

Decision No. 38229

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of J. N. ANDERSON, operating under the firm name and style of The J. N. Anderson Theatre Service, for supplemental certificate of public convenience and necessity to operate a freight and special messenger film service as a common carrier to include Redondo, Hermosa Beach, Manhattan Beach, El Segundo, Hawthorne and Inglewood in Route 1; Hynes, Clearwater, Bellflower, Artesia, Norwalk and Downey in Route 2; and all intermediate points; and to consolidate the proposed new territory herein applied for, with the territory now being served under certificate issued on Application No.12482 and Decision No.16541.

Application
No. 18504

ORIGINAL

In the Matter of the Application of BENJAMIN S. GOLDBERG and J. H. GOLDBERG, doing business under the fictitious firm name and style of Goldberg Film Delivery, for a certificate of public convenience and necessity to operate an express service between Los Angeles and Glendale, Chula Vista, Calexico, Compton, Redondo Beach and Visalia, and intermediate points over the routes set forth in the application.

Amended
Application
No.18271

Phil Jacobsen, for Goldberg and Goldberg,
Applicant in Application No.18271
and protestant in Application No.18504.

C. C. Smith for J. N. Anderson, Applicant
in Application No.18504 and protestant
in Application No.18271.

W. E. Sherwood for C. E. Kimbrough, protestant
in Application No.18271.

Edward Stern, for Railway Express Agency, Inc., protestant.

H. W. Hobbs, for Southern Pacific Company and Pacific
Motor Transport Company, protestants.

W. K. Downey, for Motor Freight Terminal Company, protestant.

H. J. Bischoff, for Motor Service Express and Coast
Truck Line, interested parties.

F. G. Athearn and Douglas Brookman, appearing amici curiae.
R. F. Brennan and W. F. Brooks, for The Atchison, Topeka
and Santa Fe Railway, protestant.

Rex W. Boston, for San Pedro Special Delivery, interested
party.

BY THE COMMISSION -

FINAL OPINION and ORDER

Applicant Anderson now conducts automotive service for the transportation of films and certain accessories between Los Angeles and Long Beach, and certain intermediate points under authority of Decision No.16541, dated April 21, 1926, on Application No.12482. In the instant application he seeks extension of his operative right to Redondo Beach, Hawthorne and Inglewood, over an additional route; also to Clearwater, Hynes, Bellflower, Artesia, Norwalk and Downey by another additional route. Rates are based, as is the custom of the film industry and exhibitors, on the number of program changes per week.

Applicants Goldberg and Goldberg, co-partners, operating as Goldberg Film Delivery, seek a certificate of public convenience and necessity to operate "an express service" between Los Angeles and Glendale, Chula Vista-San Diego, Calexico, Compton, Redondo Beach and Bakersfield-Visalia and certain intermediate points for the transportation of films and accessories over routes specified in the amended application and at the "weekly charge" basis customary.

Public hearings were conducted by Examiner Kennedy at Los Angeles at which it was stipulated that the matters may be consolidated for decision after the Commission had, by its Decision No.25493, dated December 27, 1932, on Application No.18271, held that it possessed jurisdiction over such transportation under Chapter 213, Acts of 1917, as amended. The matters were duly submitted on briefs and now are ready for decision.

The question of jurisdiction over such operations having been determined by Decision No.25493, the remain question is solely that of public necessity and convenience. Prior to the

decision in Hare v. Gilboy (31 C.R.C. 566), both Goldberg and Anderson had sought and received certificates from this Commission for the transportation of films.⁽¹⁾ Others had also sought and received certificates. After the Hare v. Gilboy decision no applications were filed for certificates for film transportation until the instant ones. Under legal advice that the decision in Hare v. Gilboy exempted such transportation, Goldberg enlarged his business by serving the routes now shown in his instant application, and enlarged the scope of his operations by adding some accessorial commodities which were included in the rate fixed, but on some of which Goldberg received a commission as compensation.

