

Decision No. 31675

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PACIFIC GREYHOUND LINES,
a corporation,)
Complainant,)

vs.)

Case No. 4346

ORIGINAL

W. J. PERRY d.b.a. NEVADA-CALIFORNIA
STAGES: NEVADA-CALIFORNIA STAGES:
FIRST DOE, SECOND DOE, THIRD DOE,
FOURTH DOE, and FIFTH DOE,)
Defendants.)

H. C. LUCAS and H. D. RICHARDS, by H. C. Lucas
for Pacific Greyhound Lines, Complainant.

DOUGLAS BROOKMAN, for W. J. Perry, doing business
as Nevada-California Stages and Nevada-
California Stages.

BY THE COMMISSION:

O P I N I O N

By the above entitled formal complaint Pacific Greyhound Lines, a corporation, alleges that W. J. Perry, operating under the name and style of Nevada-California Stages, has operated or caused to be operated passenger stages as such are defined in sections 2 $\frac{1}{2}$ and 50 $\frac{1}{2}$ of the Public Utilities Act, between

1. Sacramento and Baxter's Camp, via Auburn and Colfax, California
2. Sacramento and Emigrant Gap, via Auburn and Colfax, California,

without first having obtained from the Railroad Commission of the State of California a certificate of public convenience and necessity authorizing such operation.

(1)

A public hearing in this proceeding was had in San Francisco on November 22, 1938, where testimony was received, evidence taken, and the matter being duly submitted it is now ready for decision.

For convenience, Pacific Greyhound Lines will hereinafter be referred to as complainant and W. J. Perry as defendant. Complainant introduced three exhibits and presented the testimony of six witnesses who testified that they had obtained transportation on defendant's line between points in California for which they paid an individual fare.

All of complainant's witnesses were employed by Pacific Greyhound Lines for the express purpose of buying intrastate transportation over the line of defendant Perry. Generally, the testimony of these witnesses was to the effect that they called at defendant's depot, in Sacramento, inquired as to transportation to points on his line in California and were furnished such transportation for compensation with no apparent difficulty.

Defendant took the stand in his own behalf and also presented the testimony of two witnesses, one a mechanic-ticket-seller-driver and the other a driver.

The complainant's witness, J. J. Bryan, testified that on June 23, 1938 he presented himself at the depot of Nevada-California Stages at 2nd and "K" Streets, Sacramento, and asked that he be transported to Emigrant Gap, California. He was told by the driver of the car that it went to Reno and that the fare was \$2.00. When the witness said he didn't want to go to Reno but only to Emigrant Gap he had no difficulty in arranging this trip and was told that the fare would be \$1.50, and then given a ticket (Exhibit No. 1) which read from Sacramento to Reno, and told that

1. Before Examiner McGettigan

it would be all right for him to get off at Emigrant Gap. Subsequently, he, with two other passengers, one of whom got off at Auburn and the other at Baxter's Camp, was taken to Emigrant Gap where he left the stage. Just before reaching Baxter's Camp, Bryan made arrangements to be picked up on the return trip at 9:30 p.m. in the evening. No mention was made of any stopover privilege on the ticket tendered to him nor was there any indication aside from the ticket marking that he was taking part of an interstate trip. Subsequently, Bryan was picked up on the return trip and transported to Sacramento. This witness testified that on the trip to Emigrant Gap his ticket was taken up by the driver of the car and on the return trip no mention of any ticket was made. However, the driver advised him the fare was \$1.00, which sum he paid to the driver at the time he boarded the stage. Incidentally, the witness testified that a miner boarded the stage at Baxter's Camp and rode to Sacramento. The fare this passenger paid was not known but the driver advised the witness not to discuss the matter of fares. This witness was not able to identify or name the driver or ticket seller.

Witness Stennett M. Sheppard testified that he presented himself at defendant's depot on June 23, 1938, and was given a ticket (Exhibit No. 2) reading between Sacramento and Reno and advised that he could go to Baxter's Camp, his announced destination. He likewise experienced no difficulty in obtaining transportation, boarded the stage, had his ticket taken up and was transported to and allowed to leave the stage at Baxter's Camp. Under a similar arrangement as that made by witness Bryan, Sheppard was picked up at Baxter's Camp on the return trip, charged \$1.00 and transported to Sacramento. By stipulation of counsel it was agreed that the witness

Sheppard would testify in substantially the same manner and to the same degree as witness Bryan, save with respect to destination outbound from Sacramento.

