

Decision No. 33465

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA MILK TRANSPORT, INC.,  
a corporation,

Complainant

vs.

GREGORY G. PANOPULOS,

Defendant.

ORIGINAL

Case No. 4371

REGINALD L. VAUGHAN and CHARLES C. STRATTON,  
for Complainant.

CLARENCE M. WEISBROD and WALLACE L. WARE,  
for Defendant.

BY THE COMMISSION:

O P I N I O N

Complainant herein, California Milk Transport, Inc., a corporation, is a certificated highway common carrier which alleges that defendant, Gregory G. Panopulos, an individual, has been and is unlawfully engaged in the transportation of property for compensation, as a highway common carrier over the public highways of the state of California, usually and ordinarily between Montebello, El Monte, Baldwin Park, Monterey Park, Whittier, Pico, Downey, Compton, Lynwood, Clearwater, Artesia, Hynes and Bellflower, and the vicinity thereof, on the one hand, and the city of Los Angeles, on the other hand. Defendant denies that he has been, or is, conducting any unlawful automotive transportation service, and by way of defense alleges that he is providing

a highway common carrier service under a certificate of public convenience and necessity issued by the Railroad Commission within the certificated territory; and without said certificated territory that he is providing highway contract carrier service under a permit issued by the Railroad Commission.

A public hearing thereon was held before Examiner Paul, at Los Angeles, at the conclusion of which the matter was submitted on briefs. Such briefs having been duly filed, the matter is now ready for decision.

The Commission, by its Decision No. 28186, dated August 26, 1935, as amended by Decision No. 28339, dated November 12, 1935, on Application No. 19951, granted a certificate of public convenience and necessity to defendant G. G. Panopulos, authorizing the transportation of milk in 10-gallon cans and bottled milk in cases between Baldwin Park, El Monte, Montebello, Pico, Monterey Park and Los Angeles, over and along two routes and within a zone three miles on each side of each route. Such certificate was granted subject to the condition that it was

"... limited to the transportation of milk and cream from the territory and over the routes indicated, and further limited to such milk and cream as may be destined solely to the Associated Dairies, 917 Hemlock Street, Los Angeles, California, and no other destination."

R. H. Cronshey, manager of Los Angeles Mutual Dairymen, testified on behalf of complainant that defendant called on him and stated, in substance, that there was a surplus of milk in the market and that a number of dairymen had requested Challenge Creamery, located at 60th and Gramercy Streets, in Los

(1)  
 Angeles, to accept their milk. Defendant then asked whether he could, subsequent to October 16, 1938, transport such milk if accepted and purchased by said creamery. The witness, so he stated, after a discussion with the officers of the creamery then told defendant that the milk would be accepted beginning October 16, 1938. Cronshey further testified, in effect, that subsequent to such conversations and during the period from October 16, 1938, to and including December 18, 1938, milk was received at the Challenge Creamery from the dairies of M. Demasco, D. Albertoni, T. de Jong, J. Koopman and J. Vanden Raadt; that such milk was transported on the equipment of defendant; and, that payment for such transportation was made by said Challenge Creamery to defendant, such transportation charges being deducted from the purchase price of the milk of such shippers, excepting Koopman, the remainder of which was remitted to the shippers. The approximate locations of the dairies of such shippers and the periods of time during which such transportation was performed by defendant are shown by the record to be as follows:

D. Albertoni	4 miles southwest of Compton.	October 16, 1938 to and including December 18, 1938.
J. Vanden Raadt	2 miles north of Artesia.	October 16, 1938 to and including December 18, 1938.
(2) T. de Jong	Puente	October 17, 1938 to and including December 18, 1938.
M. Demasco	3 miles east of Artesia	October 16, 1938 to and including December 18, 1938.
J. Koopman	1 mile west of Hynes.	October 17, 1938 only.

---

(1) From the testimony of Mr. Cronshey, it appears that the Challenge Creamery is the sales division of the Los Angeles Mutual Dairymen's Association which is a co-operative association of dairymen.

(2) Witness Northway testified that the dairy of T. de Jong was located in Puente while defendant testified that it was in El Monte. Puente is not named in the complaint. Because of the doubt cast upon its location no consideration can be given to transportation therefrom.

Mr. A. Aroney who is the owner of the Associated Dairies Creamery, situated at 917 Hemlock Street, Los Angeles, testified that defendant had transported milk to his plant from dairies located at points involved herein. <sup>(3)</sup> The witness stated that transportation charges for the milk delivered to his plant by defendant are deducted from the purchase price of the milk due to the producer shippers and paid directly to defendant. The remainder of said purchase price is then remitted to such shippers.

