

Decision No. 27515

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,

Complainant,

vs.

Case No. 3650

N. W. SANDERCOCK and N. W. SANDERCOCK
doing business under the fictitious name
and style of Sandercock Transfer Company,
First Doe, Second Doe, Third Doe, Fourth
Doe, Fifth Doe, First Doe Corporation,
Second Doe Corporation, Third Doe Corpor-
ation, Fourth Doe Corporation, Fifth
Doe Corporation,

Defendants.

Reginald L. Vaughan and Scott Elder, for Complainant.

C. P. Kaetzel and Frank B. Austin, for Defendant
Sandercock Transfer Company, a corporation.

BY THE COMMISSION -

O P I N I O N

By complaint filed on August 7, 1933, complainant charges defendant with unlawful common carrier operations by auto truck between San Luis Obispo and Los Angeles and San Francisco and intermediate points.

Public hearings were had before Examiner Johnson ending March 9, 1934, on which date the case was submitted.

The facts as developed at the hearing may be summarized briefly as follows:

By amendment to the complaint at the time of hearing Sandercock Transfer Company, a corporation, was made sole defendant as a substitute for the first Doe defendants. Defendant corporation by its answer generally and specifically denied the allegations of complainant.

N. W. Sandercock and Warren Sandercock are officers of the corporation being, respectively, President and Secretary.

The corporation conducts a transportation business in the City of San Luis Obispo with offices there. It and its predecessors, members of the Sandercock family, have been engaged in transportation in San Luis Obispo county since 1872. The use of trucks was begun by the predecessors of the corporation in 1912 and they have been used ever since, at the time of the hearing eight (8) trucks and three (3) trailers being in the possession of the corporation and available for use. The operations affected by this order, however, were all initiated after 1917.

The record discloses the following method of operation:

Defendant receives calls at its place of business for movements of livestock and merchandise and other property to and from various points. Its largest business is the transportation it conducts within the city of San Luis Obispo and a local radial service to and from that city. This ordinary radial drayage service is not involved in the instant case.

Complainant seeks to establish that defendant is engaged in the business of transporting property between San Luis Obispo and San Francisco and between San Luis Obispo and Los Angeles as a common carrier using the points as fixed termini and conducting the service with frequency and at established rates. The record shows that between May and December, inclusive, 1933, defendant conducted 247 movements between points in and around San Luis Obispo and San Francisco and Los Angeles (Exhibits Nos. 11 and 12). Approximately 60% of the volume of this business was the transportation of livestock, (witness Warren Sandercock estimated the amount at more than 75% of revenue). The remainder was merchandise, more than three fourths of which moved from termini or points intermediate to San Luis Obispo, very little merchandise moving in the opposite direction. All the movements involved

in this proceeding were so-called "carload" quantities,- a carload meaning a truck and trailer accommodating approximately 10 tons, or more, of merchandise, or from 28 to 35 head of cattle, sheep or hogs. It appears that a uniform rate per 100 pounds was charged and collected for such movements between termini. There is no dispute that the movements were made and that the compensation was received.

Defendant's contention is that the movements were those of a private carrier, each movement being made separately upon particular arrangements with the shipper and based upon a verbal contract for each movement; that the movements were not made from any particular points but were picked up variously over a large area and moved to destination; that the merchandise movements were usually from termini or intermediate points to San Luis Obispo under private contract, verbally (except when written bids were accepted) with consignees at San Luis Obispo. Defendant stresses the point that only eleven or twelve consignees or shippers were involved in its operations and contends that this constituted a limitation upon its service and stamped it as private carriage and not common carriage. Apparently this is all the business acquired after solicitation or bidding.

