

Decision No. 28838

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PETALUMA-FT. BRAGG MOTOR TRUCK LINE,
JACK REID, Owner,

Complainant,

vs.

FT. BRAGG COOPERATIVE MERCANTILE
COMPANY and I. J. MENDOSA,

Defendants.

ORIGINAL

Case No. 4094

APPEARANCES

L. G. Hitchcock, for Complainant;
Carl R. Schulz, for Defendants;
John E. McCurdy, for Poultry Producers of Central California.

BY THE COMMISSION:

OPINION

The complainant is a highway common carrier operating between Petaluma and Ft. Bragg. His complaint alleges that defendants are unlawfully operating as highway common carriers without certificates of public convenience and necessity or other operative right. Defendant Ft. Bragg Co-operative Mercantile Company, it is alleged, is so operating between Ft. Bragg and Petaluma, and defendant I. J. Mendosa is alleged to be so operating between Mendocino City and Petaluma. The answer of the defendants admits they possess no certificates of public convenience and necessity, denies the other material allegations of the complaint, and alleges that their operations are those of highway contract

carriers, conducted under permits from the Railroad Commission. Public hearing was held at Petaluma before Examiner Elder.

Defendant Ft. Bragg Co-operative Mercantile Company is a corporation, and will, for convenience, be referred to hereinafter as "the corporation." It is admittedly in the transportation business, hauling eggs from Ft. Bragg to Petaluma, and returning feed, chickens, and empty sacks. The eggs are produced in the vicinity of Ft. Bragg by approximately 63 members of the Poultry Producers of Central California, hereinafter, for convenience, referred to as "the Association." These eggs constitute all the eggs shipped out of Ft. Bragg. The back haul consists of property of the Association, being transported to the Association at Ft. Bragg.

Defendant Mendosa performs similar transportation between Mendocino City and Petaluma, hauling to Petaluma eggs produced by Association members in the vicinity of Mendocino City, and returning feed and supplies for sale to members at Mendocino City. Except for the transportation of property for the defendants' own use, this constitutes virtually all the hauling either defendant has performed between the points complained of.

The operation was commenced by the corporation in November, 1935, and by Mendosa in October, 1935, after written hauling contracts between the Association and each defendant had been entered into.¹ All of the traffic thus handled by

1. The contract with the corporation, described therein as "the carrier," provides that the carrier shall "transport from Ft. Bragg district to Petaluma eggs and poultry as received there, and transport from Petaluma to Ft. Bragg district

defendants was previously transported by complainant and constituted about 90% of the total volume of his business. Its diversion to defendants has caused complainant great loss.

Although the charges for the transportation of the eggs are paid to defendants by the Association, their burden ultimately rests upon the producers, as they receive from the Association, for eggs transported by defendants, a price less than that received on eggs delivered to the Association at Petaluma by just the amount of the transportation charges. The producers are free to perform the hauling themselves or to make their own arrangements with other carriers.

Complainant's principal contention is that as the charges for the transportation are thus borne by the producers, defendants' transportation service is actually being performed for the producers and not for the Association; that the transportation,

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such feed and merchandise as the Association may desire to ship by truck." Rates are specified and provisions for indemnification of the shipper set forth. The term is 30 days from date and thereafter until cancelled, on 10 days' notice. On February 8, 1936, another contract was substituted, providing that "Carrier shall transport to Association at Petaluma, California, all eggs, poultry and empty sacks received by Carrier in the Ft. Bragg district as agent for Association, except that Association may, by special instructions to Carrier, require such shipments of eggs, poultry, and empty sacks to be made by railroad." The Association agrees to have transported by Carrier, and Carrier agrees to transport from Petaluma to Ft. Bragg district by truck, all the grain feed, poultry supplies, and empty coops that the Association may ship to Ft. Bragg by truck. Contracts with defendant Mendosa were identical except as to names, dates, and points. Under the peculiar facts of this case, the form of the contracts is not of controlling importance.

therefore, is not subject to control through the Association's contracts with defendants, but by the Association's Members; and that in thus serving the members, the defendants are unlawfully serving the public or a class of the public. Great reliance is placed upon In re Hiron, Decision No. 19976 in Case No. 2524, dated July 2, 1928, 32 C.R.C. 48. Defendants insist, however, that the property transported is the property of the Association; that all of the hauling is thus within the terms of defendants' respective contracts with the Association, and that defendants' services are being rendered to the Association alone, to the exclusion of all others, and as private or contract carriers for the Association.

Solution of the controversy depends upon whether the transportation is being performed for the producers or for the Association. This, in turn, depends upon whether title to the property during transportation reposes in the producers, the sellers, or in the Association, the purchaser. As the Hiron case indicates, it is often significant in this connection which party, the consignor or consignee, the seller or the purchaser, pays the transportation charges. That fact, however, is important, not as of itself controlling but because the party who pays the freight is presumptively the owner of the goods, with control and dominion over the transportation. This presumption, however, is not conclusive. The parties may provide by contract for the payment of the freight and the passing of title quite independently, the freight charges in such case merely constituting a factor in the selling price. An examination of the contracts and relationship between the parties shows this to be the situation here.