The main facts as to the operations of Goldberg were set forth in Decision No. 25493 herein, based wholly on Ben S. Goldberg's testimony. The testimony of a score of public witnesses presented by Goldberg confirms every detail of his testimony and stamps the business as wholly a common carrier operation between fixed termini and over regular routes. The commodities transported, other than films, included advertising matter, electric light bulbs, lobby displays, cards, carbons, projection machine parts and accessories, tickets in rolls, programs, soap, mops, brooms, sanitary paper articles and disinfectants. Authorized carriers by truck and rail for most of these commodities serve practically all the places served by Goldberg now or previously. The addition of articles of merchandise, not strictly incidental to film exhibition, were transported as "courtesy" under the rate already established for films, although commissions paid by supply houses were received.

(1) Goldberg & Spann Decision No. 21361, dated July 19, 1929, on Application No. 15800; J. N. Anderson Decision No. 16541, dated April 21, 1926, on Application No. 12482.

The witnesses produced both by Goldberg and Anderson fully support the demand for the special transportation service applied for and which, apparently, cannot be furnished with the degree of accuracy and speed by any other existing service. In this connection Railway Express Agency, Inc. demonstrated by its witnesses a highly efficient system available to film companies and theaters incidental to its general business but it lacks the direct intimacy and technical understanding of the special local truck service proposed, and to which the film companies and theaters have long accustomed themselves and which they desire continued.

It appears from the record that the extension of service proposed by Anderson is a necessary and proper expansion in the area long served by him efficiently under certificate. Anderson has not exceeded the authority of his certificate since acquiring it. In granting his application for the routes and points sought, the application of Goldberg for certain points now served, or proposed to be served by Anderson will be denied as two services to them are unnecessary.

Goldberg proposed five routes out of Los Angeles to (1) Glendale, (2) to San Diego and Chula Vista, (3) to Holtville and Calexico, (4) to Compton and (5) to Redondo Beach and Torrance. Applicant includes in his intermediate points several now served by Anderson, and also by C. E. Kimbrough, but he stipulated that he would perform no service on conflict with Kimbrough's operation, that is, between Los Angeles and March Field, near Riverside.

The testimony of exhibits and film agencies fully justifies the granting of certificates to both applicants but does not justify two carriers to any one point; nor is there justification

for certificating the Goldberg operation to Bakersfield and Visalia, the sole purpose of which is to deliver films to Thomas Gilboy, operating out of San Francisco to San Joaquin Valley points. The transportation of commodities, other than those accessorial to actual projection of pictures and advertising matter and tickets is not supported by the record, especially in view of the many other authorized operations to all points involved.

The applicants are long established and seek now to submit to regulation of their businesses, as are other similar common carriers. Goldberg serves 350 theaters and film companies in Los Angeles and Southern California. The testimony of representatives of the industry is that the service is efficient and adequate. Anderson serves only a score of theaters in his limited area but appears equally efficient and his service fully adequate. The record justifies us in finding as a fact that public convenience and necessity require the continuation of both services, under suitable limitations, for the transportation of films and their accessories, but not for commodities that are not necessarily incidental to the moving picture theater business. An Order accordingly will be entered.

O R D E R

Benjamin H. Goldberg and J. H. Goldberg, co-partners, doing business under the fictitious name of Goldberg Film Delivery, having made application for a certificate of public convenience and necessity to operate automotive service as a common carrier of films and motion picture accessories between Los Angeles and Glendale, Calexico, Chula Vista, Compton, Redondo Beach and Visalia, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY
DECLARES that public convenience and necessity require the
establishment of such service between Los Angeles and Glendale,
Chula Vista and Calexico, and intermediate points, provided,
however, no service shall be rendered between Los Angeles and
March Field over and along the following routes:

