

Decision No. 27863

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of )  
BERNARD C. TUCKER and DONALD A. PARKER )  
to sell and THOMAS J. SHATTUCK to pur- )  
chase an automobile passenger and freight )  
line operated between Etna and Sawyers )  
Bar, California, and Humboldt Motor ) Application No. 22052  
Stages, Inc. to purchase an automobile )  
passenger and freight line operated )  
between Forks of Salmon and Somesbar, )  
California. )

In the Matter of the Application of )  
BERNARD C. TUCKER and DONALD A. PARKER )  
for authority to discontinue operation )  
of an automobile service as a common ) Application No. 22053  
carrier between Sawyers Bar and Forks of )  
Salmon, California. )

In the Matter of the Application of )  
CHARLIE SNAPP for certificate of public )  
convenience and necessity to operate ) Application No. 22089  
truck service as common carrier service )  
between Etna and Somesbar, California. )

In the Matter of the Investigation on )  
the Commission's own motion of the high- )  
way common carrier and passenger stage ) Case No. 4362  
operations, etc. of BERNARD C. TUCKER and )  
DONALD A. PARKER. )

MELVIN G. PINKHAM, for Humboldt Motor Stages, Inc.

DONALD A. PARKER, in Propria Persona.

JAMES DAVIS, for Charlie Snapp.

BY THE COMMISSION:

O P I N I O N

Bernard C. Tucker and Donald A. Parker, copartners, were granted authority by this Commission in Decision No. 27185, dated June 30, 1934, on Application No. 19492, to acquire and operate an

automotive service for the transportation of passengers and property between Etna and Somesbar by way of Sawyers Bar and Forks of Salmon, serving all intermediate points. One of the conditions upon which that authority was granted was as follows:

"The rights and privileges herein authorized may not be sold, leased, transferred, nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been secured."

Tucker and Parker propose to divide such operative right into three parts. By Application No. 22052, filed June 24, 1938, they seek authority to transfer to Thomas J. Shattuck that part between Etna and Sawyers Bar and to transfer to Humboldt Motor Stages, Inc. that part between Somesbar and Forks of Salmon. The consideration for each transfer is \$100. The terms of such sales are set forth in agreements marked Exhibits "A" attached to the application herein and made a part thereof. No equipment is involved in the proposed transfer. By Application No. 22053, Tucker and Parker seek authority to abandon the middle portion of such right between Sawyers Bar and Forks of Salmon.

Charlie Snapp, by Application No. 22069, filed July 11, 1938, requests a certificate of public convenience and necessity to establish and operate an automotive service for the transportation of passengers and property between Etna and Somesbar and intermediate points, as an extension of his existing operative right between Gazelle and Etna. His proposal is to provide service to and from all points covered by the Tucker and Parker right.

Case No. 4362 was instituted by the Commission on its own motion, under date of September 12, 1938, to determine whether Tucker and Parker did, without authority from the Railroad Commission, abandon their operations between Etna and Somesbar.

These matters were consolidated for the purpose of hearing which was held before Examiner Paul at Etna, on October 20, 1938. Since they involve closely related problems they will accordingly be disposed of in a single opinion.

It appears from the evidence that Tucker and Parker formerly were under contract with the United States Government to transport mail between Etna and Somesbar for a consideration of approximately \$10,500 annually. This contract, the term of which was four years, expired June 30, 1938. The record shows that some time in April 1938 Tucker and Parker, upon learning that the new mail contract, effective July 1, 1938, had been awarded to Charlie Snapp, applicant in Application No. 22089, attempted to sell their operative right to Snapp, but were unable to reach any agreement. Tucker and Parker subsequently entered into agreements and filed the applications hereinbefore described.

The record shows that on June 30, 1938, Tucker and Parker discontinued operations, apparently under the mistaken belief that the filing of the applications was sufficient authority for such discontinuance. Parker testified that profitable operations were impossible without the mail contract and substantiated this testimony by submitting the following data regarding the revenue and expenses during the calendar year 1937:

<u>REVENUE</u>		<u>OPERATING EXPENSES</u>
Freight	\$1,464.62	
Passengers	590.80	
Mail	<u>10,500.00</u>	
Total	\$12,555.42	\$10,935.27
Net return over operating expenses	\$1,620.15.	

Applicant Snapp has been operating over the route in question since July 1, 1938, as a mail carrier and has also carried passengers without compensation and freight under contracts with the shippers, pending a disposition of his application. His equipment consists of one 1938 Chevrolet  $1\frac{1}{2}$ -ton truck, two 1938 Chevrolet  $3/4$ -ton trucks, and two tractors, the latter intended for use over part of the route during the winter months when the road is often covered with snow and ice. He proposes to provide service daily except Sunday. Numerous witnesses appeared at the hearing and testified to a need for a through common carrier service from Etna to Somesbar. Merchants in Etna, Sawyers Bar, and Forks of Salmon testified that they have regular deliveries to be made to customers in the area between Sawyers Bar and Forks of Salmon; that they need applicant Snapp's proposed service and will use it; and that they will be greatly inconvenienced and suffer some loss of business without it. The fact that Snapp holds the mail contract to operate regularly over this route places him in a favorable position to conduct a common carrier service through this sparsely settled district at a profit. It is apparent from this record that there is a public need for such a through service as is proposed only by applicant Snapp.

