

Decision No. 27610

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of A. W. WAY for a certificate of public convenience and necessity to transport property, as a common carrier, for compensation, over the public highways between Arcata, Eureka, Scotia, Loleta, Ferndale, Fernbridge, Fortuna, Alton, Garberville, Willits and intermediate points, on the one hand, and Santa Rosa, Petaluma, San Francisco and South San Francisco, on the other hand, via the Redwood Highway, as an enlargement and extension of applicant's existing operative rights between Ferndale and Eureka, and intermediate points, via Loleta, and between Ferndale and Upper Mattole, and intermediate points, via Petrolia.

Application 19612

Sanborn & Roehl, by Claire W. McLeod, for Applicant.

H. W. Hobbs, for Northwestern Pacific Railroad Company, Southern Pacific Company, Pacific Motor Transport Company and Petaluma & Santa Rosa Railroad, Protestants.
Edward Stern, for Railway Express Agency, Inc., Protestant.
Reginald L. Vaughan, for Intercity Transport Lines, Inc., Eureka-Garberville Truck Line and Redwood Motor Freight, interested parties.

BY THE COMMISSION -

OPINION

A. W. Way, applicant herein, seeks a certificate for the extension of automotive freight service now maintained by him under bona fide operation prior to May 1, 1917, between Eureka and Ferndale, via Loleta, to and including Scotia, Ferndale, Fernbridge, Fortuna, Alton, Garberville, Willits, Santa Rosa, Petaluma and San Francisco on the south, and Arcata on the north.

Applicant proposes to restrict the operation to the transportation of perishable freight in refrigerated motor trucks. Applicant has conducted general truck freight service between Eureka and Ferndale and also to Upper Mattole, via Petrolia, for approximately twenty years and has maintained the service under the authority

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of this Commission with rates and time schedules filed therefor. No question is raised by protestants as to his rights thereunder. By his application he seeks to extend this right northerly to Arcata and southerly over the Redwood highway between San Francisco and the intermediate points named. He proposes to transport freight from San Francisco, Petaluma, Santa Rosa and Willits northbound, and from Arcata-Eureka-Carberville area southbound to the same places. Applicant began such transportation service in the spring of 1933 under alleged private contracts with various shippers. This operation was challenged before the Commission in Case No.3729 on complaint of Regulated Carriers, Inc. After public hearing the Commission found the service to be of common carrier nature and subject to regulation by the Commission, and required applicant, by its Decision No.27299, to cease and desist. The record herein shows that the order of the Commission has been obeyed.

Public hearings on the instant application were conducted by Examiner Williams at San Francisco and Eureka, the matter was duly submitted and is now ready for decision.

Applicant proposes to conduct operation with two refrigerated trucks and two trailers, each with a capacity of 18 tons of freight, and to maintain the equipment in its interior at a temperature not to exceed 40 degrees Fahrenheit. The operation is to be conducted twice weekly. Southbound trips would leave Eureka on Sunday and Wednesday, and northbound trips would leave San Francisco on Monday and Thursday. Applicant estimates that it will take thirteen (13) hours running time each way to make the trip. However, time schedule filed by applicant provides that the trip start at San Francisco at 2 p.m., arriving at Eureka at 7 a.m., thus making total elapsed time of 17 hours; southbound movements leaving Eureka at 10 a.m., arriving at San Francisco at 5:45 a.m., the following day, making total of 19 hours and 45 minutes. While the running time may be approximately

13 hours, the schedule is slowed considerably by proposed service at various points in pick-up, delivery and transfer of freight. The schedules as outlined are substantially the service maintained before applicant obeyed the order to cease and desist.

Testimony indicates that prior to ceasing this operation applicant was transporting a number of commodities which do not require refrigeration and which are now omitted from his final schedule of commodities he proposes to handle. He has omitted canned goods, groceries etc., and various other commodities for which refrigeration is neither required and in some instances undesirable. All told, in his prior operation applicant hauled approximately 10 tons each day southbound and approximately 15 to 18 tons northbound. The southbound haul was principally of butter and creamery products, eggs, fish and dressed poultry. Northbound, the haul was largely fresh meats and packinghouse products, dairy products, eggs, beer and dressed poultry. Under final amendment applicant limited the commodities he proposes to handle, and only under refrigeration, to cream and dairy products, including all cheese, meat and meat products and edible oils, beer, eggs, dressed poultry and fruits and vegetables, when fresh, and fish.