Through Mr. Aroney exhibits were introduced (Exhibits 6 and 7) which indicated that during the months from January to November, 1938, both inclusive, defendant transported milk to the Associated Dairies, the transportation charges for which were paid as above indicated. The number of shippers for whom defendant transported milk to the Associated Dairies during this period ranged from approximately 16 to 29, the average being some 21 shippers. The location of the dairies of some of these shippers are at points not involved herein, and consideration will be given only to those dairies located at points which are involved. As indicated by the testimony of Mr. Aroney, the following is a partial list of such shippers and the community or town in or near which their dairies are located for whom defendant provided transportation to Associated Dairies during the period of time above indicated:

---

(3) It should be borne in mind that Mr. Aroney's plant is the only destination point which defendant may serve as a highway common carrier under a certificate of public convenience and necessity as hereinbefore pointed out. Therefore, no consideration will be given to any evidence in regard to shipments moving to Mr. Aroney's plant except to those shipments originating in non-certificated territory.

J. Koopman . . .	.Hynes
W. Visser . . .	.Hynes
A. Jufferman. . .	.Clearwater
J. L. de Groot . . .	.Clearwater
D. Van Eck . . .	.Artesia
H. Struickman . . .	.Artesia
R. C. Guglielmana . . .	.Artesia-Buena Park
A. A. Guglielmana . . .	.Norwalk
M. Damasco . . .	.Artesia
J. Erricaldi. . .	.Norwalk
T. Irrigary . . .	.Baldwin Park
A. Rambaud . . .	.Baldwin Park
J. Dospital . . .	.El Monte
H. H. Zylstra . . .	.Bellflower
L. Sleger . . .	.Artesia

Mr. Aroney further testified that milk transported to his creamery by defendant was under a contract for a term of three years beginning October 16, 1935 (Exhibit No. 8).

R. E. Osborne, assistant production manager of Knudsen Creamery at 21st and Santee Streets, Los Angeles, testified that his company purchases milk f.o.b. at its platform; that on or about August 10, 1938, defendant had called on him and solicited business for the transportation of milk to his plant; that a similar solicitation was made two or three times thereafter; that he told defendant that he did not desire having too many trucks calling at his plant; that defendant stated to him that he desired to solicit more traffic to be delivered to the Knudsen Creamery. The witness stated that he requested defendant not to haul any milk to Knudsen except his own, or that of his wife, Jane Panopulos. From Exhibit No. 3, introduced through this witness, it was shown that during August, September, October and November of 1938, defendant delivered to Knudsen Creamery milk for the account of Jane Panopulos, and that on August 9 and 10, 1938, milk was also delivered for the account of one Jongbloed. Witness Osborne stated that his company pays the transportation charge on the milk delivered to it which, so he implied, is deducted from the purchase price of the milk.

It was shown that the milk received from Jane Panopulos is produced at a dairy located on Imperial Highway a short way east of Woodruff Avenue about two miles north of the community of Bellflower which is operated by her and one Veenstra under some joint arrangement. The dairy of Jongbloed is located near El Monte.

Mr. A. M. McOmie, assistant secretary and field manager of the Independent Milk Producers Association, a co-operative association of dairymen, testified that milk produced by members of such association is paid for by the purchasing creamery direct to the producer, and that membership dues owed by such members to the association are deducted by the creameries from the purchase price of the milk, and paid to the association. He further stated that his association has no agreement nor arrangement with defendant for the transportation of the products of its members but that defendant several times had discussed with him the possibility of obtaining traffic from the association or its members, and that no arrangement ever was made. He indicated that some of the members of his association are engaged in the production of milk at points named in the complaint. The witness further stated that during 1938 he had requested defendant to transport milk for the association in addition to transporting milk for the members of such association. However, the points between which such milk was to be transported were not clearly indicated.

A number of dairymen, operating at or near points involved herein, testified in regard to the transportation service performed for them by defendant. The period of time during which defendant performed such service varied from one day to approximately one year. All shipments considered herein were destined to creameries located at Los Angeles, namely Knudsen Creamery, Associated

Dairy Creamery, Standard Creamery, or Challenge Creamery. Each of the witnesses stated that the transportation charges were deducted by the creameries to which their milk was consigned and paid to defendant. The rate in all cases appears to be 10 cents per can. Some of the witnesses testified that such deductions were made upon their authorization, others stated that such deductions were made without their specific order.

