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Decision No. 9064

ORIGINAL

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

A. B. WATSON, transacting business under the name and style of CROWN STAGE,

Complainant,

-vs-

Case No. 1442.

WHITE BUS LINE, a corporation, O. R. FULLER, transacting business under the name and style of WHITE STAGE LINE, and O. R. Fuller,

Defendants.

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Douglas Brookman, Clyde Bishop and L. A. Lewis, for Complainant;
H. W. Kidd, Harry A. Encell and A. J. Verheyen, for Defendants.

BY THE COMMISSION:

O P I N I O N

This is a complaint by an auto stage company against alleged unauthorized operations of a rival concern between the cities of Los Angeles and Santa Ana.

Public hearings were held in the city of Los Angeles on July 12 and 19, 1920, before Examiner Gordon. Thereafter briefs were filed, the matter was submitted and is now ready for decision.

Complainant, operating under the name of Crown Stage, runs a stage line between Santa Ana and Los Angeles. His operative rights, as to that portion of the line between Santa Ana and Anaheim, are by virtue of operations commenced by him prior to May 1, 1917, and as to the portion of the route between Anaheim and Los Angeles is, by purchase, under the authorization of the Commission's Decision No.7143, of the operative rights of the Valley Stage Line as the same had been conducted by one F. B. Ogden since a time prior to May 1,1917. The defendant is the successor in interest in the operative rights of the A. E. G. Bus Company, which began operations prior to May 1, 1917, between Los Angeles and San Diego over a route passing through Anaheim and Santa Ana.

It is contended by complainant that the defendant holds an operative right for the through service between Los Angeles and San Diego, and also an operative right for a local service between Los Angeles and Anaheim; that no operative right has ever been acquired by the defendant, either by virtue of operations prior to May 1, 1917, or by certificate granted subsequently by this Commission to operate a local service between Los Angeles and points along its route south and east of Anaheim to and including the City of Santa Ana.

Three issues are presented:

1st. As to whether or not the Commission has jurisdiction to entertain the complaint, seeking as it does to inquire into, define and regulate an operative right as such right existed prior to May 1, 1917, and was, therefore, recognized under the provisions of Chapter 213, Statutes of 1917.

2d. Whether the defendant has an operative right for any local service which it may at any time initiate along the line and route covered by its operative right for a through service between Los Angeles and San Diego. In other words, does the operative right for a through service by virtue of operations commenced prior to May 1, 1917, carry with it the right of local operations along such through route?

3d. Did the defendant, or the defendant's predecessor in interest in fact operate in good faith between the fixed termini of Anaheim and Santa Ana, or between Los Angeles and Santa Ana on and prior to May 1, 1917, in such a manner as to establish an operative right under the provisions of Chapter 213, Statutes of 1917?

The Commission has jurisdiction to entertain the complaint. Prior to the enactment of Chapter 213, Statutes of 1917, many auto stage lines were operating over highways of the State as transportation companies for the service of the public. That such transportation companies were subject to regulation under the provisions of the Constitution, Article XII, Section 22, was recognized by the Supreme Court in the case of Western Association etc. R.R. v. Railroad Commission, 173 Cal. 802.

The Legislature, in enacting Chapter 213 of the Statutes of 1917, provided definite machinery for the regulation of this form of utility--defined by that act as a "transportation company." The language of section

4 of this statute indicates no distinction between transportation companies operating prior to May 1, 1917, and those subsequently authorized by a certificate of public convenience and necessity insofar as regulation of operations is concerned. The only basis for any distinction between transportation companies operating prior to May 1, 1917, and those which commenced subsequent to that time is in the manner of creation of their operative rights. The act, in effect, declared that such operations as were actually being carried on in good faith on May 1, 1917, would be recognized as a lawful right to be exercised by the person or corporation then in the enjoyment of them. Every subsequent deviation fromor change in such operations must be under the approval and authorization of the regulatory body, the Railroad Commission.

Protection of existing rights against the encroachments of unauthorized operations is a proper exercise of the regulatory power. Public Utilities Commission v. Garviloch, 181 Pac. 272; P.U.R. 1919E, p. 182; Oro Electric Co. v. Railroad Commission, 169 Cal. 466.

The complaint herein invokes the regulatory power of the Commission to prevent alleged illegal encroachments by one transportation company on the operative rights of another. This is a matter within the Commission's jurisdiction.

Strictly speaking, a transportation company operating a through service in good faith on and prior to May 1, 1917, has no right by reason of such operation to later initiate a local service between intermediate points on the route traversed in the through service without first obtaining a certificate of public convenience and necessity

therefor from the Railroad Commission. The company would have the right to put on the local service to the same extent only as was its duty to render it, and this, in turn, would be only to the extent that the company had, on and prior to May 1, 1917, held itself out to render such local service for the public. Fundamentally and in the absence of statutory restriction, the right to operate as a public utility is measured by the extent of the undertaking. Under regulation, the right to so operate is coextensive with the duty to render service in the field undertaken. Prior to the enactment of the Statute of 1917 there was no State regulation of the operation of auto stages or, as later designated, "transportation companies." A stage company was free to undertake any kind of service without legal restriction as to the route or termini. By the Statute of 1917 a definite limitation was placed on all future proposed operations. Thereafter, one proposing to undertake a new service was required to obtain a certificate of public convenience and necessity from the Railroad Commission.

