

Decision No. 25944

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
VIRGILIO ANTONINI, doing business under the
name and style of ANTONINI FRUIT EXPRESS,
for a certificate of public convenience and
necessity to operate motor vehicles for the
transportation of fruits, vegetables and nuts
in boxes, crates and sacks, between Stockton
and San Francisco and Oakland.

ORIGINAL

Application No. 18720

REGULATED CARRIERS, INC., a corporation,

Complainant,

vs.

Case No. 3526

V. ANTONINI, doing business under the ficti-
tious name and style of V. Antonini Draying
Company, FIRST DOE, SECOND DOE, THIRD DOE,
FOURTH DOE, FIFTH DOE, FIRST DOE CORPORATION,
SECOND DOE CORPORATION, THIRD DOE CORPORATION,
FOURTH DOE CORPORATION, FIFTH DOE CORPORATION,

Defendants.

In the matter of the application of
A. E. GIANELLI, for a certificate of public
convenience and necessity to operate motor
vehicles for the transportation of fruits,
vegetables and nuts in boxes, crates and
sacks, between Stockton and San Francisco and
Oakland.

Application No. 18742

In the matter of the application of
STOCKTON FARMERS TRUCKING COMPANY, a co-
partnership, for certificate of public con-
venience and necessity to operate a trucking
service as a common carrier, between Stockton
and Oakland and Stockton and San Francisco.

Application No. 18751

Reginald L. Vaughan & Scott Elder, by W. S. Johnson, for
complainant in Case No. 3526.

Louttit, Marceau & Louttit, by T. S. Louttit and D. V.
Marceau, for defendant in Case No. 3526, applicants in
Applications Nos. 18720 and 18742, and opponent in
Application No. 18751.

McCutchen, Olney, Mannon & Greene, by Carl I. Wheat, for
The River Lines, intervener on behalf of complainant in
Case No. 3526, and opponent in Applications Nos. 18720,
18742 and 18751.

Edward Stern, for Railway Express, Inc., opponent in all
applications.

J. LeRoy Johnson, for applicant in Application No. 18751
and opponent in Applications Nos. 18720 and 18742.

Wm. F. Brooks, for The Atchison, Topeka & Santa Fe Railway Company, opponent in all applications.
Arthur L. Levinsky and Gilbert L. Jones, by Gilbert L. Jones, for Southern Pacific Company and Pacific Motor Transport Company; also for Western Pacific Railroad Company.

WARE, COMMISSIONER:

O P I N I O N

In the matter of the application (No. 18720) filed on February 20, 1933, Virgilio Antonini, doing business under the name and style of Antonini Fruit Express, seeks from this Commission a certificate of public convenience and necessity to operate a freight service as a common carrier for the transportation of fruits, vegetables and nuts in boxes, crates and sacks between Stockton and San Francisco and Oakland.

By complaint (Case No. 3526) filed on February 24, 1933, complainant, Regulated Carriers, Inc., a corporation, charges the above named Virgilio Antonini with unlawful common carrier operations by auto truck between Stockton and San Francisco and Oakland.

In the matter of the application (No. 18742) filed on March 1, 1933, A. E. Gianelli seeks from this Commission a certificate of public convenience and necessity to operate a freight service as a common carrier for the transportation of fruits, vegetables and nuts in boxes, crates and sacks between Stockton and San Francisco and Oakland.

In the matter of the application (No. 18751) filed on March 8, 1933, John P. French and Fred R. Pearson, co-partners, proposing to do business under the firm name and style of Stockton Farmers Trucking Company, seek from this Commission a certificate of public convenience and necessity to operate a trucking service as a common carrier between Stockton and San Francisco and Oakland.

Said case and applications being inseparably related

and involving the common problem of the movements of fresh fruits, vegetables and nuts in boxes, crates and sacks between Stockton and San Francisco and Oakland, were set for hearing at Stockton on April 12, 1933, at which time and place all parties stipulated, and an order was made by the presiding Commissioner that the hearing of said case and three applications be consolidated, both for the purpose of receiving evidence and rendering a decision and judgment thereon; thereupon evidence was adduced in said City of Stockton on April 12, 13 and 14, 1933. These four consolidated matters were continued for further hearing at San Francisco May 4, 1933, at which time and place all of the remaining evidence was adduced, said matters were submitted and are now ready for further order and decision.