Three of the witnesses, namely, John Vanden Raadt, Rean Vander Kraan and A. Jufferman, testified that defendant is presently transporting their milk under a written contract. Vanden Raadt stated that prior to May 1, 1938, defendant had been transporting his milk to the Knudsen Creamery at Los Angeles; that between May 1, 1938, and October 16, 1938, defendant transported his milk to Associated Dairies at Los Angeles; and that on October 17, 1938, he entered into a contract with defendant to transport his milk to the Challenge Creamery at Los Angeles. The exact period during which his milk was delivered to Knudsen Creamery was not indicated. Vander Kraan testified that defendant had been transporting his milk to Associated Dairies at Los Angeles from July, 1937, to September, 1938. He also stated that on January 6, 1939, he entered into a contract with defendant for the transportation of his milk to the Challenge Creamery at Los Angeles. Witness Jufferman testified that defendant had been transporting his milk to the Associated Dairies at Los Angeles during the period from November or December of 1937, to November 1, 1938, and that subsequent to that date, on January 6, 1939, defendant began hauling his milk under a contract to Challenge Creamery at Los Angeles.

From the record, it appears that the dairies of the foregoing three witnesses are approximately located as follows:

Vanden Raadt, John . . . Midway between Artesia  
and Norwalk.

Vander Kraan, Rean . . .  $\frac{1}{2}$  mile easterly of Hynes

Jufferman, A. . . . .  $\frac{1}{2}$  mile easterly of Clearwater.

The following witnesses testified that defendant had been transporting their milk from their dairies to creameries at Los Angeles; that prior to October 16, 1938, such transportation had been to Associated Dairies Creamery as well as to other creameries in Los Angeles, and that no contractual relationship had been established with defendant. Some of them stated that defendant is still transporting their milk to Los Angeles:

Approximate Location of Dairy

Van Eck, Dick . . . . .	2 mi. northeasterly of Artesia
Romband, A. F. . . . .	2 mi. southwesterly of Baldwin Park
Sleger, L. . . . .	$1\frac{1}{2}$ mi. northwesterly of Artesia
Bartsma, Sam . . . . .	2 mi. southeasterly of Artesia
Guglielmana, R. C.. . . .	2 mi. southeasterly of Artesia
Visser, Walter . . . . .	1 mi. east of Hynes
Koopman, J. . . . .	$\frac{1}{2}$ mi. west of Hynes
de Groot, J. L.. . . .	2 mi. northeasterly of Clearwater
Zylstra, H. H. . . . .	$\frac{1}{4}$ mi. north of Artesia.

The defendant testified, in regard to service performed between points involved herein, that since November, 1937, he was engaged in the transportation of milk between Lynwood, Hynes, Artesia and Bellflower, and the vicinity of such towns, to the Associated Dairies at 917 Hemlock Street, Los Angeles, as well as to the Challenge Creamery at Los Angeles, Beverly Creamery at Jefferson and Hill Streets, Los Angeles, and the Knudsen Creamery at 21st and Santee Streets, Los Angeles, and that he hauled to no other plants than those indicated.

Defendant further testified that he never solicited any traffic; that the service he was performing for the transportation

of milk to Associated Dairies was under a contract with said Associated Dairies, the term of which was a period of three years, beginning October 16, 1935, and expiring October 16, 1938; that prior to October, 1938, he was not operating under any other contract than that with Associated Dairies; that the compensation he received for the transportation of such milk was 10 cents a can which was paid to him by said Associated Dairies. It was his belief that the transportation charges were deducted from the payments made by the Associated Dairies to the dairymen. Defendant further testified that on October 1, 1938, he was hauling milk for about fifteen shippers to Associated Dairies under the aforementioned contract. In addition, defendant testified that he was transporting milk for about fifteen shippers from his certificated territory--the point of delivery of such milk was not indicated. Defendant further stated that during the period November, 1937, to November, 1938, he hauled milk to no one but Associated Dairies, except the milk of Veenstra and Jane Panopulos which was transported to Knudsen Dairy under contract with the shippers.

Defendant further testified that following the termination of his contract with Associated Dairies (October 16, 1938) he entered into contracts with the following dairymen shippers whose dairies are located at the points indicated:

Albertoni., D. . . . .	4 mi. southwest of Compton
Vanden Raadt, John . . . .	Midway between Artesia and Norwalk
Demasco, Manuel . . . . .	1 mi. southwest of Bumna Park
Dykstra, Frank . . . . .	2 mi. southwest of Bellflower
Burges, Joe . . . . .	
Vander Kraan, Rean . . . .	1 mi. east of Hynes
Jufferman, A. S. . . . .	½ mi. east of Clearwater

Defendant stated that the foregoing were the only contracts entered into with shippers and that no service in non-certificated territory is now being performed for any shippers other than those under contract.

