



on Case No.3727, this Commission revoked certain rights granted Kiso Yasunaga by Decision No.9490, dated September 12, 1921, on Application No.574, and also ordered Nami Yasunaga and James Uyeda to cease and desist further operations between Gilroy, Cupertino and San Jose and other points in Santa Clara county and Oakland and San Francisco. Extensions of the effective date were granted until March 5, 1934, when the Commission ordered the effective date extended "to and including the effective date of the order to be entered in Application No.19271." That is the instant application. The effect of the extensions was to leave applicant undisturbed in her operations, which have been continued.

Applicant produced nine witnesses. Three of them - Uyeda and Uruka, as employees, and Hashimoto, as lessor of a depot, are interested, directly or indirectly, in the business. The other six are produce growers who have used the service, which appears to have been begun in 1916 and has been continuously operated thereafter. While the presentation of affirmative testimony as to need is not strong, it seems adequate to sustain a partial grant, when considered in connection with the history of the operation.

Applicant urges reliance on the effort of Kiso Yasunaga to obtain a certificate to extend his original right to San Francisco - Application No.11459, filed July 20, 1925, and (as amended at hearing), seeking a certificate "as a contract carrier." The area pleaded in this application is "the territory adjacent to San Jose \* \* \* \*, including ranches near Santa Clara, Agnew, Alviso, Campbell, Milpitas, Berryessa and Edenvale, and on the highways known as the Alviso and San Jose Road, Mc Kee Road, Trimble Road, Milpitas and Alviso Road, Capitol Avenue, Berryessa Road, the extension of Santa Clara Street, San Jose, Monterey Road, the Stevens Creek Road, Johnson Avenue, Santa Clara-Saratoga Road, Payne Avenue."

The application was not disposed of, due to confusion attending the Frost and Ben Moore decisions, <sup>(1)</sup> until August 26, 1927, when applicant, through his counsel, elected to seek dismissal on the ground that he was a private contract carrier.

The area described in the foregoing paragraph is substantially that granted Yasunaga "as a contract carrier" in 1921, serving Oakland only as a northern terminus. The history of this carrier since 1921, set forth in Decision No.26727, supra, need not be repeated. It is sufficient to state that Yasunaga apparently tried to conduct his operation in conformity with legal advice. After his death the operation was enlarged and extended south to Coyote and points intermediate to San Jose. It has been conducted with practically no brake for rates, many being lowered to the disadvantage of authorized carriers. Many new points have been added. A form of contract, discussed in Decision No.26727, supra, was used in facilitating business after October, 1933. When the instant application was heard, the original Yasunaga area was far exceeded.

There is, as before stated, little affirmative testimony standing alone, to justify a grant. In justice, however, applicant should receive authorization to continue service from the area her husband so long served well, as the record shows. In fact, the record does not affirm any larger grant. Applicant should be admonished, however, that her operations must be maintained in strict compliance with the certificate granted and at the rates proposed by her and now authorized.

(1) Frost v. Railroad Commission, 271 U.S. 583; In re Ben Moore, 27 C.R.C. 338.

Nami Yasunaga 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.

#### ORDER

The above entitled application of Nami Yasunaga having been duly heard and submitted for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation of automotive service for the transportation of field and/or orchard produce, empty crates, boxes and farm necessities, including feed, seed, fertilizer, food stuffs, implements and machinery over the public highways between Santa Clara, Campbell, Alviso, Milpitas, Alum Rock Park, San Jose, and Coyote (excluding Los Gatos, Saratoga, Cupertino, Mountain View and points south of Coyote), <sup>on</sup> /one hand and San Francisco and/or Oakland and points intermediate thereto, on the other hand, points of origin northbound being south of the north boundary of Santa Clara county, and points of origin southbound being north of the north boundary of Santa Clara county, provided that southbound transportation shall consist only of feed, seed, fertilizer, food stuffs, farm implements and machinery to ranches and farms along the route, and produce from commission houses to points on the route, and no greater or different service, over and along routes to be hereafter authorized, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted to Nami Yasunaga, subject to the following conditions:

1. Applicant shall file her 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 the exhibit attached 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 her under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that this order shall not become effective until applicant has filed with this Commission a map showing all the routes applicant proposes to traverse, the points and termini of each route and seven (7) miles laterally therefrom, and when such map has been approved by this Commission, by supplementary order herein, and which order shall fix the effective date of the order herein.

Dated at San Francisco, California, this 11th day of January, 1935.

Leon C. Whelan  
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W. B. Linn  
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COMMISSIONERS.