The facts as developed from a host of farmers who testified at the hearing may be summarized briefly as follows:

Prior to 1926 Antonini had established himself as an experienced truck operator in the matter of shipping perishable fruits and vegetables grown or purchased by himself in the Stockton region and thence hauled to the Bay markets.

It appears that this enterprise was innocently conceived and by natural processes was gradually and constantly expanded. First, a few of his neighboring producers enlisted his trucking and marketing services in the movement of their crops to the Bay wholesalers. Commencing with 1926 and continuously thereafter, this variety of patronage increased whilst his purchases diminished. At the present time, the Antonini hauling service annually exceeds 300,000 packages divided approximately: 90 per cent fruits, vegetables and nuts hauled for Stockton growers to San Francisco Commission houses in the fulfillment of specific orders for said purchases and deliveries issued from said Commission houses unto

Antonini; the remaining 10 per cent is comprised principally of produce which Antonini buys and for which he assumes the responsibility of selling for a profit, and a negligible remainder composed of produce hauled for others and consigned to San Francisco brokers.

While the great bulk of these freight movements have been and are in point of law unmistakably those of a common carrier operating for hire between fixed termini and over a regular route upon the highways of California, it may be contended plausibly that the carrier believed his service was that of buyer for the purchasing San Francisco brokers on the one hand, or agent for the Stockton growers upon the other. It is doubtful that he pursued these activities with unlawful intent.

It is manifest that the growers of perishable crops in the vicinity of Stockton present a problem in transportation which requires the regulation of this Commission. A brief resume of the history of the San Joaquin Marketing Association illustrates this necessity. In 1923 over 200 growers incorporated said association, and developed a marketing depot in the City of Stockton at a cost of a quarter of a million dollars, adequately equipped with concrete floors, roof and railroad tracks. For three years these growers experienced the service that was available by railroad. Their uniform experience proved the inadequacy of rail shipments. Such shipments were unsatisfactory for the following reasons:

1. Most of these crops consisted of peaches and other perishable fruits and vegetables grown during extremely hot months. The farmer was obliged to pick these crops during the warm afternoon hours in order to get them loaded upon freight cars not later than 4 o'clock in the afternoon. Hence, upon departure the fruit left Stockton at a warm temperature and in poor condition for shipment.

2. These rail movements necessitated handling these perishables several times. By means of blade trucks and similar devices, the boxes were jolted and jarred and frequently broken and the contents were usually shaken, bruised and damaged. All of the growers normally suffered severe reductions in price because of the poor condition of their crop upon arrival at the Bay market.

3. These rail shipments never arrived in time for the 4 o'clock morning wholesale market. This invariably occasioned holding the fruit until the following day and these delays normally resulted in a 50 per cent loss to the farmer in sale price.

Abundant testimony was offered showing that movements by boat were also unsatisfactory and inadequate for the same reasons hereinabove enumerated.

In 1926, all of the Stockton growers ceased patronizing the railroads and the river boats. Since then, practically 100 per cent of their shipments destined to Bay points have been made by automobile truck.

On the last day of the hearing, the protesting railroads offered a single witness to refute these facts, to wit: a wholesale fruit buyer of San Francisco. It is noteworthy that he also testified that he regarded the truck service superior to train or boat, and of patent necessity to growers and buyers. One other witness was produced by the Southern Pacific - namely, the "Chief of Train Service Bureau." His contribution to the evidence at hand consisted of announcing a plan recently conceived whereby the railroad "might" add a baggage car to their passenger train to leave Stockton at 6:30 p.m., arriving of course at Bay points in time for the morning market. This intimated service was made conditional, however, upon the same "receiving sufficient demands and patronage to warrant such service." No word of evidence was

adduced showing the slightest demand or presaging any such patronage. Obviously, such a service would not prove attractive, convenient or satisfactory.

The testimony of these growers clearly establishes:

1. More than 1500 farmers in the vicinity of Stockton are engaged in producing perishable crops throughout the entire year.

2. These crops require careful and frequent harvesting, and equally careful and prompt transportation to market.

3. It is vital that these crops reach the brokers and commission houses in San Francisco and Oakland not later than 4 a. m. following their harvest.

4. Prices are constantly fluctuating and the grower and shipper require an alert, competent hauler who must also attend to the sale of these crops. The normal price is only available in the event of the daily arrival at the Bay markets by 4 a. m. Late arrivals occasion serious losses averaging 50 per cent of the sale price to the farmer.