In regard to the solicitation of business, defendant testified that none was ever solicited from Aroney or McOmie but defendant, sometime during May, 1938, did talk to Mr. McOmie and with him visited a number of dairymen in regard to the transportation of milk.

In this proceeding we have the usual situation of a carrier charged with unlawful operations contending, as a defense, that he is a private carrier operating under contracts. In this case it is not necessary to discuss the "contract" defense because it has been clearly shown in this record that defendant has, notwithstanding his denial, actively solicited traffic for transportation at every source which appeared to offer any opportunity. Definite solicitations were made of witnesses Cronshey, Osborne, McOmie and others.

Soon after the expiration of the contract between defendant and Associated Dairies (October 16, 1938) it was shown that defendant entered into certain contractual arrangements with a few dairymen for the transportation of their milk. While defendant contends that he did not solicit the business of the persons with whom he engaged in contracts, nevertheless, it appears that it was well known to all that class of shippers that defendant would transport their milk upon request, subject only to the condition that a written contract be entered into.

From defendant's testimony, the record clearly shows that he stood ready, able and willing to perform such service for all persons who desired to avail themselves of such facilities, provided that they were willing to enter into a contract with him. Paradoxically, the record also shows that defendant transported milk for a number of dairymen from their dairies located at points involved

herein to creameries at Los Angeles and that no contractual arrangement existed covering such services.

From the record it appears that defendant was transporting milk for approximately forty dairymen shippers. A few of these shippers were being served lawfully by defendant under his certificate of public convenience and necessity; that is to say insofar as such service was provided to Associated Dairies Creamery at 917 Hemlock Street, Los Angeles and to no other point within Los Angeles from the producing territory in the vicinity of El Monte and Baldwin Park which are the only producing points of concern herein. For some of the others it appears that defendant was performing service as a carrier between points not involved in this proceeding. For the remainder it appears, from the record, that defendant was providing a service as a highway common carrier without a certificate of public convenience and necessity or other operative right therefor. The record is clear and convincing, as we have shown, that defendant's service is open and available to all shippers of a class which applicant serves and who desire to use it. It is also conducted usually and ordinarily between Los Angeles, on the one hand, and El Monte, Baldwin Park, Artesia, Norwalk, Bellflower, Hynes, and Clearwater and points in the vicinity thereof or intermediate thereto, on the other hand. Therefore, the operation is that of a highway common carrier. Defendant should be ordered to cease and desist such operations in the absence of a certificate of public convenience and necessity or other operative right therefor.

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 Co. 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.

The following form of finding and order is recommended.

#### FINDING AND ORDER

Public hearing having been held in the above-entitled proceeding, evidence having been received, the matter having been duly submitted, and the Commission now being fully advised,

IT IS HEREBY FOUND that defendant, Gregory G. Panopulos, an individual, has been and now is operating as a highway common carrier, as that term is defined in Section 2-3/4 of the Public Utilities Act of the state of California, as follows:

1. Between Los Angeles, on the one hand, and Artesia, Bellflower, Hynes and Clearwater and points in the vicinity thereof or intermediate thereto, on the other hand;
2. Between Los Angeles, excluding Associated Dairies Creamery at 917 Hemlock Street, on the one hand, and El Monte and Baldwin Park and points in the vicinity thereof or intermediate thereto, on the other hand;

without first having obtained from the Railroad Commission of the state of California a certificate of public convenience and necessity authorizing such operations, or without other highway common carrier operative rights therefor in violation of Section 50-3/4 of such Public Utilities Act.

Based upon such finding,

IT IS ORDERED that defendant, Gregory G. Panopulos, an individual, shall immediately cease and desist from conducting or continuing, directly or indirectly or by any subterfuge or device, any and all of said operations as a highway common carrier as set forth hereinbefore in the finding hereof, unless and until said defendant shall have obtained from the Railroad Commission a certificate of public convenience and necessity therefor.

The Secretary of the Railroad Commission is hereby authorized and directed to cause a certified copy of this decision to be served upon defendant.

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

Dated at San Francisco, California, this 3<sup>rd</sup> day of September, 1940.

Ray L. Rice  
Samuel D. Nelson  
Walter A. Brown  
H. B. Hall  
Justus J. Calver  
COMMISSIONERS