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Decision No. 9626

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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ORIGINAL

HOMER RHYNE and C. L. RHYNE, doing
business as a co-partnership under
the name of Rhyne and Rhyne,

Complainants,)

vs.)

Case No. 1542

W. D. GREER, doing business under the
name of W. D. Greer Stage Company,

Defendant.)

BY THE COMMISSION,

SUPPLEMENTAL OPINION

On July 25th, 1921, complainants in the above entitled proceeding filed a complaint in which they attack the operating rights of the W. D. Greer Stage Company as regards operating to or from the town of Fellows in connection with their through stages operated from Taft to San Luis Obispo and Pismo Beach, via McKittrick.

A hearing was held upon such complaint on August 18th, 1921, before Examiner Satterwhite at Bakersfield and on August 31st, 1921, the Commission issued its Decision No. 9442, in which such complaint was dismissed. On September 19, 1921, complainants filed a petition for rehearing in which they allege that the Commission erred in dismissing such complaint insofar as it related to the right of defendant therein to carry passengers locally between Taft and Fellows, such petition for rehearing alleging that the evidence conclusively showed that neither defendant nor his predecessor in interest, Western Auto Stage Company, a corporation, had ever held themselves out as carry-

ing passengers locally between Taft and Fellows in connection with their through stage service, Taft to San Luis Obispo and Pismo Beach.

The evidence in this proceeding was extremely contradictory as to whether ^{or} not either the W. D. Greer Stage Company or the Western Auto Stage Company, a corporation, had ever held themselves out as receiving or discharging passengers at Fellows in connection with through trips to and from San Luis Obispo and Pismo Beach. We have again carefully reviewed the evidence submitted in this proceeding and are now of the opinion that the Western Auto Stage Company, a corporation had never held themselves out as carrying passengers locally between Taft and Fellows.

The operative right at present owned by W. D. Greer, doing business under the name of the W. D. Greer Stage Company, between Taft and San Luis Obispo and Pismo Beach, via McKittrick, was originally obtained by the Western Auto Stage Company, a corporation, through operation in good faith prior to May 1st, 1917. This operative right the Western Auto Stage Company, a corporation, was authorized to transfer to the W. D. Greer Stage Company under Decision No. 7511, and accordingly the right at this time held by W. D. Greer is only such right as was originally obtained by the Western Auto Stage Company, a corporation, through its operation prior to May 1st, 1917.

Under Decision No. 9065, in Case 1442, A. B. Watson, vs. White Bus Line, the Railroad Commission held:

"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."

The evidence in this proceeding fails to show that the Western Auto Stage Company, a corporation, predecessor in interest to the W. D. Greer Stage Company, actually operated a local service between Taft and Fellows or Fellows and Taft and intermediate points, but in fact showed that such corporation had consistently refused to accept passengers for transportation between such points and that such method of operation was continued by the corporation during all of the time that it operated automobile stage service between Taft, San Luis Obispo and Pismo Beach, and as no certificate of public convenience and necessity has been issued by the Railroad Commission authorizing the operation of local service between Taft and Fellows by W. D. Greer Stage Company, the only operative right which such company holds is such right as it obtained through purchase from the Western Auto Stage Company, a corporation, which right, as hereinabove stated, did not include the right to do business locally between Taft and Fellows, although it did include the right to enter the Town of Fellows for the purpose of picking up or discharging passengers destined to or from San Luis Obispo or Pismo Beach. We are, accordingly, of the opinion that the order of dismissal heretofore entered in the above entitled proceeding should be set aside and Decision No. 9442 modified in accordance with the findings as above outlined.

SUPPLEMENTAL ORDER

A petition for rehearing having been filed by complainants in the above entitled proceeding, and the Commission being fully advised,

IT IS HEREBY FOUND AS A FACT that W. D. Greer, doing business under the fictitious name of W. D. Greer Stage Company has no

operative right authorizing him to accept or transport for compensation passengers destined from Taft to Fellows or Fellows to Taft or points intermediate thereto.

Basing its order on the foregoing finding of fact and the findings of fact as contained in the foregoing opinion,

IT IS HEREBY ORDERED that Decision No. 9442 insofar as it relates to Case 1642 be, and the same hereby is vacated and set aside, and

IT IS HEREBY FURTHER ORDERED that W. D. Greer, going business under the fictitious name of W. D. Greer Stage Company be, and he is hereby directed to immediately discontinue the transportation of passengers locally from Taft to Fellows or Fellows to Taft or points intermediate thereto and he shall immediately cancel tariff of rates on file with this Commission insofar as such tariff shows rates applying between such points.

IT IS HEREBY FURTHER ORDERED that in all other respects the above entitled complaint be, and the same hereby is dismissed.

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

W. J. [Signature]
[Signature]
[Signature]
Commissioners