As to prior operations, the Statute provided:

> "But no such certificate shall be required of any transportation company as to the fixed termini between which or the route over which it is actually operating in good faith on May 1, 1917."
> (Statutes 1917, Chapter 213, sec. 5.)

The statute thus recognized the right of transportation companies to continue the service in effect on May 1, 1917. If, on that date, such company was actually operating stages between two points or over a regular route and in good faith was holding itself out to serve the public, its operative rights would include all features of local service which it had undertaken to render. The Commission cannot recognize as an operative right anything in excess of the original

undertaking. If, upon the assumption that such right existed, an effort were made to compel a transportation company to render a local service which it had not held itself forth as ready to perform, such effort would fall within the constitutional inhibitions against the taking of property without just compensation. Atchison, Topeka and Santa Fe Railway Co. v. Railroad Commission, 173 Cal. 577.

There are certain distinctive features of auto stage transportation which must be recognized in applying regulation to this kind of utility. In the very nature of things the type of equipment used, the character of highways traversed, and the class of public sought to be served present facts which might well limit the nature and extent of the undertaking. An auto stage company, in the present state of development of that industry, might consistently limit its undertaking to through service only between two points, such as Los Angeles and San Diego. It might well be that such service could be carried on successfully only by eliminating all or part of the local traffic along the through route. In this particular, the auto stage at the present time, is not comparable with an electric or steam railroad. It would not be justifiable to impute to an auto stage company the undertaking to serve, and, hence, the duty to serve all local points along a through route merely by reason of the operation of the through service. In this regard, the language of the statute for the regulation of transportation companies safeguards the operative rights of such companies in that these rights are described as "between fixed termini or over a regular route." It is thus possible for transportation companies to define ex-

actly the extent of their undertaking. We believe it is in the interest of the sound regulation and development of the auto stage industry that they should do so. Application can readily be made to the Commission for authorization to operate between fixed termini or over a regular route in such way as to include the right to render local service along such route. In many orders of this Commission certificates have been granted for operation between two named points and "intermediate points." Where no such qualifying language appears in the tariffs and schedules on file May 1, 1917, and there is no other evidence of an original undertaking to render local service, application should be made to the Commission for the issuance of a new certificate or modification of any existing certificate so as to permit the local service which public convenience and necessity demand. The best evidence of what a transportation company, operating in good faith on May 1, 1917, had undertaken to furnish by way of service to the public, is the showing of the actual operations of its stages, together with its published tariffs and time schedules, indicating the points proposed to be served.

The evidence in this case fails to show that the A. R. G. Bus Company, predecessor in interest of the defendant transportation company, actually operated a local service between Santa Ana and Anaheim prior to May 1, 1917. Neither do the published tariffs and time schedules of that company in effect on May 1, 1917, indicate that Santa Ana was a local stop to be served on the through line between Los Angeles and San Diego. On the contrary, there was affirmative evidence to show that the defendant's predecessor in interest did not originally on and prior to May 1, 1917, undertake to render local service between Anaheim and Santa Ana. On May 4,1918,

Mr. E. S. Goode, principal owner and general manager of the A. R. G. Bus Company, executed a written agreement in the name of that company not to "apply to the Railroad Commission for permission to handle any local traffic between Anaheim and Santa Ana or intermediate points." This agreement indicates that after a full year of operating the A. R. G. Bus Company was not holding itself out to the public to render local service between Anaheim and Santa Ana and intermediate points.

The evidence in this case does not show that on May 1, 1917, the defendant transportation company, or its predecessor in interest, was, in good faith, operating or holding itself out to operate a local service between Santa Ana and Anaheim. No certificate of public convenience and necessity has subsequently been issued by this Commission under which defendant might claim an operative right for such local service. We, therefore, conclude that the operations of the defendant transportation company between Santa Ana and Anaheim and intermediate points complained of in this proceeding are unauthorized and in violation of the provisions of Chapter 213, Statutes of 1917 as amended.

O R D E R

Complaint having been made concerning the alleged unlawful operations between the cities of Santa Ana and Anaheim and intermediate points by the defendants, White Bus Line, a corporation, O. R. Fuller, transacting business under the name and style of White Stage Line, and O. R. Fuller, and said defendants and their successor in interest, Motor Transit Company, a corporation, having appeared in answer thereto,

and public hearings having been held and the matter submitted, and the Commission having made its findings of fact as indicated by the foregoing opinion, and determined that the operations by said defendants, and each of them, as a transportation company, between the termini of Santa Ana and Anaheim are unauthorized and in violation of law,--

IT IS HEREBY ORDERED that the said defendants, and each of them, forthwith desist operating as a transportation company for the transportation of persons or property for compensation between the termini of Santa Ana and Anaheim and intermediate points.

Dated at San Francisco, California, this 7th day of June, 1921.

H. W. Brundige

H. D. Loveland

Irving Martin

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W. S. Benedict

Commissioners.