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Decision No. 9027

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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ORIGINAL

In the Matter of the Application of  
GEORGE J. BENNETT for certificate of  
public convenience and necessity to  
operate trucking service between  
ranches in Anderson Valley and  
Cloverdale and Geyserville.

)  
:  
) Application No. 6356  
)  
:

GEORGE W. JOHNSON and J.M., JOHNSON, )

Complainants, :

Vs. )

Case No. 1527

GEORGE J. BENNETT, :

Defendant. )

In the Matter of the Application of  
GEORGE W. JOHNSON and J. M. JOHNSON  
for certificate of public convenience  
and necessity to operate and extend  
their freightstage service from and  
between Cloverdale, California, and  
Geyserville, California.

:  
) Application No. 6621.  
:  
)

John W. Preston and C. A. Linn,  
by C. A. Linn, for Complainants.

W. F. Cowan for Defendant and Applicant.

BY THE COMMISSION.

O P I N I O N

The complaint in Case No. 1527 alleges that defendant solicits, accepts, and hauls freight from Philo, Mendocino County, and vicinity, to Cloverdale, Sonoma County, being territory served by complainant under authority of certificate of public convenience issued by the Commission. The answer alleges that defendant does not operate over a regular route or between fixed

termini, but always under private contract to any destination requested.

The defendant also applies for authority to operate a track line between "ranches in the Anderson Valley and Cloverdale and Geyserville".

A public hearing in both proceedings was held by Examiner Westover at Cloverdale, at which, by stipulation of parties, both matters were consolidated for hearing and decision.

It appears from the testimony that the majority of Mr. Bennett's operation during the past two or three years has consisted in moving dried fruits from the vicinity of Philo and Booneville to Cloverdale, and of green fruits to Geyserville, at which a large cannery is located. Besides fruit he does considerable hauling of grape stakes, ties, tan bark, wood and livestock to various points. He serves everyone who wishes to engage him at specified rates per hundred pounds, the great majority of his operation, aside from hauling green fruit, being between Cloverdale and Philo, a distance of about 35 miles, although he operates to and from other destinations from time to time, such other operations consisting principally in taking an occasional load to Hopland rather than to Cloverdale. The Hopland road joins the Cloverdale-Philo road at the Mountain House, 9½ miles from Cloverdale and about the same distance from Hopland.

Besides the above operations his principal additional activity is hauling green fruit during the season to a cannery at Geyserville, located about ten miles southeasterly from Cloverdale. The operations between Philo and Cloverdale are necessarily over the road used by complainants, Johnson Bros., as it is the only improved thoroughfare in that portion of the mountains.

Defendant Bennett purchased his truck in June, 1917, and soon afterward began hauling out fruit to the railroad at Hopland or to the cannery at Geyserville.

Complainants operate three round trips per week between Cloverdale, Philo and Navarro, a distance of 43 miles, over unpaved mountain roads, which at times during a considerable portion of the winter, are impassable for large trucks because of heavy rains and landslides, but they usually get through with a small truck, although sometimes they are obliged to leave part of the freight offered for shipment. Their equipment consists of three trucks with a rated capacity of 1, 2 and 3½ tons, respectively. Both complainants and defendants serve ranchers in the vicinity of the Cloverdale-Philo road.

At the hearing some complaint developed concerning the quality of service given by complainants, but most of the complaint appears to relate to periods when a trip could not be made with a large truck. There appear to have been other times, however, when freight was not moved from the railway station at Cloverdale with reasonable promptness under the circumstances. This condition must be remedied by complainants.

Defendant's operation brings him clearly within the definition of a transportation company as defined by Section 1(c), Chapter 213, Statutes of 1917, in that he operates "an auto truck \* \* \* used in the business of transportation \* \* \* over any public highway in this State between fixed termini or over a regular route", as well as operating to other points beyond fixed termini and off the regular route. Section 5 requires that no transportation company shall begin to operate for compensation on any public highway in this State without first obtaining a certificate declaring that public convenience and necessity require such operation, but that no certificate is necessary where operation began in good faith prior to July 22, 1919, the date when the amended act became effective.

Defendant wishes to operate, apparently, without regulation and only as he finds it convenient. He never has perfected

any operative rights by filing tariff or schedules, which he might have done under the Commission's frequent invitations to operators who claimed operative rights under the statutes, without the granting of certificates; nor has he sought authority to operate as a contract carrier and filed contracts with groups of shippers for special service under private contracts. He stated at the hearing that he filed the application because he was advised it would protect him in his present class of irregular and illegal operations.

Under the peculiar circumstances of this particular case, and in view of the good service he appears to have been giving, the public interest will apparently be best served by affording Mr. Bennett an opportunity to now elect whether he chooses to perfect operative rights as a common carrier by filing tariff and schedules as required by the order herein, to seek recognition as a contract carrier operating under private contracts with a limited, specified group of individuals, <sup>or to cease operating.</sup> The schedule attached to his application provides for "any time anyone orders freight hauled".

By stipulation of parties, the evidence presented is to be considered as offered in support of the new application also. Since the hearing, the new application has been received and assigned the above number 6621. It appears, as shown above, that there is considerable fruit to be moved from the Philo district to the cannery at Geyserville, and that there is a public convenience and necessity to be served by having the present authorized common carriers extend their service to Geyserville for that purpose.

#### O R D E R

A public hearing having been held upon the above entitled applications and case, the matters being submitted and ready for decision,

THE RAILROAD COMMISSION HEREBY DECLARES that public convenience and necessity require George W. Johnson and J. M. Johnson to extend their present automobile truck service <sup>and operate</sup> between Cloverdale and Geyserville and intermediate points; and requires George J. Bennett to operate automobile truck service between Philo and Geyserville, serving Cloverdale as an intermediate point. Nothing herein contained shall be construed to prevent either of said applicants from serving ranches in the vicinity of their said routes, hereinabove described, or which may now be served by them respectively.

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 applicants herein or is leased by said applicants under a contract or agreement satisfactory to the Railroad Commission.

IT IS HEREBY ORDERED that each of applicants 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 line 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 complaint in  
the above Case No. 1527 be and it is hereby dismissed.

Dated at San Francisco, California, this 28<sup>th</sup> day of  
May, 1921.

H. W. Brundage  
H. D. Brown  
Darius M. ...  
W. H. ...  
W. H. ...

Commissioners.