

ORIGINAL

Decision No. 9599

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
H. W. MOORE for certificate of public
convenience and necessity to operate
freight service between Stockton and
Oakdale.

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)
) Application No. 6731.
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E. W. Moore in propria persona.
L. N. Bradshaw for Southern Pacific Co.
and Atchison, Topeka & Santa Fe Rail-
way Co.
E. Stern for American Railway Express Co.

BY THE COMMISSION.

O P I N I O N

A public hearing was held by Examiner Westover at Stockton upon the above entitled application to establish an auto truck service as a common carrier of freight between Stockton and Oakdale, serving Colledgeville, Escalon and Valley Home as intermediate points, three round trips per week on Tuesday, Thursday and Saturday, at a rate of 25 cents per hundred pounds applying to all movements, with a pick-up charge of 50 cents in Stockton, except from wholesale fruit and produce houses. The proposed equipment consists of two 3-ton Autocars, one 2-ton G.M.C. truck, and three 2-ton trailers.

It appears from the testimony that applicant for some time has been carrying perishable goods, especially, such as fruit and produce, from the wholesale houses in Stockton to merchants at points to be served. This work has been done from time to time as goods were needed and ordered by 22 local merchants who would give him orders to be filled at the Stockton produce houses.

It appears from the testimony that applicant is now hauling from 10 to 15 tons of freight per week at the proposed 25¢ rate and that the Southern Pacific l.c.l. tonnage from Stockton to Farmington, Valley Home, and Holden for the month of May totalled about 28½ tons, and that of the Santa Fe from Stockton to Oakdale for the month of June is shown as less than 9 tons.

Of the points which applicant wishes to serve, each of the rail carriers serves Stockton and Oakdale, the Southern Pacific serving Valley Home and the Santa Fe Escalon, as well. The rail class rates are 25¢, 21¢, 17½¢, and 15¢, respectively, the average rail rate being 18¢, based on percentages of traffic moving under the several classes. The American Railway Express Company, which serves over both railroads, operates under rates very materially higher than present rail rates or those proposed by applicant.

There is a rail freight service from Stockton daily except Sunday, by which goods delivered to the Stockton freight houses of either line are delivered at Oakdale at 8:00 A.M. the next morning. It appeared, however, from Mr. Moore's testimony that orders are frequently placed with him or the wholesale houses by telephone long after the freight houses have closed and that he is able to make delivery at store doors in Oakdale at 8:00 A.M. the following morning without drayage charge or rehandling at either end of the line, a service which neither railroad offers.

The proposed pick-up charge of 50¢ per shipment in Stockton, outside of the wholesale and produce houses, apparently will have little practical effect on the situation, for the reason that most of applicant's Stockton business so far developed is with the produce houses. There is no pick-up or delivery charge proposed at any other point.

Applicant appears to have assumed that he was operating

under private contracts of employment and did not require authority from the Commission. Both assumptions were erroneous. The supposed contracts are mere written routing orders from the merchants to the wholesale houses, directing that their goods be shipped by applicant's trucks.

Again we call attention to the fact that the Auto Transportation Act does not exempt from its provisions those operating under contracts of employment. It requires that those wishing to engage in the business of transporting persons or goods for compensation, or as common carriers, over the highways of the State between fixed termini or over a regular route, should first procure from the Railroad Commission a certificate that public convenience and necessity require the service which they propose to establish. Operations wholly within the limits of an incorporated city or town, and operation of taxi cabs, hotel busses or sightseeing busses are the only classes of automotive transportation expressly excepted from the provisions of the Act.

There is no suggestion in it that one operating at irregular intervals or one operating under contract of any kind is not subject to regulation. If one engaged in the business of automotive transportation could avoid the regulatory provisions of the law by merely operating at irregular times, a handsome premium would be placed upon poor service to the public, for one of the essentials of transportation service is regularity of operation. The shipping public is entitled to know when and under what conditions transportation is available. As to operating under contract, every shipment involves the establishment of a contractual relation between the shipper or passenger and the carrier. Yet if a carrier could avoid public regulation by executing a contract of any specified type, it would result in defeating the very ends sought by the enactment of the statute regulating the transportation of passengers and property by automotive vehicles. It will not be seriously argued,

of course, that the Legislature intended such a result.

In this particular instance, it appears that the shippers of the commodities in question prefer to ship perishables by applicant's trucks and receive store door delivery, rather than ship by rail at much lower rates, and that they are entitled to an opportunity to patronize an authorized service of that kind.

ORDER

A public hearing having been held upon the above entitled application, the matter being submitted and now ready for decision,

THE RAILROAD COMMISSION HEREBY DECLARES that public convenience and necessity require that H. W. Moore operate an automotive freight truck service between Stockton and Oakdale, serving Collegenille, Escalon, and Valley Home as intermediate points.

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 fifteen days from the date hereof, file with the Railroad Commission his schedules 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 thirty days from date hereof, unless time to begin operation is extended by formal supplemental order.

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

Dated at San Francisco, California, this 14th day of October, 1921.

H. J. Overland

Charles H. Brown

J. J. [unclear]
Commissioners.