- ROUTE 1 - Along Huntington Drive to El Sereno and from
El Sereno over York Boulevard to Glendale,
thence via main highway.
- ROUTE 2 - Main highway from Los Angeles through Whittier,
La Habra, Brea, Fullerton, Anaheim, Orange and
Santa Ana, thence along main highway to Huntington
Beach, thence along Coast Highway to Chula Vista.
- ROUTE 3 - Along Valley Boulevard leaving Los Angeles to
Ontario, thence along Foothill Boulevard to San
Bernardino, thence along main highway to March
Field, thence over Jackrabbit Trail to Banning,
thence along State Highway to Calexico, serving
Koltville by diversion.
- ROUTE 4 - North on Cahuenga to North Hollywood, thence south
on Cahuenga to Sunset, West on Sunset to West
Hollywood, Beverly Hills, Sawtelle, Culver City,
Santa Monica, along Ocean highway to Redondo,
thence to Torrance, thence along Western Avenue
back to terminal.

IT IS HEREBY ORDERED that a certificate of public convenience
and necessity, therefore, be and the same hereby is granted to
Benjamin S. Goldberg and J. E. Goldberg, co-partners, subject to
the following conditions:

1. Applicants shall file their written acceptance
of the certificate herein granted within a period of
not to exceed fifteen (15) days from date hereof,
stipulating in said acceptance that the transportation
herein authorized shall be limited to films for
theaters, churches, schools and other places where
films are to be exhibited, and film accessories limited
to projecting machinery and parts therefor, advertising
matter, electrical lighting effects, including bulbs,
advertising slides and tickets, and no other commodities.

2. Applicants 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 insofar as they conform to the certificate herein granted.

3. Applicants 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 days' notice to the Commission and the public, time schedules 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, in all other respects, Application No. 12271 be, and the same hereby is denied.

J. N. Anderson, operating, under the name of The J. N. Anderson Theater Service, under authority of Decision No. 16541, dated April 21, 1926, on Application No. 12432, a service for the transportation of films and accessories between Los Angeles and Long Beach, Wilmington, San Pedro, Lomita, Gardena and Compton, and intermediate points, having made application to extend said service to Redondo Beach, Hermosa Beach, Manhattan Beach, El Segundo, Hawthorne, Inglewood, Clearwater, Hynes, Bellflower, Artesia, Norwalk and Downey and intermediate points, a public hearing having been held, the matter being duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity requires the extension of service to the points named, over and along the following routes:

2. Applicants 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 insofar as they conform to the certificate herein granted.

3. Applicants 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 days' notice to the Commission and the public, time schedules 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, in all other respects, Application No.18271 be, and the same hereby is denied.

J. N. Anderson, operating, under the name of The J. N. Anderson Theater Service, under authority of Decision No.16541, dated April 21, 1926, on Application No.12482, a service for the transportation of films and accessories between Los Angeles and Long Beach, Wilmington, San Pedro, Lomita, Gardena and Compton, and intermediate points, having made application to extend said service to Redondo Beach, Hermosa Beach, Manhattan Beach, El Segundo, Hawthorne, Inglewood, Clearwater, Hynes, Bellflower, Artesia, Norwalk and Downey and intermediate points, a public hearing having been held, the matter being duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity requires the extension of service to the points named, over and along the following routes:

From the intersection of Vermont and Slauson Avenues, in the City of Los Angeles, to Redondo Boulevard and Hawthorne Avenue, thence to El Segundo Avenue, thence via Coast Highway to Redondo-Wilmington Boulevard and connecting with applicant's Route No.1 at Lomita..

From the City of Maywood, via Slauson Avenue and main county road to Downey, thence on First Street to Norwalk, thence via Main Street to Anaheim Landing, thence via Coast State Highway to Naples, connecting there with applicant's Route No.2, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity, therefore, be and the same hereby is granted to J. N. Anderson, as an extension and enlargement of the operating rights possessed by him under authority of Decision No.16541, on Application No.12482, and not as a new or separate right, and subject to the following conditions:

1. Applicant 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 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 insofar as they conform to the certificate herein granted.
3. Applicant 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 days' notice to the Commission and the public, time schedules 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 applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

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

Dated at San Francisco, California, this 14th day of August, 1933.

C. L. ...

Leon ...

M. B. ...

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COMMISSIONERS.