

Decision No. 38294

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of )  
FORREST O. JOHNSON for a certificate )  
of public convenience and necessity )  
to operate a bus line service from )  
Woodland, Davis, Davis Highway, )  
Broderick, in Yolo County, Gardenland )  
in Sacramento County, to McClellan )  
Field only for employees at McClellan )  
Field only, and return from McClellan )  
Field only to the points mentioned )  
above. )

Application No. 26116  
2nd Supplemental

EARL D. DESMOND, for applicant.

HERBERT CAMERON, for A. J. Chapin, doing business  
as North Sacramento Stage Line, protestant.

DOUGLAS BROOKMAN, for Pacific Greyhound Lines,  
interested party.

BY THE COMMISSION:

O P I N I O N

Decision No. 37150, dated June 27, 1944, granted a certificate to F. O. Johnson authorizing the transportation of passengers between Woodland, Davis, Broderick, McClellan Field and intermediate points for only those passengers originating at or destined to McClellan Field, provided that no service should be performed between Gardenland and McClellan Field or intermediate points. By his second supplemental application, Johnson requests a removal of all limitations in such certificate so that a full and complete service may be provided between the termini and all intermediate points. A public hearing thereon was had before Examiner Paul at Sacramento on September 5, 1945, when the matter was submitted.

Applicant is presently operating three round-trip schedules daily except Sundays and holidays over his authorized route, which would be continued. The one-way fares proposed to be charged would

be on a basis of about 1½-cents a mile. Round-trip and commutation tickets would be sold at reduced fares. Applicant has eight units of passenger stage equipment used in this operation and that conducted between Broderick, Westgate and Sacramento. Another unit is on order.

Seven public witnesses testified in support of applicant's request for removal of the restrictions on his operative right. Each of these witnesses stated that his address was Gardenland. In substance, their testimony was to the effect that they have been provided transportation by applicant between Gardenland and McClellan Field, where all are employed, for periods of time varying from six or seven months to the entire time which applicant has been conducting operations between these points. Prior to July 2, 1945, these witnesses were provided transportation by applicant between points in the community known as Gardenland and McClellan Field. During the latter part of June 1945, they were informed by applicant or his drivers that after July 1, 1945, he would not provide service between Gardenland and McClellan Field. Subsequent to such date they availed themselves of applicant's service by walking varying distances to a point on Garden Highway (sometimes known as "Dock-Depot Road") about 100 feet west of its intersection with the Lower Marysville Road. Each of these public witnesses emphasized that applicant has consistently provided a fully adequate and reliable service to meet their needs. Several of them stated that there was no other service available between Gardenland and McClellan Field along the route over which applicant operated prior to July-2, 1945.

Applicant readily admitted that he had been transporting passengers between Gardenland and McClellan Field as well as to and from points intermediate thereto over a long period of time. In justification of providing this service he stated that it was done pursuant to an oral arrangement between him and A. J. Chapin, doing

business as North Sacramento Stage Line, who is engaged in transporting passengers pursuant to certificates issued by this Commission. This arrangement was made about March 1944. Applicant continued service pursuant to this arrangement until approximately July 1, 1945. He stated that on or about June 15, 1945, he was informed by the general manager and superintendent of North Sacramento Stage Line that such stage line would establish service between Gardenland and McClellan Field over the route used by applicant and requested applicant to discontinue his operation by July 1, 1945, as agreed to by applicant and Chapin. According to applicant, beginning July 2, 1945, his last point of pick up of passengers destined to McClellan Field was a point west of Gardenland on Garden Highway west of its intersection with Lower Marysville Road. This point after such date was the first point at which applicant discharged passengers originating at McClellan Field. No passengers were picked up or discharged at any point intermediate to McClellan Field and the intersection of Garden Highway and Lower Marysville Road.

A. J. Chapin, doing business as North Sacramento Stage Line, opposed the removal of the restriction in Applicant's operative right prohibiting the transportation of passengers between Gardenland, McClellan Field and intermediate points. The testimony of Chapin corroborated that of applicant with respect to the oral arrangement between them for the transportation of passengers between Gardenland and McClellan Field and intermediate points. The operative rights pursuant to which Chapin is conducting passenger stage service were created by Decision No. 35675, dated August 11, 1942. Chapin stated that he acquired such rights on September 15, 1942. Thereafter, by

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(1) The Commission, by Decision No. 35778, dated September 15, 1942, authorized Chapin to acquire the rights referred to.