Applicant was supported as to the movement of fresh meats by the testimony of L. L. Foley, Transportation Superintendent for Swift & Company, at San Francisco. Mr. Foley testified that this packinghouse has shipped from 4 to 5 tons twice each week from South San Francisco to Willits, Garberville, Eureka and Arcata; that the same required refrigeration and that no other refrigeration service is maintained by any carrier to these points. In addition, witness testified that the/^{rate}proposed to be charged by applicant for such service is satisfactory and that he would continue to use the business if it were reestablished at that basis. This industry has no southbound movements. Cross examination revealed that the

tonnage quantity cited by the witness included smoked meat, sausage, lard, butter, eggs and cheese and also soap and cleansers. The commodities not requiring refrigeration approximated 15% of the haul. Witness also testified that refrigeration is not required from December to March 1st. He admitted that during all the time he used other service, including rail, that he had received no complaints as to the conditions of the products on reaching destination.

D. Giannini, owner of a meat market at Eureka; Lloyd Rees, Manager of Safeway Stores for the Eureka district; Peter E. Ferrari of J. C. Bull, Jr. Company, Arcata; Henry O. Peterson, Manager, Poultry Products of California, at Eureka; Alma L. Beer, owner of a meat market at Eureka; and M. N. Boyias, a restaurant operator, at Eureka, testified generally in support of the need for refrigerated service upon fresh meats delivered to them from San Francisco packinghouses, or shipped to points which applicant proposes to serve.

L. E. Wolters, Traffic Manager of the Golden State Milk Company at San Francisco, testified that this company manufactures butter at its Arcata and Ferndale plants, cheese at its plants at Orick and Alton, non-perishable milk products (dried and powdered milk) at Loleta, and that it requires refrigeration in the movement of its products for all commodities except the non-perishable products from Loleta. This shipper has been using a new type of bulk butter container which would not be useful in shipping by rail. He was one of the original contract patrons of Way and testified that the service was very satisfactory. The shipments ran from 298,000 pounds per month in July to 17,000 pounds in February, with an average shipment for 12 months of about 200,000 pounds monthly.

Nick Hansen, President of Humboldt Creamery at Fernbridge, co-operative plan, (having approximately 300 farmer members), also used Way's service for butter shipments to San Francisco and to Santa Rosa, averaging 18 tons per trip in summer and 6 tons in winter.

Henry O. Peterson, Manager of Poultry Producers of California, a Eureka organization, testified in support of applicant's proposal to transport dressed poultry between Eureka and Santa Rosa and San Francisco and also for the transportation of eggs between these points. The shipments are not of any consequence except between March and June and for that period refrigeration is needed. While the association ships no poultry to San Francisco, it does ship poultry from San Francisco during the seasons when the local supply at Eureka is short. These and other witnesses produced by applicant based the requirement for refrigeration on the ground that it maintained the products in better shape because many of them are shipped out of cold storage into cold storage and suffer from fluctuating temperatures, especially higher ones, during the period of transit.

It was admitted by some of the witnesses that they had successfully shipped the commodities noted by rail without refrigeration and without apparent injury. Other witnesses contended that to take fresh meats or poultry out of refrigeration and transfer them at higher temperatures causes them to sweat and deteriorate and not have the salability of continuously refrigerated transportation.

The protestants produced as witness Peter Philipson, Manager of the Humboldt Creamery at Fernbridge (the same company of which witness Hansen is President), who testified that the only reason he shipped by refrigerated truck was because the rate was cheaper and that he got a rate of \$7.00 a ton from Way. He testified that if service for like character is to be continued, it should be at least three days a week instead of two. The creamery used Way to transport cheese, wrappers and cartons from San Francisco, which was the only haul from that point made. Witness testified that while the creamery absolutely does not require refrigerated service, he feels that the service maintained "does some good."

