

ORIGINAL

Decision No. 34587

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

VALLEJO, NAPA & CALISTOGA TRANSPORT CO.,)
a corporation,)

Complainant,)

vs.)

Case No. 4589

KELLOGG EXPRESS & DRAYING CO., a corpor-)
ation, and NAPA TRANSPORTATION CO., a)
corporation,)

Defendants.)

FITZGERALD, ABBOTT and BEARDSLEY, by MILTON
W. DOBRZENSKY, for Complainant.

REGINALD L. VAUGHAN, for Defendants.

WILLIAM MEINHOLD and E. L. VAN DELLEN, JR.,
for Southern Pacific Company and Pacific
Motor Trucking Company, Interveners on
behalf of Complainant.

DOUGLAS BROOKMAN, for Haslett Warehouse Company
and Vallejo Express Company, Interested
Parties.

BY THE COMMISSION:

O P I N I O N

This is a complaint by Vallejo, Napa & Calistoga Trans-
port Co., a corporation, alleging that Kellogg Express and Draying
Co., a corporation, and Napa Transportation Company, a corporation.
(1)

(1) For convenience, defendants will hereinafter be referred to
as Kellogg and Napa Company, respectively.

have unlawfully united and consolidated their respective operative rights by filing and placing in effect joint rates and through service contrary to the provisions of Section 50-3/4(c) of the Public Utilities Act.

A public hearing in this proceeding was had in San Francisco before Examiner McGettigan on Tuesday, April 15, 1941, where testimony was taken, exhibits filed, the matter submitted on briefs duly filed with the Commission, and it is now ready for decision.

The facts of record are as follows:

Defendant Kellogg is operating as a highway common carrier between the City and County of San Francisco and numerous points in Marin and Alameda Counties, pursuant to authority of this Commission.

(2) Joint Freight Tariff No. 5, C.R.C. No. 6 of Kellogg Express and Draying Co., as amended, effective March 17, 1941.

(3) Section 50-3/4(c) of the Public Utilities Act reads, in part, as follows:

"...Without the express approval of the commission, no certificate of public convenience and necessity issued to any highway common carrier under the provisions of this section, or heretofore issued by the commission for the transportation of property by auto truck or self-propelled vehicle, nor any operative right founded upon operations actually conducted in good faith on July 26, 1917, shall be combined, united or consolidated with another such certificate or operative right so as to permit through service between any point or points served under any such separate certificate or operative right, on the one hand, and any point or points served under another such certificate or operative right, on the other hand; nor, without the express approval of the commission, shall any through route or joint, through, combination, or proportional rate be established by any highway common carrier between any point or points which it serves under any such certificate or operative right, and any point or points which it serves under any other such certificate or operative right."

Defendant Napa Company is the operator, through acquisition from R. E. Anderson and A. Nystrom, doing business as Napa Transportation and Navigation Company, its predecessors in interest, of prescriptive and certificated common carrier vessel rights, as such are defined in Sections 2(1), 2(y) and 50(d) of the Public Utilities Act, between San Francisco and South San Francisco, on the one hand, and South Vallejo, Napa and points on the Napa River, on the other hand, as originally defined, confirmed and authorized in Decision No. 28285, dated October 14, 1925, on Application No. 19468. Also, Napa Company, pursuant to the authority of Decision No. 30107, dated September 7, 1937, on Application No. 21104, operates a highway common carrier service, as such is defined in Section 2-3/4 of the Public Utilities Act, between its dock in San Francisco and its dock in Napa over and along a prescribed route between termini, restricted as follows:

"1. The authority herein granted for a highway common carrier service, as hereinabove defined, is to be operated in coordination and conjunction with the vessel service now being operated by applicant between San Francisco and Napa, said service to be operated only on alternate days from San Francisco to Napa, and only on alternate days from Napa to San Francisco."

Admittedly, defendants have, since March 17, 1941, in accordance with a tariff filed with the Commission February 11, 1941, been rendering a through service under joint rates between points served by the one and points served by the other, pursuant to the operative authorities above described.

Based upon this record, the following contentions appear to arise:

1. On behalf of complainant,

- a. The automotive service performed by defendant Napa Company is and should be considered as distinct and separate from its service as a common carrier vessel operator and must, therefore, be regarded as a specific highway common carrier operation, and
- b. The establishment of joint rates is, therefore, governed by the rule announced in Re Anderson, 42 C.R.C. 15, namely, that, as a highway common carrier, Commission consent must be obtained before said defendant may establish through service by joint rates with defendant Kellogg, also a highway common carrier.

2. On behalf of defendants,

- a. The automotive service performed by defendant Napa Company is incidental to and inseparable from its operation as a common carrier vessel operator; and, therefore,
- b. the rule of Re Sacramento Motor Transport, 39 C.R.C., 115, which permits joint rates to be established without authority between common carriers by vessel and highway common carriers, may be invoked. (Re E. V. Rideout, 41 C.R.C. 81).

Essentially, the question for determination is whether or not the Napa Company, as an operator of both a common carrier vessel right and a highway common carrier right between the same points and in the same service, is bound by the provision of Section 50-3/4 of the Public Utilities Act with respect to joint rates and through service with defendant Kellogg. Upon this record we must conclude in the affirmative. Napa Company, therefore, regardless of operating restrictions imposed by said certificate, is clothed thereby with the status of an automotive common carrier within the purview of Section 2 $\frac{3}{4}$ of the Public Utilities Act however limited such status may be. In short, having applied for, been declared to require, and having been granted authority to establish and operate a highway common

carrier service, defendant Napa Company must, to the extent of so operating, be regarded as such and required to comply with conditions pertaining to and incumbent upon such a carrier with respect to the establishment of through service by joint rates with other highway common carriers, in this instance, Kellogg.

Defendant Kellogg, admittedly having the status of a highway common carrier, would, conversely, be required likewise to secure identical and complementary authority.

Upon consideration of all the facts of record, therefore, we are of the opinion that defendants Kellogg Express and Draying Co. and Napa Transportation Company should be ordered to cancel Joint Tariff No. 5, C.R.C. No. 6 of Kellogg Express and Draying Co. within a period of not to exceed ten (10) days from the effective date of this order and to thereafter abstain from applying, demanding or collecting the rates shown therein unless and until said defendants first obtain proper authority to perform the service therein proposed.

O R D E R

A public hearing having been had in the above-entitled proceeding, evidence having been received, the matter having been duly submitted, and the Commission now being fully advised in the premises,

IT IS ORDERED that defendants Kellogg Express and Draying Co. and Napa Transportation Company be and each of them is hereby directed and required to cancel Joint Tariff No. 5, C.R.C. No. 6 of Kellogg Express and Draying Co., heretofore published

and filed with the Commission, within a period of not to exceed ten (10) days from the effective date of this order.

IT IS FURTHER ORDERED that defendants Kellogg Express and Draying Co. and Napa Transportation Company be and each of them hereby is directed and required to cease and desist, and thereafter abstain from applying, demanding or collecting the joint rates specified in and provided by said tariff unless and until said defendants and each of them shall have first obtained proper authority to establish and maintain joint rates between the points therein named.

The Secretary of the Railroad Commission is directed to cause personal service of a certified copy of this decision to be made upon said respondents Kellogg Express and Draying Co. and Napa Transportation Company.

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

Dated at San Francisco, California, this 26th day of August, 1941.

[Signature]
Justice F. C. Cullen
Francis R. Havens

COMMISSIONERS