Humboldt Motor Stages, Inc. now operates as a common carrier of passengers and freight, under a certificate, between Eureka and Somesbar and as a contract carrier of freight from Somesbar to Forks of Salmon under a contract with Bennett & Co., which operates the only store at Forks of Salmon. Occasionally passengers traveling from points westerly of Somesbar to Forks of Salmon or points easterly thereof have been carried by Humboldt Motor Stages, Inc. from Somesbar to Forks of Salmon without compensation, as there are no hotel accommodations at Somesbar, while there are at Forks of Salmon. After staying overnight at Forks of Salmon, the passengers have been carried to Sawyers Bar, Etna, or points beyond by Snapp (and prior to June 30, 1938, by Tucker and Parker).

It appears that the geographical conditions in this territory are such that most of the freight shipments, moving to Somesbar and Forks of Salmon, originate at Eureka while most of such traffic destined to Etna, Forks of Salmon, and intermediate points, but not including Forks of Salmon, originates at Etna or points beyond, such as Yreka and Gazelle. Witnesses appearing in behalf of applicant Snapp testified that their transportation needs concern primarily the area between Etna and Forks of Salmon and that they seldom have shipments to Forks of Salmon or Somesbar. The record also shows that the road between Etna and Sawyers Bar is often inaccessible to automobiles or trucks during the winter months and accordingly the most convenient point of origin for supplies destined to points west of Sawyers Bar during such periods is Eureka.

Humboldt Motor Stages, Inc. now transports approximately fifteen tons of freight monthly, under contract, for Bennett & Co. at Forks of Salmon. There are numerous mines along or near the road between Somesbar and Forks of Salmon and it is likely that the tonnage would be increased if the service were made available to the general public. At the present time shipments from Eureka to points beyond Somesbar (except those destined to Bennett & Co.) have been carried by Humboldt Motor Stages, Inc. to Somesbar where they are left overnight and picked up the next day by Snapp. The extra handling and overnight storage are obviously not as convenient or desirable from the viewpoint of public interest as a direct, through service would be. In addition to such circumstances there is the factor of the convenience to passengers of having a through common carrier service from Eureka to Forks of Salmon, where they may have

hotel facilities over night while awaiting connections to Sawyers Bar, Etna, and beyond, as compared with the present service which extends from Eureka only to Somesbar where there are no hotel accommodations available.

No evidence was presented with respect to that portion of Application No. 22052 seeking authority to transfer the eastern segment of Tucker and Parker's route to Shattuck.

The Commission under a long established policy has consistently refrained from permitting the division of operative rights, as herein proposed, except in the presence of extraordinary circumstances wherein it appears to be in the interest of the public which will be directly benefited thereby.<sup>(1)</sup> It is clear from this record that Tucker and Parker have discontinued the common carrier service authorized between Etna and Somesbar and have indicated that they have no intention of resuming this operation in the future. Therefore, the Commission must determine what action should be taken with respect to the certificate heretofore issued to Tucker and Parker. It would be in order upon this record to revoke this entire certificate between Etna and Somesbar. However, this record clearly shows that it is in the public interest to permit Tucker and Parker to transfer that portion of its operating right between Somesbar and Forks of Salmon to Humboldt Motor Stages, Inc., as applied for herein, and to revoke the remainder of the certificate. A careful review of this entire record leads to the conclusion that the matters before the Commission, involved herein, should be disposed of in the following manner:

- (a) Tucker and Parker should be authorized to transfer to Humboldt Motor Stages, Inc. that portion of its operation between Somesbar and Forks of Salmon.

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(1) In re Benjamin Walters, et al, Decision No. 30062, dated August 23, 1937, on Application No. 21076, and associated cases. In re Motor Transit Company, et al, Decision No. 30091, Dated September 7, 1937, on Application No. 21334.

- (b) The application of Tucker and Parker to transfer the operating right between Sawyers Bar and Etna to Thomas J. Shattuck should be denied on the ground that there has been no showing of public necessity for such a transfer.
- (c) The certificate granted to Tucker and Parker for operation between Forks of Salmon and Etna should be revoked. This will automatically dispose of Application No. 22053 wherein Tucker and Parker seek authority to abandon operation between Sawyers Bar and Forks of Salmon.
- (d) The application of Charlie Snapp for a certificate to operate between Etna and Somesbar should be granted and the following order will so provide.

Charlie Snapp and Humboldt Motor Stages, Inc. are 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 public hearing having been held, evidence having been received, the matters having been duly submitted, and the Commission now being fully advised:

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY  
DECLARES that public convenience and necessity require the establishment and operation by Charlie Snapp of an automotive service for the transportation of passengers and property as a passenger stage corporation as defined in section 2 $\frac{1}{2}$  of the Public Utilities Act, and as a highway common carrier as defined in section 2  $\frac{3}{4}$  of the Public Utilities Act, between Etna and Somosbar and intermediate points by way of Sawyers Bar and Forks of Salmon, as an extension and enlargement of his existing operative rights between Gazelle and Etna.