The testimony of complainant's witness E. H. Douglas was to the effect that on October 25, 1938, he appeared at the Bank Exchange Cafe (where defendant has his depot) and purchased a ticket for transportation to Emigrant Gap for \$1.50. He too, was given a ticket reading between Sacramento and Reno and subsequently left on the stage that day at about 2:15 p.m. accompanied by three other passengers, one of whom advised him he was going to Reno, another to Colfax and the third left the stage at Emigrant Gap. In addition, he testified that another passenger took the stage at the Sacramento city limits and left the vehicle at Colfax and another passenger rode from Colfax to Gold Run. He further testified that his ticket was taken up by the driver and that he left the stage at Emigrant Gap upon its arrival at about 4:15 p.m. Mr. Douglas did not identify or name the driver on this trip.

Through witness H. L. Hapgood, Chief Clerk Transportation Tax Division, Board of Equalization, there was introduced the monthly gross receipts report of W. J. Perry for the month of January, 1937. The witness stated that this report did not necessarily reflect any intrastate business. His oral testimony from the working papers of an auditor's report of this carrier's operations was to the effect that receipts were reported to Sacramento, Weimar, Auburn and Soda Springs, as well as to Reno.

Witness Mrs. Madeleine May Simpson testified that on October 26, 1938, she called at the 2nd and "X" Street depot of Nevada-California Stages at Sacramento and inquired as to the fare from Sacramento to Truckee. She was informed that the fare was \$2.00,

and upon a further request as to the fare to Reno was told that the fare was also \$2.00. Transportation was then arranged for herself and her husband to Truckee, and the trip made. Their tickets likewise were taken up by the driver of the stage. No passengers, according to this witness, were picked up between Sacramento and Truckee. Mr. and Mrs. Simpson returned from Truckee to Sacramento at 12 noon Saturday, October 29, 1938. Three other passengers were in the stage and Mr. Perry was driving during their entire trip according to the testimony of Mrs. Simpson. No fare was collected from them until they reached Sacramento when each paid \$2.00, she stated. The witness said that no explanation was given as to the availability of stopover privileges on the ticket she received outbound, which read between Sacramento and Reno. Mrs. Simpson also identified C. W. Carter, who later testified for defendant, as the man who sold her her ticket at Sacramento.

C. W. Carter, testifying in behalf of defendant, stated that he had been employed by Perry as mechanic-driver-ticket seller from March 20, 1938, to October 2, 1938. During that time, he stated, his duties included servicing of stages, extra driving and the selling of tickets. He also testified that, during the period of his employment, he had sold and rendered intrastate transportation on a number of occasions and had retained for himself the money collected. In May of 1938, Carter testified, Perry warned him not to sell transportation between points in California but he persisted in so doing despite instructions to the contrary. Ultimately, Carter stated, he was exposed and discharged from his position as a result thereof, but no attempt was made to prosecute him. This witness couldn't remember having sold the Simpsons transportation, but did admit seeing them in the stage depot.

W. L. Moore, also a defense witness, testified that he was employed as a driver by Perry between March 20 and October 18 of 1938 and admitted that he too, despite having been warned to the contrary at the time of his employment, had sold and rendered transportation intrastate. Moore also testified that he had retained for himself the money collected in the instances wherein transportation had been afforded between points in California. As in the case of Carter, Moore was finally exposed and thereupon discharged. However, no prosecution was attempted by Perry.

W. J. Perry, defendant, testifying in his own behalf, stated that he was the owner and operator of Nevada-California Stages and had been operating in interstate commerce between Sacramento and Reno since 1922. He stated that at no time had he been the holder of a certificate of public convenience and necessity from the California Railroad Commission to operate an intrastate service. He further testified that he had operated from one to three daily schedules during this sixteen year period of operation. He also stated that he had at all times insisted upon his personnel abiding by the purely interstate nature of his service and had advised and instructed them to handle only interstate traffic although contending that his policy had been and is now to allow stopover privileges enroute. He concurred in and supported the testimony of witnesses Carter and Moore with respect to their derelictions and his action in discharging them from his service therefor. He also testified that two other employees had been discharged in November of 1938 for similar reasons. He admitted that he occasionally drove stages himself but in the case of the Simpsons did not know that they wanted to go to Truckee but understood they simply intended to stop over to visit friends before continuing on to Reno. It was

his contention, denied by both Mr. and Mrs. Simpson, that round-trip tickets to Reno had been purchased by the couple.

According to the record in this proceeding some ten passengers were transported intrastate between points in California on the line of defendant between Sacramento and Reno during the period June to October, 1938, and for such transportation service there was assessed, charged and collected a fare based on an individual fare basis in approximately fifty per cent of the instances. No apparent difficulty was experienced by passengers in obtaining this service and on at least one occasion the defendant Perry was fully aware of what was transpiring.

The record shows that the defendant possesses no authority to perform any passenger stage corporation service, as such is defined in sections 2½ and 50½ of the Public Utilities Act, within the State of California.

