

Decision No. 37377

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of J. R. VAN ARSDALE to sell, and K. K. ATKINSON to purchase, certain operative rights, and application of K. K. ATKINSON for a certificate of public convenience and necessity to operate as a highway common carrier as indicated herein, in lieu of said operative rights.

ORIGINAL
Application No. 26075

BY THE COMMISSION:

O P I N I O N

In this proceeding, K. K. Atkinson requests authority to acquire from J. R. Van Arsdale an operative right to transport express between Martinez, Benicia and Benicia Arsenal, which comprises part of a more extensive passenger stage operative right now held by Van Arsdale. The transfer of the operative right alone is sought, no tangible property being involved. As the purchase price, Atkinson has agreed to pay Van Arsdale the sum of one dollar. Atkinson also seeks a certificate of public convenience and necessity authorizing operation as a highway common carrier between Martinez and Crockett, on the one hand, and Benicia and Benicia Arsenal, on the other hand, via both the Martinez-Benicia Ferry and the Carquinez Bridge; and between Vallejo, Benicia and Benicia Arsenal. This would be limited to service as an underlying carrier for Railway Express Agency (an express corporation), and to the handling of shipments of baggage, milk and cream which have received or would receive, a prior or a subsequent rail movement. This certificate would be issued to Atkinson in lieu of the operative right above described, to be acquired from Van Arsdale.

Van Arsdale now holds operative authority to conduct a passenger stage service for the transportation of passengers, baggage and express between Martinez, Concord, Avon and intermediate points, and between Martinez, Benicia and Benicia Arsenal, via the Martinez-Benicia Ferry. Operation has been suspended between the Martinez Ferry slip, Benicia Arsenal, Benicia Arsenal barracks and intermediate points. By the present application, Atkinson seeks to acquire the right to transport express alone between Martinez, Benicia and Benicia Arsenal. Van Arsdale would retain the right to handle passengers and baggage between all of the points he is authorized to serve, and to carry express between Martinez, Concord and Avon.

Between Martinez and Benicia, Van Arsdale is authorized to operate via the Martinez-Benicia Ferry exclusively. Under the highway common carrier certificate sought, Atkinson proposes to operate between these points over the Ferry, and also via Crockett and the Carquinez Bridge. Vallejo would be served as an off-route point.

(1) Van Arsdale was authorized to acquire this operative right from K. K. Atkinson (applicant herein, who formerly conducted the operation), by Decision No. 36881, dated February 15, 1944, in Application No. 25845. Previously, Atkinson acquired from Pacific Greyhound Lines a passenger stage operative right between Martinez and Benicia and intermediate points (via Martinez-Benicia Ferry), pursuant to Decision No. 34619, rendered September 23, 1941, in Application No. 24447. By the same decision, he was authorized to extend the operation from Benicia to Benicia Arsenal and Benicia Arsenal barracks, this operative right being consolidated with that acquired from Pacific Greyhound Lines. Subsequently, Atkinson was authorized to operate between Martinez and Concord and intermediate points, via Avon and Golindo and via Mountain View and Pacheco, as an extension of the operative right granted by Decision No. 24619 (Decision No. 35376, dated May 19, 1942, in Application No. 24863).

(2) Decision No. 36881, supra.

Since the operative right which Atkinson proposes to acquire from Van Arsdale contemplates the transportation of express incidental to the passenger stage service in which the latter is engaged, Atkinson seeks additional authority to operate as a highway common carrier, in order to remove any doubt concerning his right to transport express by motor truck, following the consummation of the transfer from Van Arsdale.

Under applicants' proposal, it was shown, the movement of Railway Express traffic consigned to Benicia and Benicia Arsenal would be facilitated. This has moved by rail to Martinez, and thence by motor truck to destination. In the past, the volume has been substantial. ⁽³⁾ Shipments originating at eastern points now move through Martinez in through passenger trains to Oakland, where they are transferred to local passenger trains and back-hauled to Martinez. To avoid this delay, and to eliminate such additional mileage, the traffic would be handled in through cars to Vallejo, where it would be transferred to Atkinson for delivery at Benicia and Benicia Arsenal. Rail express traffic would also be delivered to Atkinson at Crockett, and transported to Benicia and Benicia Arsenal over Carquinez Bridge. Expeditious handling is important, since many of these shipments are intended for military uses.

