

Decision No. 8985-

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of
FRED MILLER for certificate of pub-
lic convenience and necessity to op-
erate freight, express and baggage
service between Brawley and Westmore-
land.

)
Application No. 6486.
)

In the Matter of the Application of
C. A. WARE of Westmoreland, California,
for permission to operate a freight
and express auto truck line between
Westmoreland and Brawley.

)
Application No. 6533.
)

H. W. Kidd and Rex Hardy for Applicant,
Fred Miller.

James L. Allen for Applicant, C. A. Ware.

BY THE COMMISSION.

O P I N I O N

Each of the above named applicants applies for authority to operate automotive freight truck lines between Brawley and Westmoreland in Imperial County, a distance of about 12 miles over dirt road.

A public hearing upon both applications was held by Examiner Westover at El Centro, May 10, 1921, at which, upon stipulation of counsel, both were consolidated for hearing and decision. Counsel for the Southern Pacific Company and for the American Railway Express Company were present, but stated that they did not care to enter an appearance in the matter.

It appears from the undisputed testimony that applicant, C. A. Ware, purchased from A. W. Dwinell in August, 1920, his ice

and general trucking business in Westmoreland, including two one-ton trucks and some real estate, for the total sum of \$5400.00. In connection with the trucking business, it appears that Mr. Dwinell had been operating a freight line between Brawley and Westmoreland without authority. Mr. Ware continued the operation, also without authority, and since last August has been operating one round trip daily upon morning schedules, which the testimony shows are the most convenient and suitable hours for the accommodation of shippers. He operates the only direct service between the two points; the only other service being the rail service of the Southern Pacific Company's lines via Calipatria, a distance of about 25 miles. All of the testimony indicates that he has been giving good service. The freight movement amounts to about 1600 pounds per day, principally west bound, the shipments being quite uniform in amount.

Mr. Ware's application recites that at the time of purchasing the property he was unaware of the legal requirement of procuring authority from the Commission; confesses the operation of the line since August, 1920, and alleges that it was not done with knowledge of or intent to violate any law or ruling of the Commission; and ^{that he} is ready to answer to any infraction of the law occasioned by such operation. His testimony as to this feature of the application is to the effect that when the opportunity to purchase the business arose, he considered the investment favorably and accepted the proposition, paid his money, and began operating the line in connection with the ice and trucking business in total ignorance of the existence of the law requiring him to first procure authority from the Commission. His first knowledge of the illegality of his operation was acquired in January or February, 1921, when he learned, through the local paper, that

Fred Miller had applied to the Commission for authority to operate between Brawley and Westmoreland. He promptly sought legal advice, with the result that his above Application No. 6533 was filed in the Commission's San Francisco office on February 7, 1921.

Mr. Miller's above Application No. 6486 was filed in the Commission's San Francisco office three weeks earlier, namely, January 14, 1921. It applies for authority to operate between the same points a 3/4 ton truck, "three trips weekly". At the close of the testimony, Mr. Miller's counsel was granted leave to amend his schedule to provide for a daily service, except Sundays and holidays, specifying the hours of arrival and departure at each terminal; and to file an amended proposed tariff.

The schedules offered by the two applicants are very similar and apparently about equally convenient. Mr. Ware operates two one-ton trucks, and Mr. Miller proposes to operate one 3/4 ton truck. It appears that each can add additional equipment as required. Mr. Ware's proposed rates are "25 cents per cwt. on all freight; 35 cents per cwt. on all express and perishable merchandise". Mr. Miller's proposed rates are "25 cents per cwt. on all commodities except household furniture and ice in quantities of two tons or less; ice, two tons or more, 15 cents per cwt.; household furniture, 50 cents per cwt. No testimony was presented by either party tending to show how the communities in question will be affected by these rates, nor the quantities of either class now moving. The principal commodities westbound are grain, feed, flour, general merchandise, fruit, food stuffs, and hardware; eastbound, the principle shipments are perishable lettuce and cantaloupes during their respective seasons. It is apparent from the testimony that there is not sufficient business to require the service of two lines.

There was no testimony tending to question the good faith of Mr. Ware in beginning the operation of the line, nor his ignorance of the legal requirements; nor the satisfactory character of the service which he has been rendering to the public. It appears from the testimony that he had been rendering good service in handling a considerable and steady volume of business for about five months before Mr. Miller filed his application, and that he used a reasonable degree of diligence in seeking legal advice and acting upon it by filing his application about three weeks after the Miller application was filed. In his verified application he specifically called the attention of the Commission to the illegal character of his operations and expressed his readiness to answer therefor in such manner as the Commission "may see fit to impose". His attorney, in transmitting the application, requested an early hearing. The Commission's clerical force, noting from the application that the line had been purchased from another, not mentioned, returned the application, suggesting that a joint application for authority to transfer operative rights be filed, but was promptly advised by applicant's counsel that the one formerly operating the line had left the community and his whereabouts were not known; that Mr. Ware advised that he thought the man did not have a certificate, but as to that he was not positive, and suggested that the Commission's records be examined on this point. Although several letters were exchanged, no suggestion was made to this applicant or his counsel that his confessedly illegal operation should be discontinued pending the hearing.