The testimony of Warren Sandercock and N. W. Sandercock discloses that business was solicited by the corporation, either by personal visitation, telephone contact or by submitting bids upon various movements. It was admitted by these witnesses that any property tendered to them for transportation would be transported, providing the quantity was sufficient (a minimum of 20,000 pounds), the rate agreeable to the carrier, and the character of the haul, the ability to provide equipment and/or the credit of the consignor or consignee were satisfactory. Composite loads for several consignees or several consignors were accepted. Refusals of transportation, according to these wit -

nesses, were made only when one or all of these conditions could not be met.

Complainant presented the testimony of twenty four (24) shipper witnesses who testified to employing defendant to transport livestock between various points in and about San Luis Obispo to San Francisco or Los Angeles or intermediate points. Many of these were members of the Farm Bureau which made the arrangements with defendant for the transportation. The rate for such transportation of livestock was uniform and the record does not disclose any discrimination among the cargoes offered or the shippers, nor any refusal to transport, except doubt as to the ability to collect compensation. During the year 1933 defendant transported 149½ carloads (each carload constituting a trip), of which 102 carloads were movements of livestock. The remaining trips concerned transportation of merchandise. Other trips shown by the exhibits (Exhibits 11 to 13, inclusive) were from point to point in and about San Luis Obispo and, apparently, were movements of livestock from ranch to ranch or from ranch to feeding ground and, for the purpose of this proceeding, may be dismissed without further consideration.

For clarity, the movements of livestock and the movements of merchandise will be considered separately. Livestock movements originate by request, made on the carrier at San Luis Obispo, to go to a definite point and receive a "carload" of livestock, which livestock, at the time the orders are given, are definitely consigned to a market at San Francisco or Los Angeles. Defendant thereupon moves its equipment to the point of reception, varying from two to forty-five miles from San Luis Obispo, where the consignment is picked up and transported to destination. In some cases light equipment is used over rough

roads and the livestock transported to a larger vehicle at a convenient point which vehicle is dispatched to destination. Some of the pickup is made within a mile or two of San Luis Obispo and several times stock has been driven to convenient points in the city of San Luis Obispo. A map submitted by defendant (Exhibit No.10), disclosed that defendant's business is so organized that there are definite pickup points between San Miguel and Santa Maria along and near to Highway No.101, the total number being fifty-one (51). This is of some importance in view of the fact that in reaching the various points of pickup or from loading points Highway No.101 is used to the nearest approach to the pickup point. Diversion from Highway No.101 is made only in order to load the vehicle and return to the highway to transport the cargo to destination. It is apparent that movements, begun at San Luis Obispo, are diverted to reach the loading points and then return to the main highway to complete the journey and that the rate therefor included the entire service of the vehicle. The record does not disclose that a different price was made for different distances or for quantities in excess of 20,000 pounds. Several shippers have combined to provide the minimum load.

There appears to be no question from the record that defendant holds itself out to perform such a service and that the operations are usually and ordinarily conducted over Highway No.101 and that diversions therefrom are only for the purpose of receiving or discharging cargo. In view of the fact that the focal point is San Luis Obispo, and that defendant's headquarters and equipment are maintained in that city and that the trucking movement originates there and terminates only at the points designated, indicates that the movements as a whole are between San Luis Obispo and usually and ordinarily over Highway No.101. Defendant seeks to treat each movement from each loading place as a separate movement to be considered independently of all others. There is no dispute that in accomplishing these movements the same highway and the same

termini are used.

Defendant further contends that each of these movements was made upon a separate agreement negotiated between defendant and the individual shipper. It is also contended that all movements from all points arranged by or for members of the Farm Bureau should be treated as one consignor -- said Farm Bureau -- and not separate and distinct movements. It is significant, however, that each of these movements was paid for by the individual shipper (often for as few as three animals), and at no time paid for by the Farm Bureau. In some instances livestock was delivered at destination and the transportation charges were deducted and the amount remitted to the Farm Bureau and allocated by the Bureau to the individual shipper whose stock was acquired. In this manner, or directly, every shipper paid his own transportation bill. There is no doubt that defendant's admissions are complete upon this phase; that defendant held itself out to perform exactly that sort of transportation business for all who could satisfy it of their ability to pay and whenever it had equipment available for such movements.