IT IS ORDERED that a certificate of public convenience and necessity therefor is hereby granted to Charlie Snapp subject to the following conditions:

1. Applicant shall file a written acceptance of the certificate granted herein within fifteen (15) days from the date of this order.
2. Applicant shall commence the service authorized herein within thirty (30) days from the effective date of this order and shall file in triplicate with the Railroad Commission and concurrently make effective on not less than ten (10) days notice to the Railroad Commission and to the public tariffs constructed in accordance with the requirements of the Railroad Commission's general orders and containing rates and rules satisfactory to the Railroad Commission.
3. Applicant shall file in duplicate with the Railroad Commission and make effective within thirty (30) days from the effective date of this order on not less than five (5) days notice to the Railroad Commission and to the public a time schedule covering the service authorized herein in a form satisfactory to the Railroad Commission.
4. The rights and privileges granted and authorized herein 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 obtained.
5. No vehicle may be operated by applicant unless such vehicle is owned by applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.
6. Applicant shall, prior to the commencement of the service authorized herein, and continuously thereafter, comply with all of the provisions of the Railroad Commission's General Order No. 91.



IT IS FURTHER ORDERED that applicants Tucker and Parker are hereby authorized to sell and transfer to Humboldt Motor Stages, Inc. and said Humboldt Motor Stages, Inc. is hereby authorized to purchase and acquire from said Tucker and Parker, and to hereafter operate thereunder, an operative right between Somesbar and Forks of Salmon as heretofore created by Decision No. 27185, dated June 30, 1934, on Application No. 19492, said acquisition to be as an extension and enlargement of Humboldt Motor Stages, Inc.'s present operative right to and from Somesbar, subject to the following conditions:

1. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission, or any other rate fixing body, as a measure of value of said property for rate fixing, or for any purpose other than the transfer herein authorized.
2. Humboldt Motor Stages, Inc. shall commence the service, as herein authorized to be acquired, within thirty (30) days from the effective date of this order and shall file in triplicate with the Railroad Commission and concurrently make effective on not less than ten (10) days notice to the Railroad Commission and to the public tariffs constructed in accordance with the requirements of the Railroad Commission's general orders and containing rates and rules satisfactory to the Railroad Commission.
3. Humboldt Motor Stages, Inc. shall file in duplicate with the Railroad Commission and make effective within thirty (30) days from the effective date of this order, on not less than five (5) days notice to the Railroad Commission and to the public, a time schedule covering the service as herein authorized to be acquired in a form satisfactory to the Railroad Commission.
4. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been obtained.
5. No vehicle may be operated by applicant Humboldt Motor Stages, Inc. unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.
6. The authority herein granted shall lapse and be void if the parties hereto shall not have complied with all the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.

7. Applicant shall, prior to the commencement of the service authorized herein, and continuously thereafter, comply with all of the provisions of the Railroad Commission's General Order No. 91.

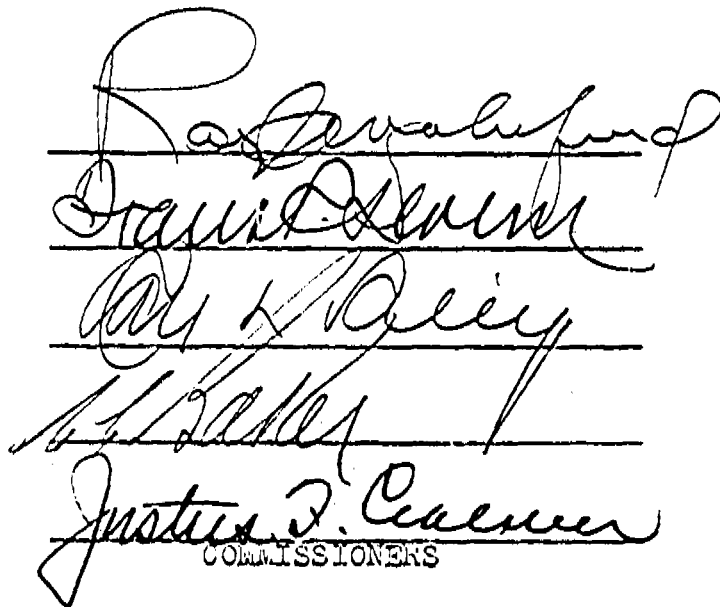
IT IS FURTHER ORDERED that Application No. 22052 in so far as authority is requested to transfer certain operative rights to Thomas J. Shattuck is hereby denied.

IT IS FURTHER ORDERED that the operative rights of Bernard C. Tucker and Donald A. Parker between Etna and Forks of Salmon and intermediate points as created by Decision No. 27185, dated June 30, 1934, are hereby revoked and annulled and all time schedules and tariffs now on file with the Railroad Commission in the name of said Bernard C. Tucker and Donald A. Parker are hereby cancelled.

IT IS FURTHER ORDERED that Application No. 22053 is hereby dismissed.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 6<sup>th</sup> day of March, 1939.

  
COMMISSIONERS