Charles Fridenbach of Fortuna, general merchant; Eugene S. Clovey, Eureka, retail druggist, Fritz Baumgartner, butcher, at Eureka; John Boyd Louis, Manager of United Groceries at Arcata (another co-operative organization of 300 members); Leonard Carlson, Manager of Russ Meat Market, which has been established for 60 years in Eureka; Stewart J. Newcomer of Associated Fisheries; E. Caldwell, beer dealer; Robert E. Flowers, Ferndale, General Manager, Valley Flower Co-Operative Creamery; C. L. Day, publisher of the Humboldt Standard Daily; Otto Kausen, Eureka, shipper of cut flowers, were produced by protestants as witnesses who used the rail service of Northwestern Pacific Railroad, Pacific Motor Transport and Railway Express Agency, Inc., for less than carload movements and for the commodities included by applicant in his offer, and whose experience with rail transportation was that it was adequate and efficient for their purposes and that refrigeration was not required for the commodities transported. This latter opinion was based upon the fact that rail transportation is almost wholly in the night time and that the temperatures, except on infrequent occasions, are not high enough during any part of the route to cause deterioration or injury to the so-called perishable commodities. This testimony is not true of Mr. Day, whose shipments from San Francisco or other points are not perishable,

being inks and paper required for use by his publication. He based his opposition on the theory that the rail service maintained was excellent and that any competition to it might impair its value and eventually prevent proper functioning by the rail carriers, to the general injury of the community.

Applicant is a lawyer and performed transportation service of the character he now proposes under contracts, which he regarded as validly removing such operations from the jurisdiction of the Commission. When the Commission found that he was not so removed, he ceased and prosecuted his application for a certificate. He seems to have acted in good faith though in error. He has now reduced his proposed operation to one exclusively for commodities moving under refrigeration and seeks authority therefor. The test is whether such shippers now have adequate service for less than carload shipments.

The record shows that no other carrier maintains refrigerator service, except for carload quantities. Northwestern Pacific has not offered such service for four years, withdrawing it on the ground that it did not receive profitable patronage.

There is a genuine demand for the service he proposes and there is no other carrier offering less than carload refrigeration.

The application will be granted as herein modified.

Applicant A. W. Way 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.

O R D E R

A. W. Way having made application, as above entitled, public hearings having been held and the matter now being duly submitted,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation of automotive refrigeration service for the transportation of the commodities of cream and dairy products, including all cheese, meat and meat products and edible oils, beer, eggs, dressed poultry, fresh fruits and vegetables and fish (in its natural state), and no other commodities, between San Francisco, Petaluma, Santa Rosa and Willits and Garberville, Scotia, Alton, Ferndale, Fernbridge, Fortuna, Eureka and Arcata, and intermediate points, provided, no authority is hereby granted to move locally between any points between Willits and Arcata, said service in said area and points herein authorized to be limited to such shipments as may be tendered applicant when the origin or destination is either Willits, Santa Rosa, Petaluma, San Francisco or South San Francisco; and provided, further, that only the following commodities may be transported from and to each point, viz:

To Willits from San Francisco only -- meat and packinghouse products.

Between Santa Rosa and Eureka and Fernbridge, creamery products and dairy products, eggs, dressed poultry, southbound; beer, eggs, and dressed poultry, northbound.

Between Eureka and Petaluma,- eggs, southbound; eggs and dressed poultry, northbound.

Between South San Francisco, San Francisco and Arcata, Eureka, Loleta, Ferndale, Fernbridge, Fortuna, Alton, Scotia and Garberville -- cream, creamery and dairy products, meat and packinghouse products, beer, fresh vegetables and/or fruit, and fish, (in its natural state), southbound only; and eggs, poultry (dressed) northbound only; and, provided, further that such movements shall be transported only in motor equipment maintained in its interior at a temperature of not more than 40 degrees Fahrenheit, over and along the following route:

Via ferry and Redwood highway between termini, for all points, serving Ferndale by diversion from Fernbridge, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted to A. W. Way, 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 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 Revised Exhibit "A", filed November 5, 1934, as an amendment to the application, insofar as they conform to the certificate herein granted, or rates satisfactory to the Railroad Commission.
3. 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 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 29th day of December, 1934.

Leon A. Whelan

W. H. Carr

Arthur H. Brown

Charles R. Doolin
COMMISSIONERS.

I dissent

W. B. Lewis
COMMISSIONER.