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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Application
No. 19279

Application
No. 19311

Daniel V. Marceau, for Antonini Brothers.

O P I N I O N

Both applications, involving a common problem, were set for hearing at Walnut Grove on March 21, 1934, at which time and place an order was made consolidating said appli -

cations for the purpose of receiving evidence and rendering a decision and judgment thereon; thereupon evidence was adduced, said matters were submitted, and are now ready for further order and decision.

The hearing developed a conclusive showing in support of the application of Pete Rampone (Application No.19311). Hence, at the conclusion thereof all parties appearing, other than the applicants, withdrew all protests against the granting of the certificate sought by Rampone, and the applicant Dinelli (Application No.19279), requested a dismissal of his application in the event of the granting of a certificate to Rampone. Therefore, a resume of the Rampone status will suffice for this opinion.

The facts enumerated and conclusions reached in the decision of this Commission, certifying the freight activities of V. Antonini (Decision No.25944, dated May 15, 1933), between Stockton and vicinity and the commission and brokerage houses of San Francisco and Oakland, are essentially identical to the facts and conclusions affecting the instant application of Rampone. The applicant herein commenced trucking perishables in 1929, as an extensive buyer of asparagus in the agricultural regions involved in this application. The destination of such produce has always been the wholesale markets of San Francisco and Oakland. On April 17, 1926, this Commission issued a certificate of public convenience and necessity to Rampone's predecessor in interest (Decision No.16521, on Application No.12498) wherein was authorized a truck service as a common carrier of asparagus between Sherman Island and Oakland and San Francisco. Thereafter, a host of growers in this delta region required, importuned and got the Rampone truck service for the transportation of their fresh fruits and vegetables.

Sixty-one of these growers (56 by stipulation), and nineteen persons representing commission houses in San Francisco and Oakland (18 by stipulation), testified at the hearing and clearly established the following facts:

1. The growers of asparagus, fresh vegetables and fruits ¹ must have, and public convenience and necessity require, a truck service which will transport their commodities on the afternoon or evening following harvest, with no multiplicity of handling, directly to the next ensuing early morning wholesale market of San Francisco and Oakland.
2. There is no certificated common carrier rendering any such adequate or satisfactory service in the agricultural area affected.
3. The growers and commission houses are agreed that Rampone has rendered, and if certificated will continue to render, a service entirely satisfactory and adequate to meet all of their requirements.

Before the conclusion of the hearing and the entire elimination of protests by those appearing, applicant specified the following conditions to be embraced in the certificate sought, to-wit:

1. Applicant shall have the right to transport from the producing territory specified in Exhibit "A" of his application and also from the agricultural section known as Union and Victoria Islands, at the rate set forth in said application, ² fresh fruits and vegetables, including melons and fresh potatoes and onions, in boxes, to the commission and brokerage markets of San Francisco and Oakland.

¹ Many thousands of acres in this rich delta region tributary to the Sacramento and San Joaquin rivers produce enormous tonnage of asparagus, celery, spinach, peas, potatoes, onions, figs, pears, peaches, cherries, nectarines, and various other fresh fruits and vegetables, all of which demand, have received and will continue to require the proposed Rampone service. Indicative of this enormous necessity, applicant's trucks normally haul 3000 tons of asparagus from producers to the Bay canneries, and approximately 6000 tons of asparagus from producers to Bay commission merchants in the short period of two months required for harvesting this single crop. Approximately 20 other uncertificated trucks are operating in this field proposed to be served by Rampone.

² Thirty cents (30¢) per 100 pounds, minimum charge fifty cents (50¢).

2. Applicant shall not haul, as a common carrier, any commodities to the canneries and/or packing houses situated in the vicinity of San Francisco bay.

3. Applicant will not haul, as a common carrier, dried onions and potatoes in sacks.

4. Applicant will not haul, as a common carrier, such commodities to any shipping terminal or state refrigeration terminal at San Francisco or Oakland. Said transportation service shall be an "on call" service afforded by the equipment owned and operated by applicant through the growing season in the territory affected.

5. The route to be used by applicant shall be as indicated in Exhibit "A", attached to the application herein, thence from the territory set forth in said Exhibit over the public highways via Antioch bridge, Pittsburg, Concord, Tunnel Road to Oakland and from Oakland via Southern Pacific automobile ferry to San Francisco and/or as affecting produce from Union Island and Victoria Island over the public highways via Altamont Pass, Dublin Canyon, Hayward, San Mateo bridge, Bay Shore highway, to San Francisco; and/or as affecting all transportation involved in said certificate via Foothill Boulevard and East Fourteenth street.

It is obvious that the Rampone service is of real and vital necessity to the growers and distributors involved. Hence, a certificate of public convenience and necessity should be issued unto him as prayed for in Application No.19311 and subject to the five qualifications hereinabove enumerated.

The application of W. Dinelli, doing business under the firm name and style of The River Transportation Co., (Application No.19279), should be dismissed.

Pete Rampone, doing business under the firm name and style of Rampone Brothers, 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.

The following form of order is recommended:

O R D E R

A public hearing having been held in the above entitled proceedings, evidence heard, and an order of submission made, and the Commission being fully advised;

IT IS HEREBY ORDERED that the application of W. Dinelli, doing business under the firm name and style of The River Transportation Co., (Application No.19279), be dismissed.

IT IS HEREBY FURTHER ORDERED that public convenience and necessity require the operation by Pete Rampone, doing business under the firm name and style of Rampone Bros., of an automotive service for the transportation of fresh fruits and vegetables, including melons, from origin territory tributary to the Sacramento and San Joaquin rivers lying south of Freeport, as defined in Exhibit "A", attached to the application, and from Union and Victoria Islands to San Francisco and Oakland, and for the return of the empty containers from San Francisco and Oakland to the origin territory described, via the routes described in the opinion which precedes this order, and subject to the following conditions:

1. The authority herein granted is limited to the transportation of fresh fruits and vegetables, including melons, from the origin territory herein described to commission and brokerage markets at San Francisco and Oakland and for the return of the empty containers from San Francisco and Oakland to the origin territory herein described, and does not permit the transportation of any commodities as a common carrier to the canneries and/or packing houses situated in the vicinity of San Francisco bay nor to any shipping terminal or state refrigeration terminal at San Francisco or Oakland.
2. The authority herein granted, insofar as it involves the transportation of potatoes and onions, is confined to fresh potatoes and onions, in boxes, and does not permit the transportation of dried onions and potatoes in sacks.
3. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.

4. Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, 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.

5. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five (5) days' notice to the Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.

6. 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.

7. 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.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of March, 1934.

Leon C. White
W. B. Harris
W. B. Harris
W. B. Harris
COMMISSIONERS.