, at which time the matters were consolidated for the purpose of receiving evidence and for decision, were duly submitted and are now ready for decision.

Complainants allege that defendants, without securing authority from this Commission, have disregarded the provisions of a joint tariff filed to care for through business originating at San Francisco and destined to San Leandro and Hayward, the handling of such through business requiring the service of both complainant and defendant; that a concurrence in the through tariff has been cancelled by defendant without the permission of this Commission and that such permission is required in that by such cancellation the combination of local rates exceeds the former joint rate provided by the concurrence and joint tariff and results in increased rates to the public desiring to use such through route and joint rate; that defendant has been and is now soliciting and handling shipments destined to San Leandro and Hayward over its own line and making deliveries by its own trucks for which it possesses no authority or certificate of public convenience and necessity from this Commission; that it

has failed and refused and still fails and refuses to deliver to complainant shipments originating at San Francisco and destined to San Leandro and Haywards, complainant alleging that it is entitled to transport such shipments over the portion of the through route from Oakland to San Leandro and Haywards.

Defendant in its answer in Case Number 1547, denies the material allegations of the complaint and also sets forth sundry allegations as to the method of conducting the business of the complainant, which allegations are not pertinent to the issues in these proceedings and are outside the jurisdiction of the Commission.

Witnesses for complainant and defendant testified as to conditions surrounding the traffic between San Francisco, Oakland, San Leandro and Haywards; as to the causes surrounding the diversion of shipments from the former joint route and the method in which shipments have been and are at present being handled. It was stipulated that all records of the Railroad Commission might be considered as being in evidence in this proceeding.

We have carefully considered all evidence, exhibits and our own records in these proceedings and have arrived at the following statement of facts.

- Mrs. J. W. Scott, operating under the fictitious name of Williams Motor Express Company, is the proprietor of an automobile truck line as a common carrier of freight between Oakland, San Leandro and Haywards. This operation is conducted by reason of succession to operation heretofore conducted prior to May 1, 1917, the date recognized by the Legislature in the passage of Chapter 213, Laws of 1917, as that upon which operators in good faith were not required to secure certificates of public

necessity and convenience from this Commission nor permits from the governing bodies of the various political sub-divisions through which a route passed. The tariffs and schedules of Mrs. Scott are on file with this Commission, as required by the provisions of General Order No. 51.

C. D. Rasmussen, operating under the fictitious name of Santa Fe Express & Drayage Company, is the proprietor of an automobile truck line as a common carrier of freight between San Francisco and Oakland, Berkeley, Alameda, Piedmont, Emeryville, Fruitvale and Melrose. This operation is conducted by reason of operation in effect prior to May 1, 1917, the date recognized by the Legislature in the passage of Chapter 213, Laws of 1917, as that upon which operators in good faith were not required to secure certificates of public convenience and necessity from this Commission nor permits from the governing bodies of the various political sub-divisions through which a route passed. The tariffs and schedules of Mr. Rasmussen are on file with this Commission as required by the provisions of General Order No. 51.

On March 14, 1918, the Santa Fe Express and Drayage Company by its Form F. 2 No. 1 filed a concurrence in all schedules made and filed by Williams Motor Express Company or its agent. After the filing of such concurrence shipments moving between San Francisco, Berkeley, Alameda, and Piedmont to Oakland, Fruitvale, Melrose, San Leandro and Haywards were covered by Joint Tariff C. R. C. No. 1 issued by Williams Motor Express Company. On February 28, 1921, the Williams Motor Express Company changed the location of its station in the city of Oakland, it formerly having occupied premises jointly used by the Santa Fe Express and Drayage Company. On March 1, 1921,

representatives of the Williams Motor Express Company called at the station of the Santa Fe Express and Drayage Company for any shipments that might be destined to San Leandro and Haywards via the line of the Williams Motor Express Company. They were refused any shipments and for several days following inquiries as regards shipments were met with the advice that there were no shipments at the station of the Santa Fe Express and Drayage Company to be transported over the line of the Williams Motor Express Company. On March 7, 1921, the Santa Fe Express and Drayage Company by C. D. Rasmussen filed with the Railroad Commission a document dated March 15, 1921, giving notice of the revocation of its concurrence (Form F 2, No. 1) issued under date of March 14, 1918, in favor of Williams Motor Express, the notice of concurrence to become effective March 15, 1921, and purporting to be issued under Rule No. 8c of General Order No. 51 of this Commission, such rule providing as follows:

"A power of attorney or concurrence may be revoked by filing notice of such revocation with the commission and serving a copy of same upon the party to whom originally given at least ten days in advance of the date such revocation is to become effective."

The revoking of the concurrence resulted in an increase of rates in that the sum of the locals via the line of the Santa Fe Express and Drayage Company - San Francisco to Oakland - and via the line of the Williams Motor Express Company between Oakland, San Leandro and Haywards being greater than the through rate via the use of the respective lines and the joint rates as filed in Williams Motor Express Company's local and Joint Freight Tariff C. R. C. No. 1.

Shipments originating in San Francisco or Oakland with the Santa Fe Express and Drayage Company and which were destined to San Leandro and Hayward's were turned over by the Santa Fe Express and Drayage Company to the S. & F. Auto Truck Line and the same rates were assigned on the through business as formerly obtained under the joint freight tariff filed by the Williams Motor Express Company. The assignment of such rates was illegal in that there was no concurrence existing between the S. & F. Auto Truck Line and the Santa Fe Express and Drayage Company.