The testimony of defendant in this proceeding in regard to stopover privileges is not borne out by the testimony of witnesses who individually and collectively denied that any such explanation was made to them at any time nor does any such information appear upon the face of the tickets distributed by this carrier. It is difficult also to reconcile defendant's testimony in regard to the sale of round-trip tickets to the Simpsons with the testimony of Mrs. Simpson, particularly when it appears that defendant failed to question their lack of a ticket when he picked them up at Truckee. Testimony of all witnesses that they had not intended to go to any other destination than that stated by them when originally applying for transportation was not refuted in the record.

Defendant Perry's testimony that all his employees were thoroughly instructed not to offer or perform intrastate transportation,

and the inference therefrom that the departures from said instructions as set forth herein were committed without his knowledge may be entitled to some consideration in all save the one instance where he himself drove the stage and collected the money or at least was present at its collection for an intrastate trip. This instance definitely weakens his defense in this proceeding. The testimony of the witnesses Carter and Moore that they had transported passengers intrastate and had appropriated moneys collected for said intrastate trips on an individual fare basis to their own use is proof sufficient of illegal operation. There appears no doubt also that the stage used was owned by defendant Perry and bore markings identifying it as the Nevada-California Stage of which Perry is the owner. However, there also appears an effort on the part of defendant Perry to prevent such instances as indicated by his instructions to these men and their discharge when their disobedience and peculations were discovered. Perry's failure to prosecute these men is not of paramount importance in deciding the issues in this case except to the extent that it serves to indicate a not too watchful eye on the conduct of his business in this respect.

The elapsing of nearly eight months before the peculations of these men were discovered further supports a conclusion as to the carelessness of this operator and indicates a passive collusion when the rather individual nature of his operation is considered and the fact considered that he himself is actively connected with all phases of the business.

While mindful of defendant's position as a victim of unscrupulous employees, we cannot find that such circumstances are sufficiently mitigating to warrant acquiescence in defense counsel's motion to dismiss. Defendant could not reasonably have been entirely

unmindful of the facts developed in this proceeding and consequently is to be censured for the illegal common carrier operation complained of. On one occasion defendant himself was a party to, and participated in, an intrastate operation on an individual fare basis, and, thereby subjected himself to the penalties therefor.

The Commission cannot and will not condone the type of operation developed by the facts in this proceeding whether directly or indirectly countenanced by the principals therein and hence will place defendant Perry upon notice that he is subject to criticism for the evident carelessness with which he conducts his transportation business as regards the particular phase thereof under scrutiny herein. It should also be noted that drivers Carter and Moore were not discharged until some months after the filing of the complaint herein.

After fully considering the record in this matter and all phases thereof, the Commission believes that sufficient proof has been adduced herein to connect defendant Perry with the illegal operations developed and the issuance of a cease and desist order is warranted.

An order of the Commission directing the suspension of an operation is, in its effect, not unlike an injunction by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a person is adjudged guilty of contempt, a fine may be imposed in the amount of \$500 or he may be imprisoned for five (5) days, or both. C.C.P. Sec. 1218; Motor Freight Terminal Company v. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 371.

O R D E R

A public hearing in the above proceeding having been held, the matter duly submitted and the Commission now being fully advised thereon,

IT IS HEREBY FOUND that W. J. Perry, an individual, operating under the fictitious name and style of Nevada-California Stages, is and during the time hereinabove mentioned was operating as a passenger stage corporation as such is defined in section 2½ of the Public Utilities Act, with common carrier status between fixed termini or over regular routes, over public highways between,

1. Sacramento and Baxter's Camp via Auburn and Colfax
2. Sacramento and Emigrant Gap via Auburn and Colfax,

without first having obtained from this Commission a certificate of public convenience and necessity or without a prior right authorizing such operation.

Based upon the opinion and findings herein,

IT IS HEREBY ORDERED that W. J. Perry, an individual operating under the name and style of Nevada-California Stages, cease and desist, directly or indirectly, or by any subterfuge or device, from operating as a passenger stage corporation between any or all of the following points or any two or more of said points to-wit:

1. Sacramento and Baxter's Camp via Auburn and Colfax
2. Sacramento and Emigrant Gap via Auburn and Colfax

unless and until he has first obtained from this Commission a

certificate of public convenience and necessity authorizing such operation.

IT IS HEREBY FURTHER ORDERED that in all other respects Case. No. 4346 be, and the same hereby is, dismissed.

The Secretary of the Railroad Commission is directed to cause personal service of a certified copy of this decision to be made upon said defendant W. J. Perry, and to cause certified copies thereof to be mailed to the District Attorneys of Sacramento and Placer Counties and to the Department of Motor Vehicles, California, Highway Patrol at Sacramento.

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

Dated at San Francisco, California, this 23^d day of January, 1939.

Frank Miller
Carl L. Rice
H. H. Kelly
Justus D. Quenneville
COMMISSIONERS