According to the exhibits, heavy movements were conducted during the livestock shipping season, approximately May to August, three times weekly, and at other times once weekly. This appears to be a frequency equal to regularity for the transportation of the commodity of livestock from the producing area to the consuming destinations.

The movements of merchandise (Exhibits Nos. 9 and 13), according to the Sandercocks, were solicited as return movements, in this manner providing a back-haul for the equipment that was used to transport shipments out of San Luis Obispo or its environs.¹

¹ Testimony of Warren Sandercock, Transcript page 220.

Exhibits Nos. 11 to 13, inclusive, indicate that the return movements of merchandise do not in all cases meet the requirements of 20,000 pounds, or more, from each consignor or receiver, in many instances the individual amounts being less but the composite load in excess of the minimum requirement.

It appears from the record that defendant has established and conducts a transportation business offered to the public (a) for the transportation of livestock between San Luis Obispo and San Francisco and Los Angeles and certain intermediate points, and (b) for the transportation of merchandise destined to receivers in San Luis Obispo, both services being conducted over Highway No. 101 with diversions therefrom only when necessary to receive or discharge cargo.

That the movements were made with an understanding by the public using them as to what the rates were, is palpable throughout the record. There is not disclosed any diversity of dealings with the various shippers but rather the holding out of, and offer to conduct transportation from any of the points at a known rate. Citations of testimony of all witnesses in this respect are unnecessary as the record is full of them. It appears that this service, as established and conducted, is available to the public and has long been so and that it does not possess radial character necessary to bring it within re Moore, C.R.C. 27, 388. Defendant has certain radial operations which appear to be well within the scope of the Moore decision but it would be incongruous to assume that the distance movements shown are radial in character and without the impress of an offer to the public, being, as they are, between fixed termini and over a regular route.

There appears, however, another phase of the record that justifies modification of the usual cease and desist order.

It is apparent that a long established and active business of transportation changed its character from private to public so gradually that its owners did not realize the actual expansion. Nothing in the record indicates that bad faith or an attempt to evade the law was in the minds of the Sandercock family. The record shows the service actually performed was useful and reached points far from the usual channels of traffic. It would be a harsh act to destroy a business that has been built up by three generations of one family who have always been law abiding. Justice will be better served by modifying the order to permit defendant to file within a reasonable time an application covering the service found to be illegal and staying the effective date of the order pending disposition of the application by the Commission. (Bekins Van Lines v. Griggs, 36 C. R. C. 183; Re: U. C. Express and Storage Co., Decision No.26993, dated April 30, 1934; Re: Carpenter, Decision No.26992, dated April 30, 1934; Re: Garcia, Decision No.26505, dated November 6, 1933).

A cease and desist order should issue.

ORDER

IT IS HEREBY FOUND THAT Sandercock Transfer Company, a corporation, is operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Act (Chapter 213, Statutes 1917, as amended), with common carrier status between San Luis Obispo and San Francisco and Los Angeles and intermediate points and without a certificate of public convenience and necessity or prior right authorizing such operations.

Based upon the finding herein and the opinion,

IT IS HEREBY ORDERED that Sandercock Transfer Company shall cease and desist directly or indirectly or by any subterfuge or device from continuing such operations, provided, that should defendant corporation herein file, within thirty (30) days from date hereof, its proper application for a certificate of public convenience and necessity covering such service, the foregoing order in all respects shall stand suspended until the Commission shall have finally disposed of said application.

IT IS HEREBY FURTHER ORDERED that the complaint be and it hereby is dismissed as to N. W. Sandercock and Warren Sandercock, individuals.

The effective date of this order shall be twenty (20) days after the date of service upon defendant.

Dated at San Francisco, California, this 6th day of November, 1934.

Leon O. Whitall
W. A. Carr
W. B. Lewis
W. H. Brown
Frank R. Kelly
COMMISSIONERS.