On April 11, 1921, the S. & F. Auto Truck Line by C. D. Rasmussen, its manager, filed with the Railroad Commission a document ( F. 2, No. 1) assenting to and concurring in the publication and filing of any freight rate schedule, as filed by the Santa Fe Express and Drayage Company, and on April 23, there was filed with this Commission by the Santa Fe Express and Drayage Company Supplement No. 5 to Santa Fe Express and Drayage Company's Tariff C. R. C. No. 2 naming joint rates between San Francisco and San Leandro and Hayward's in connection with S. & F. Auto Truck Line under the authority conferred by S. & F. Auto Truck Line F. 2, No.1.

Complainant, Williams Motor Express Company, alleges that the Santa Fe Express and Drayage Company had sent its own trucks into the territory serving San Leandro and Hayward's. We find from the evidence that this is not a fact and that the business was turned over to the S. & F. Auto Truck Line; such line having operative rights from Oakland to San Jose serving as intermediates the communities at San Leandro and Hayward's. The handling of this business under the joint rates is a violation of the regulations of this Commission in that no joint rates

were filed with this Commission as existing between the Santa Fe Express and Drayage Company and the S. & F. Auto Truck Line. Upon the cancellation of the concurrence of the Santa Fe Express and Drayage Company with the Williams Motor Express the correct rates applicable would be a combination of locals and such combination of locals would have resulted in rates higher than the previously published joint rates participated in by each of these companies. The combination of locals resulting in an increase in rates constituted a violation of the provisions of Rule 11 a of General Order No. 51 of this Commission, such rule reading as follows:

"No transportation company shall raise any rate, fare, toll, rental or charge or so alter any classification, contract, practice, rule or regulation as to result in an increase in any rate, fare, toll, rental or charge, under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified."

The filing of a concurrence by the S. & F. Auto Truck Line with the Santa Fe Express and Drayage Company and the subsequent publishing of a tariff by the Santa Fe Express and Drayage Company naming through rates between San Francisco, San Leandro and Hayward via the line of the S. & F. Auto Truck Line and the Santa Fe Express and Drayage Company has resulted in the public again being able to receive the benefit of through rates between such points.

The Commission in these proceedings is not interested in the matter of the change of terminals in Oakland of the Williams Motor Express Company although Williams Motor Express Company is entitled to transport and receive notice from the Santa Fe Express and Drayage Company of any shipments arriving

at the Oakland station of the Santa Fe Express and Drayage Company and marked to consignees in San Leandro and Hayward, care Williams Motor Express Company. The Santa Fe Express and Drayage Company is not obligated nor will it be required by this Commission to divert to Williams Motor Express Company any shipments not specifically routed and marked via Williams Motor Express Company as the delivering carrier.

After carefully considering all the evidence, exhibits and the record filings of the Commission, we are of the opinion that the complaints herein should be dismissed in accordance with the following order.

#### O R D E R

A public hearing having been held in the above entitled proceedings, the matters having been duly submitted and the Commission being fully advised and basing its order on the findings of fact as contained in the opinion preceding this order,

IT IS HEREBY ORDERED, That shipments originating with or collected by C. D. Rasmussen, operating under the fictitious name of Santa Fe Express and Drayage Company, in San Francisco, Oakland, Berkeley, Alameda, Piedmont, Emeryville, Fruitvale or Melrose and destined to San Leandro and Hayward, when such shipments are routed via the line of Mrs. J. W. Scott, operating under the fictitious name of Williams Motor Express Company, shall be delivered at the station of C. D. Rasmussen to Mrs. J. W. Scott or her representatives and that notification of such shipments being ready for delivery shall be made by post card notice, telephone, or any other method that may be agreed upon. Shipments which



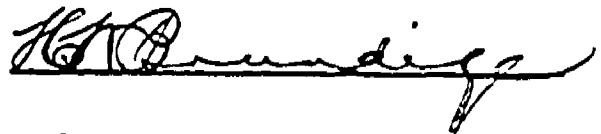
are not definitely routed via the line of Mrs. J. W. Scott, operating under the fictitious name of Williams Motor Express Company, may be routed to destination via any line authorized to operate in the communities of San Leandro and Hayward.

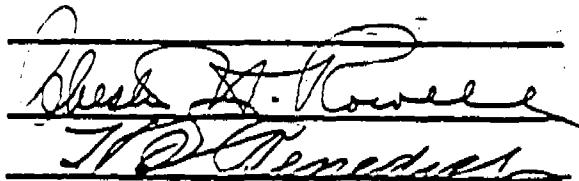

C. D. Rasmussen is hereby required to notify prospective shippers from whom consignments are received when same are destined to San Leandro and Hayward of the existence of through route and joint rates and also as to the through rates that are arrived at by a combination of locals, this that the shipping public may have notice of existing rates and be fully advised at the time of selecting the route over which transportation is desired.

IT IS HEREBY FURTHER ORDERED, That as to other matters herein complained of that these complaints be and the same hereby are 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 16<sup>th</sup> day of May, 1921.



Commissioners.