(3) The volume of this traffic moving between March 1943 and February 1944, appears in the following tabulation:

<u>DATE</u>	<u>POUNDS</u>	<u>DATE</u>	<u>POUNDS</u>
<u>1943</u>		<u>1943</u>	
March	175,309	October	230,746
April	219,129	November	246,625
May	244,685	December	192,959
June	280,907		
July	271,122	<u>1944</u>	
August	371,452	January	181,062
September	230,795	February	226,488

In the past, passenger stage service between Martinez and Benicia and Benicia Arsenal frequently has been delayed because of interruptions in the Martinez-Benicia Ferry service. The establishment of a highway common carrier operation over the Carquinez Bridge, it appears, would obviate these delays.

From both Martinez and Vallejo, there is a substantial movement of milk and cream consigned to Benicia and to the Arsenal. Luggage and trunks, shipped by rail passengers leaving the trains at Martinez and Crockett, and destined to Benicia or the Arsenal, also move in substantial volume. All of this traffic has had, or will have, a prior or a subsequent movement by rail. Formerly, this was handled by Van Arsdale on his passenger stages, but that service no longer is available.

Rates would be published conforming to the minimum rates heretofore established by the Commission. At the outset, three 1½-ton trucks would be employed in this operation. No definite time schedules will be observed; in general, the service will be coordinated with that of Railway Express Agency. The only common carriers in the field, viz, Southern Pacific Company, Pacific Motor Trucking Company and The River Lines, have advised the Commission that they had no objection to the inauguration of this service. And, the military authorities at Benicia Arsenal, it appears, have requested the establishment of the service.

A public need exists, we believe, for the certification of a highway common carrier operation in accordance with Atkinson's proposal. In our judgment, however, the transfer of the express operative right by Van Arsdale to Atkinson, should not be authorized. To permit such a transfer would result in a division of the passenger stage operative right now held by Van Arsdale -- a step

which the Commission ordinarily will not sanction. And the question might well arise, whether a right to carry express in passenger vehicles, which exists incidentally to a passenger stage operative right, could be divorced from that operation; and also whether such a right, following its transfer, could be merged with a highway common carrier operation. Moreover, it would serve no useful purpose to authorize the transfer of the express operation only to revoke it contemporaneously through the issuance of an in lieu certificate. From the facts alleged, it is apparent that the objective sought to be attained by the parties could best be accomplished through the abandonment, and by revocation of the operative right, now held by Van Arsdale, to transport express between Martinez, Benicia and Benicia Arsenal. Such, accordingly, will be the order.

K. K. Atkinson is hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate-fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. 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

Application having been made as above entitled, and the Commission now finding that public convenience and necessity so require,

IT IS ORDERED as follows:

(1) That J. R. Van Arsdale is hereby authorized to abandon the operation of the service heretofore provided, as a part of the passenger stage operative right described in the foregoing opinion, under which he may engage in the transportation of express between Martinez, Benicia and Benicia Arsenal; and that said operative right, to that extent, be and it hereby is revoked and annulled.

(2) That a certificate of public convenience and necessity be and it hereby is granted to K. K. Atkinson authorizing the establishment and operation of a service as a highway common carrier as defined by Section 2-3/4, Public Utilities Act, between Martinez, Crockett and Vallejo, on the one hand, and Benicia and Benicia Arsenal, on the other hand. That said operative right shall be limited as follows, viz:

- (a) To the transportation of shipments moving under the billing of Railway Express Agency, an express corporation, as an underlying carrier for the latter; and
- (b) To the transportation of baggage, and shipments of milk and cream or empty containers therefor, which have had or will have, in addition to the movement by applicant, a prior or a subsequent movement by rail.

(3) That in the operation of service pursuant to the foregoing certificate, K. K. Atkinson shall comply with and observe the following service regulations:

- 1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.

2. Applicant shall comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, appropriate tariffs and time tables within sixty (60) days from the effective date hereof and on not less than one (1) day's notice to the Commission and the public.
3. Applicant shall file, in triplicate, within sixty (60) days after the effective date hereof, copies of any contract entered into between him and any express corporation relating to the operation of the service authorized hereunder.
4. Subject to the authority of the Commission to change or modify them by further order, applicant shall conduct operations, pursuant to the certificate herein granted, over the following routes:

Between Martinez and Crockett, via State Highway; between Crockett, Vallejo, Benicia and Benicia Arsenal, via Carquinez Bridge, U. S. Highway No. 40 and all appropriate streets and highways; between Martinez, Benicia and Benicia Arsenal, via Martinez-Benicia Ferry and all appropriate streets and highways.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 3rd
day of October, 1944.

Justin F. Casner
Francis R. Harenes

Irving S. Lawrence
COMMISSIONERS