The application of Mr. Miller named as the carriers now operating between the points in question only the Southern Pacific Company and the American Railway Express Company. Neither the

application nor correspondence with the Commission referred to Mr. Ware's operation, nor requested that it should be stopped. The first application to the Commission to stop the alleged illegal operation came at the close of the testimony when Mr. Miller's counsel requested Examiner Westover to order that applicant, C. A. Ware, cease operation pending the decision of the Commission. As applicant, Fred Miller, had not previously advised the Commission of the situation, although he was in a position to know of it for several months, and as the Commission had not taken action upon the filing of the Ware application expressly calling attention to the illegal character of his operation, Examiner Westover properly declined to make such order at the hearing in El Centro on May 10, 1921, considering that, under the particular circumstances of the case, the probable interruption in the public service was not required, in view of the fact that all of the circumstances would be laid before the Commission upon his return to San Francisco a few days later.

Counsel for applicant Miller cited Decision No. 8924 of May 3, 1921, upon Application No. 6582 of L. A. Jones and Robert and Kaltenborn, a matter heard by Examiner Westover/in which he prepared the opinion, in which authority to operate was denied largely because of willful violation of the law. In the decision referred to, the applicants applied for authority to operate between San Bernardino and Colton on the one hand, and Mecca on the other hand, serving as intermediate points five towns between Banning and Mecca, - a territory served by the authorized operation of the Coachella Valley Truck Line (except as to serving San Bernardino, concerning which the Coachella Line had an application before the Commission under submission at that time). One of the applicants, L. A. Jones, had begun the operation "without authority and with-

out knowledge, he claimed, that the law required previous authority for such operation, but that the Commission advised him of the provisions of the law and notified him about December 1, 1920, to quit operating; yet he continued, nevertheless, in defiance of the law and of the Commission's order until about the time this application was filed on February 21, 1921". The only justification he offered was that after being ordered by the Commission's inspector to quit, he had been advised by some other truck man that he had a right to operate. The opinion closes with the following language, to which we call the attention of stage and truck operators:

"Those interested in the matter will always find it far safer to follow the advice of the Commission, which is engaged in interpreting and applying the law, rather than ~~that of truck drivers or others who may have ulterior motives~~ or interested reasons for giving erroneous advice. Willful violation of the law is sufficient to show unfitness of such person for operating 'transportation companies' or public utilities, although the Commission has in proper instances granted authority where operation had been continued only in good faith without knowledge of the requirement of the law. As the statute in question has been in operation nearly four years, it is but fair to assume that everyone interested in the subject matter has knowledge of its existence, and the maxim 'ignorance of the law excuses no one' should be applied."

Under the peculiar circumstances presented by the record in the above matters, including the straightforward disclosure of the illegal character of his operation made by Mr. Ware in his application, the fact that he had not been ordered to cease such operation, and the fact that he has served the public faithfully and well and that the public interest would not be better served in this particular instance by a change in operators and equipment, we are not inclined to impose as a punitive measure a denial of his application to legalize his illegal operation, even though such operation was continued pending the order of the Commission after he learned of its illegal character, and advised the Commission of the circumstances.

O R D E R

A public hearing having been held in the above entitled matters, they being submitted and ready for decision,

THE RAILROAD COMMISSION HEREBY DECLARES that public convenience and necessity require the operation by C. A. Ware of an auto truck line between Brawley and Westmoreland, Imperial County, but do not require the operation of such service by Fred Miller.

The operative rights and privileges hereby established may not be transferred, leased, sold nor assigned, nor the said service abandoned unless the written consent of the Railroad Commission thereto has first been procured.

No vehicle may be operated in said service unless said vehicle is owned by the applicant herein or is leased by said applicant under a contract or agreement satisfactory to the Railroad Commission.

IT IS HEREBY ORDERED that applicant shall within twenty (20) days from the date hereof file with the Railroad Commission his schedule and tariffs covering said proposed service, which shall be in addition to proposed schedule and tariff accompanying the application, and shall set forth the date upon which the operation of the lines hereby authorized will commence, which date shall be within ninety (90) days from date hereof, unless time to begin operation is extended by formal supplemental order.

The authority herein contained shall not become effective until and unless the above mentioned schedules and tariffs are filed within the time herein limited.

IT IS HEREBY FURTHER ORDERED that the above described

application of Fred Miller be and it is hereby dismissed.

Dated at San Francisco, California, this 21st day
of May, 1921.

H. P. Rendige

H. W. Lovland

H. P. Rendige
Commissioners.