Decision No. 36628, dated September 28, 1943, new routes for the entire system were defined. Decision No. 36727, dated November 23, 1943, modified certain of the routes defined by Decision No. 36628 and added thereto a new route, defined as follows:

"ROUTE 15. Intersection of El Camino and Old Marysville Road, Marysville Road to Main Street, Main Street to 3rd Street, 3rd Street to Bell Avenue, Bell Avenue to 16th Street."

This is the route between Gardenland and McClellan Field which is essentially the route used by applicant Johnson in performing the service authorized by Decision No. 37150.

In explanation of the arrangement with Johnson, Chapin stated that he did not establish service over the above described route because of lack of equipment and the various restrictive orders of the Office of Defense Transportation. Chapin further stated that when he learned that Johnson had obtained a certificate he "grasped the opportunity to provide service on that road locally as a substitute for my own" and asked Johnson to provide such service until Chapin could obtain equipment - Johnson to withdraw the service when Chapin was able to obtain such equipment. To this, so Chapin stated, Johnson agreed. Chapin stated that on or about June 10, 1945, he obtained four additional units of equipment. At this time he instructed his general manager to notify Johnson that Chapin would establish operations between Gardenland and McClellan Field on July 2, 1945 and requested Johnson to discontinue his service between such points prior to such date.

Chapin contended that the application should be dismissed because evidence adduced by Johnson was evidence of unlawful operations. The motion to dismiss the application on this ground is denied. The operations of Johnson which Chapin contends to be unlawful were operations pursuant to an arrangement between these parties without the authority of the Commission, which was;

therefore, an unlawful arrangement. Chapin was authorized to use the route involved on November 25, 1943, and admitted that the service was not established until July 2, 1945, notwithstanding that it is shown in this record that during such period of time there has been a continuing public need for a service over such route.

With respect to the contention of Chapin that the evidence adduced in support of the application of Johnson is evidence of unlawful operations and cannot be considered as a basis for making a finding that public convenience and necessity require the service offered, it is our opinion that the interest of the public is paramount and should be given the first consideration. According to the record Johnson has performed an adequate and satisfactory service for the public. Chapin was derelict in his duty to the public. Both carriers operated illegally. We believe that the authority should be issued to the one who has demonstrated his ability over a considerable period of time to adequately serve the public. Therefore, based upon the evidence of record, we find that there is a public need for service by applicant between Gardenland and McClellan Field and intermediate points for passengers originating at or destined to McClellan Field. The restriction contained in Decision No. 37150 prohibiting such transportation will be removed.

Pacific Greyhound Lines opposed applicant's request for the removal of limitations in his certificate, other than between Gardenland and McClellan Field and intermediate points, on the basis that such removal would permit the transportation of passengers between Woodland and Sacramento and intermediate points. As no

showing of public necessity was made for the removal of such restriction; this part of applicant's request will be denied.

We desire to place applicant Johnson on notice that operations under certificates granted by this Commission must be conducted within the scope of such certificates as otherwise he will not only jeopardize his right to continue operating, but will become liable to prosecution under the penal provisions of the statute.

Forrest O. Johnson 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

A public hearing having been held upon the above entitled application, and it having been found that public convenience and necessity so require,

IT IS ORDERED as follows:

(1) That the following language appearing at Sheet 3 of Decision No. 37150, dated June 27, 1944;

"...provided that no service may be performed between Gardenland and McClellan Field and intermediate points:"

is hereby deleted therefrom.

(2) That the route of operation defined in service regulation 4 at Sheet 4 of Decision No. 37150 is hereby amended to read as follows:

"Beginning at the intersection of Main Street and U. S. Highway 99 (Woodland), thence along Main Street, 3rd Street, Clovis Street, Walnut Street, Cross Street, Elm Street, Pendergast Street, U. S. Highways 99 and 40, 4th Street (Davis), G Street, First Street, U.S. Highway 40, 3rd Street (Broderick), Southern Pacific bridge, Jibboom Street, Garden Highway, Lower Marysville Road, Main Street, 3rd Street and Bell Avenue to McClellan Field."

(3) That in all other respects said Decision No. 37150 shall remain in full force and effect.

(4) That Second Supplemental Application No. 26116, filed July 17, 1945, in all other respects is hereby denied.

(5) That applicant shall, within 60 days from the effective date hereof and on not less than 5 days' notice to the Commission and the public, establish the service herein authorized and comply with the provisions of General Order No. 79 and Part IV of General Order No. 93-A by filing in triplicate, and concurrently making effective appropriate tariffs and time tables satisfactory to the Commission.

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

Dated at San Francisco, California, this 9th day of October, 1945.

[Signature]

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COMMISSIONERS