

Decision No. 9895

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of D. H. MALEY and E. W. SULLIVAN for certificate of public convenience and necessity to operate express freight service between Stockton and Manteca.

Application No. 6264.

THE WHITE LINES,

Complainant,

VS.

D. H. MALEY and E. W. SULLIVAN,

Defendants.

Case No. 1507.

W. J. Quinn for The White Lines.

L. N. Bradshaw for Southern Pacific Co.

W. J. Griffith for American Railway Express Co.

Clifton E. Brooks for D. H. Maley and E. W. Sullivan.

BY THE COMMISSION.

OPINION

A public hearing was held by Examiner Westover at Stockton upon above application for authority to operate an automotive express and freight service between Stockton and Manteca, and upon above case involving the legality of the operations of said Maley and Sullivan, both matters being consolidated for hearing and decision.

It appears from the testimony that Messrs. Maley and Sullivan began operation March 23, 1917, and have continued without interruption to date, making one, two or three trips per day.

Their headquarters are at Manteca, their equipment is kept there and all of their patrons live there. Their business consists almost wholly of hauling freight for Manteca business men from Stockton wholesale houses. It appears from the testimony that they have always operated under so-called contracts by which their patrons employ them to haul freight at fixed rates per hundred pounds. These contracts were oral and were made with practically all of the business interests of Manteca, and were not reduced to writing until November, 1920, when a printed form of such contract was entered into between Maley and Sullivan and their respective patrons. Nineteen of them are attached to the application as exhibits. Applicants also do general trucking, making special trips from time to time under special arrangements to various other points and also to Stockton at very early hours to procure ice and ice cream to deliver in Manteca by 6:00 A.M.

The service appears to have been begun in good faith at a time when it was not necessary to procure preliminary certificate of public convenience and necessity from the Railroad Commission before entering upon such service. Chapter 213, Statutes of 1917, provides that those operating in good faith prior to May 1, 1917, need not procure such certificate.

At the hearing, applicants requested that they be authorized to serve as contract carriers.

The testimony does not show any conditions which would justify relieving applicants in any particulars from the obligation which they appear to have assumed prior to May 1, 1917, to operate as common carriers. When the business was established they agreed orally to carry freight at fixed rates per hundred pounds, solicited business upon this basis, and appear to have procured as patrons most of the shippers in Manteca, they having attached to the application nineteen contracts with Manteca shippers

providing for the hauling of "goods, wares, merchandise, etc., perishable and otherwise x x x and x x x to make at least three trips weekly on Monday, Wednesday and Friday, and daily trips during the months of May, June, July, August and September; also to make more frequent trips at any time when the amount of goods, wares or merchandise shall warrant". The testimony is to the effect that, in fact, daily trips have been made almost from the beginning. The testimony, oral and written, does not disclose any traffic condition which cannot be met by operation as common carrier, or for service under abnormal conditions or at unusual hours, unless it be for the handling of ice and ice cream for delivery in Manteca by 6:00 A.M. The contracts submitted do not provide for this service, the only provision as to time being that commodities consigned to Manteca patrons, delivered at Stockton by river boat, freight carriers, shall be delivered in Manteca not later than 11:00 A.M. of the day of receipt in Stockton.

It appears from the testimony that The White Lines carry goods southbound from Stockton at 5:00 A.M., making delivery in Manteca about 6:00 A.M., and apparently could handle the ice and ice cream business.

The application was filed because of uncertainty in the minds of applicants as to whether or not they were legally entitled to continue operation. While the Legislature provided that they need not procure a certificate, yet, as common carriers, they are subject to the regulatory powers of the Commission and should have seasonably filed their operating schedules and tariffs. The Commission made every effort to reach every carrier in the State of California with request for such filing shortly after the statute became effective, but no such filing was made by these applicants. The result was that when the White Lines, or the predecessors of

that organization, sought a certificate they were given operative rights to and through Manteca in the absence of knowledge on the part of the Commission that Maley and Sullivan existed or claimed operative rights, and naturally the latter could not be notified of the hearing or given opportunity to be heard.

Under the circumstances, it appears to be better practice, in the absence of proper filings and in view of apparent uncertainty as to whether applicants should operate as common carriers or special contract carriers, that the application be granted rather than dismissed as unnecessary, in view of the time when operations began.

#### O R D E R

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

THE RAILROAD COMMISSION HEREBY DECLARES that public necessity and convenience require the continued operation by D. H. Maley and E. W. Sullivan, under the co-partnership name of Maley & Sullivan, of an automotive through truck service as a common carrier of freight between Stockton and Manteca, not serving any 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 applicants herein or is leased by said applicants under a contract or agreement satisfactory to the Railroad Commission.

IT IS HEREBY ORDERED that applicants shall, within fifteen days from the date hereof, file with the Railroad Commission

their 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 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 of The White Lines in Case No. 1507 be and it is hereby dismissed.

Dated at San Francisco, California, this 20<sup>th</sup> day of December, 1921.

H. C. Bunnidge  
H. W. Lovell  
James Martin  
Chas. A. Howell

Commissioners.