5. The transportation of these crops by truck affords the only prompt, timely and safe method of getting the same to the market. A ruinous multiplicity of handling, with consequent injury to the shipment, is avoided. The truck is carefully loaded and firmly tied, thereby sparing the produce any of the injuries experienced from the loose and rough handling by rail or boat. Each shipper's lot is conveniently segregated, thereby insuring a more expeditious delivery at destination.

6. Every grower has made it plain that this service is vital and essential and that no other means of transportation would prove satisfactory or adequate.

The shippers with unanimity proved that Antonini has

rendered a careful, competent, honest and satisfactory service. He is an experienced trucker who knows and meets the requirements of the Stockton farmers. It is obvious that the Antonini service is of real and vital necessity to these growers. Hence, a certificate of public convenience and necessity should be issued unto him as prayed for in Application No. 18720.

The said Virgilio Antonini, doing business under the name and style of Antonini Fruit Express, is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

While all of the allegations in Case No. 3526 were abundantly proven, the object sought is thwarted by the manifest necessity for a continuation under certification by this Commission of the Antonini service. Hence, complaint No. 3526 must be dismissed.

Application No. 18742 must be denied for these reasons:

First, applicant Gianelli testified on the witness stand that he desired no certificate to be issued to him in the event that applicant Antonini received such a certificate.

Secondly, Gianelli has had no experience in the trucking business.

Thirdly, there was no showing as to his fitness for the service nor was there any showing that public convenience and necessity warrant the granting of the same at this time.

The application of John P. French and Fred R. Pearson (Application No. 18751) should be denied at this time.

Neither of these men has ever engaged in the trucking

business. As disclosed in the foregoing analysis, this species of common carrier requires unique skill, experience and adaptability. The evidence discloses no claim by French or Pearson to these necessary qualifications, nor is there a sufficient showing of public convenience and necessity warranting the granting unto them of a certificate. It is possible that the future may reveal the necessity of other carriers being certificated and inducted into this territory. In presently denying Application No. 18751, the Commission is not unmindful of the possibility of subsequently recognizing a necessity for this or similar service.

The following form of order is recommended:

O R D E R

Public hearings having been held in the above entitled matters and all of them having been submitted,

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by Virgilio Antonini, doing business under the name and style of Antonini Fruit Express, of an auto truck service for the transportation of fruits, vegetables and nuts in boxes, crates and sacks, between Stockton, and San Francisco and Oakland.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such service be and the same is hereby granted to said Virgilio Antonini, doing business under the name and style of Antonini Fruit Express, subject to the following conditions:

1. Applicant Antonini shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant Antonini shall file in triplicate and make effective within a period of not to exceed thirty (30) days from the date hereof, on not less than ten days' notice to the Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical

with the rates and rules shown in the exhibit attached to the application in so far as they conform to the certificate herein granted.

3. Applicant Antonini shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from date hereof, on not less than five (5) days' notice to the Commission and the public, time schedules, according to form provided in General Order No. 83, covering the service herein authorized, in a form satisfactory to the Railroad Commission.
4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.
5. No vehicle may be operated by applicants herein unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that Case No. 3526 be and the same is hereby dismissed.

IT IS HEREBY FURTHER ORDERED that Application No. 18742 be and same is hereby denied.

IT IS HEREBY FURTHER ORDERED that Application No. 18751 be and the same is hereby denied without prejudice.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

The foregoing opinion and order is hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 15th day of

May, 1933.

O. L. Seaver

L. M. Connelley

W. A. Linn

M. B. Linn

M. H. Linn

Commissioners.

EXHIBIT "A"
(Continued)

<u>Crossing Number</u>	<u>Railroad</u>	<u>Jurisdiction of Highway</u>	<u>Location and Remarks</u>
<u>PEERLESS STAGES:</u>			
DA-29.4-C	Southern Pacific Co.	State,	State Highway #5, South of Niles, Cannery Spur.
66A-2.52-C	Penn. Ry.	W. of San Jose,	Stevens Creek Rd., Di Fiore Spur.
<u>PACIFIC GREYHOUND LINES, INC.:</u>			
8F-14.7-C	Sacramento Northern	State,	Chadburn Pack- ing House Spur.