The Association is a non-profit, agricultural corporation, without capital stock, organized for the purpose of encouraging and fostering the business of producing and marketing eggs and poultry co-operatively, and for other pertinent purposes. Its membership is open, upon payment of a Ten Dollar membership fee, to all engaged in the production of eggs or poultry who sign Association standard Produce Sale Agreement to "sell and deliver" their eggs to the Association.² The Association maintains several packing plants in different parts of the State, the one here involved being at Petaluma. It also maintains, through agents, several "receiving stations" at more outlying points where, under the practice in this locality, the Association takes delivery of eggs under the sales contracts, if the producers do not choose to make delivery at Petaluma.

2. This agreement provides in part:

"1. The Association agrees to purchase and the Producer agrees to sell and deliver to the Association, all eggs produced or acquired by or for him in California for fifteen (15) years from date hereof, that he intends to sell or market in any event, for the price to be secured by the Association, as hereinafter mentioned. * * *

"2. The Association agrees to resell said eggs, together with similar eggs from other Producers, when and as it shall determine, at prices which, in the Association's judgment, are the best obtainable under market conditions, and to pay over the amounts received thereby as payment in full to the producers named in contracts generally similar to this contract, according to the quantities of eggs delivered by the respective Producers, after deducting therefrom all costs of receiving, handling, distributing and marketing - all as determined in the discretion of the Association - and a sufficient amount to provide for the maintenance of commercial reserves, depreciation (interest and the like)**

"7. b. The Producer expressly agrees that all eggs delivered hereunder shall be in good marketable and merchantable condition, and shall be delivered to the Association as, when, and where it shall direct."

Both defendants have contracts with the Association to act as its agents in maintaining such receiving stations. These contracts have been in effect since March 13, 1930.³ When eggs are delivered by the members to the receiving station, the members are given a receipt for the eggs in the name of the Association, showing the number of eggs received and the number of dozens in the cases. The receiving agent makes out a manifest of cases so received, which is sent, with duplicate copies of the receipts, along with the eggs to the packing plant at Petaluma, where the eggs are graded before being sold by the Association.

The members do not deal or have any contact with the carrier, as such, at any point in the transaction, either directly or indirectly.

Risk of loss rests upon the Association from the time

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3. The Association and the Poultry Producers Packing & Warehousing Association, Inc. are the other contracting parties in each contract. It is provided that - "1. The Association and corporation, respectively, appoint the Agent as their representative for the purpose of selling such poultry feeds and supplies as may be delivered to the Agent by the Association or the Corporation, and for the purpose of receiving, handling or buying eggs or poultry on behalf of the Association or Corporation"(such selling or buying to be done under terms and conditions fixed by the Association or Corporation). "2. The Agent agrees to maintain at his own expense a feed distributing and egg receiving station at Ft. Bragg, California, (or Mendocino City) to serve adequately the needs of the customers of the Association and Corporation. *** All poultry feed and supplies of any kind delivered to the Agent are to remain the property of the Association or Corporation until sold, and the Agent agrees to be responsible for loss or theft of any of the property. "7. And the Agent further agrees to receive eggs from the members, to take proper care of the eggs received, and to deliver such eggs to the Association's carrier when he calls for the same," for which the Agent is to be compensated at the rate of 3 cents for each case of eggs so received and handled.

the eggs are received at the agencies. If lost or damaged en route, the producer is nevertheless paid for the eggs by the Association at a price based upon the average grade of eggs previously sold by the producer.

We must conclude from this evidence that title to the eggs passes to the Association when they are delivered to the receiving stations and receipted for by the Association, through defendants as its agents. From that moment, risk of loss and all the incidents of ownership, including control over the transportation, rest with the Association. As between the Association and the producers, the cost of the transportation is merely an element entering into the computation of the price to be paid for the eggs in accordance with the Sales Contract.

The genuineness of defendants' position, as agents of the Association, is beyond question, particularly as they fulfilled the same functions, in the same way, when complainant performed the hauling. There is nothing to prevent defendants dealing with the Association as carriers as well.

It is also clear that the Association is the owner of the goods brought from Petaluma on the back-haul. It follows, therefore, that defendants' transportation services are performed for the Association, with which they have contracted for the hauling and in which title to the property transported rests. The case is thus to be distinguished from In re Hiron, supra. There is no evidence that either defendant has served or offered to serve the public as a common carrier, and the complaint must be dismissed.

O R D E R

The above complaint, having been duly heard and submitted for decision, and the Commission now being fully advised

in the premises:

IT IS HEREBY ORDERED that the complaint herein be
and the same is hereby dismissed.

Dated at San Francisco, California, this 15th
day of June, 1936.

M B Harris
Leon Whidely
W A Carr
William J. Brown
Frank R. Miller
Commissioners.