

Decision No. 38742

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of VERYL CALLISON, an individual doing business as CALLISON TRUCK LINES, for a certificate of public convenience and necessity to operate a highway common carrier service between Eureka, on the one hand, and San Francisco and Oakland, on the other hand, for transportation of fresh, frozen and cured fish; fishermen's equipment and commodities dealt in by wholesale and retail foods business houses, except frozen fruits and vegetables.

ORIGINAL

Application No. 26391

In the Matter of the Application of A. W. WAY for certificate of public convenience and necessity to transport property, as a common carrier, between Arcata, Eureka, Scotia, Loleta, Ferndale, Fernbridge, Fortuna, Alton, Garberville, Willits and intermediate points, on the one hand, and Santa Rosa, Petaluma, San Francisco, and South San Francisco, on the other hand, as an enlargement and extension of applicant's existing operative rights between Ferndale and Eureka.

Application No. 19612  
1st Supplemental

BEROL & HANDLER by MARVIN HANDLER for Veryl Callison, applicant in Appl. No. 26391 and protestant in Appl. No. 19612.

DOUGLAS BROCKMAN, for A. W. Way in Appl. No. 19612 and protestant in Appl. No. 26391.

J. RICHARD TOWNSEND and HAROLD M. HAYES, for C. C. McLenegan, C. S. McLenegan and Harold M. Hayes, partners doing business as Intercity Transport Lines; PIONEER EXPRESS COMPANY, a corporation; C. S. McLENEGAN, H.M. HAYES and GEORGE S. BUTLER, partners doing business as Eureka-Garberville Truck Lines; and GEORGE S. BUTLER, an individual doing business as Butler Freight Lines, protestants in Appl. No. 26391 and interested parties in Appl. No. 19612.

EDWARD STERN and R. S. ELLIOTT for Railway Express Agency, Incorporated, protestant in Appl. No. 26391 and interested party in Appl. No. 19612.

CHARLES W. BURKETT, JR., and W. J. CUMMINGS for Northwestern Pacific Railroad Company, protestant in Appl. No. 26391 and interested party in Appl. No. 19612.

O P I N I O N

PROPOSAL OF APPLICANT CALLISON

Veryl Callison, doing business as Callison Truck Lines, in his application as amended, requests a highway common carrier certificate as follows:

- (a) For the transportation of fresh, frozen and cured fish, crustaceans, fish livers, fish viscera, equipment, materials and supplies used or useful in the fishing business, as more particularly set forth in Section "B", original page 19, of Exhibit No. 14, between Eureka and Fields Landing and within a radius of one mile of Fields Landing, on the one hand, and San Francisco and Oakland, on the other hand.
- (b) For the transportation of cut flowers, potted plants and dormant nursery stock, in general, between McKinleyville, Eureka and points within three miles of Eureka, on the one hand, and Santa Rosa and San Jose and intermediate points, via San Francisco; and Santa Rosa and San Jose via Napa, Vallejo, Oakland and Hayward, on the other hand.
- (c) For the transportation of groceries and grocery supplies, as specifically described in Supplemental Amendment to Application, between Eureka, on the one hand, and San Francisco and Oakland, on the other hand, provided that the transportation of such items shall be limited to those originating at or destined to wholesale or retail grocery businesses at Eureka.

PROPOSAL OF APPLICANT WAY

Applicant Way requests a highway common carrier certificate for the transportation of fresh fish, iced fish, frozen fish, quick freeze fish, cured fish, frozen fish products and frozen bait, between Eureka, on the one hand, and San Francisco and Oakland, on the other hand, and also for the transportation of fresh meat southbound from Arcata, Eureka, Ferndale, Fernbridge and Scotia to Santa Rosa, Oakland, San Francisco and South San Francisco. The proposal to transport fresh meat between the points indicated would be points in addition to those which applicant is now authorized to transport

(1)  
meat under his existing certificate.

These matters were heard on a joint record before Examiner Paul at San Francisco on March 6, 7 and 8, 1945; at Eureka on April 18, 19 and 20 and August 7, 1945; and at San Francisco on August 15 and 16, 1945. The matters were submitted subject to the filing of briefs, the last of which were due and received October 31, 1945. The matters will be disposed of in one decision.

The granting of the Callison application is protested by A. W. Way, Northwestern Pacific Railroad, Railway Express Agency, Inc., Intercity Transport Lines, Inc., Pioneer Express Company, Eureka-Carberville Truck Lines, and Butler Freight Lines. Only Callison protested the application of A. W. Way to transport fresh fish and fish products. There was no protest to Way's proposal to transport fresh meat.

EVIDENCE IN SUPPORT OF APPLICATION OF  
VERYL CALLISON

In his testimony Callison described the character of his proposed highway common carrier operation. If authorized, he will establish a terminal at Oakland in addition to that now maintained at San Francisco. He would publish rates which would be no lower in volume or effect than the minimum rates established by the Commission in its various rate orders on the commodities involved. His equipment consists of seven line-haul units, including trucks, trailers,

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(1) Applicant Way has a certificate granted by Decision No. 27610, as amended by Decision No. 27694, which authorizes transportation of limited commodities such as cream, butter, meat, edible oils, dressed poultry and eggs, in general, between San Francisco, South San Francisco, Eureka and Arcata and certain intermediate points, subject to certain restrictions as to the points served and the direction of the movement. This certificate was issued subject to the provision that such commodities shall be transported only in motor equipment maintained in its interior at a temperature of not more than 40 degrees Fahrenheit.

tractors and semi-trailers. The truck and trailer bodies are all of the van type. Seven of the nine bodies are insulated. He also has seven smaller units of different types which are used for pickup and delivery. Schedules would be operated to meet the requirements of the shippers. In general, such schedules would leave Eureka in the evening so that delivery would be made at San Francisco and Oakland in time to be available for the opening of the fish markets the following morning. As a rule all schedules would be operated daily except Sundays and holidays northbound; and except Saturdays and days preceding holidays southbound.

Witnesses representing the fishing industries and wholesalers and retailers of fish and fish products testified that they would use Callison's service if he were certificated as a highway common carrier. Most of them had entered into transportation arrangements with him. They stated they had need for a dependable and expeditious service for an early first morning delivery, such as he has been providing. They uniformly praised the excellence, reliability and cooperative character of Callison's contract carrier service. Most of them who have used available common carrier services stated that it was unsatisfactory as shipments to San Francisco and Oakland generally are delivered too late to meet their requirements. Many of the fishing companies had engaged in proprietary operations before using Callison's service to which

(2)(3)  
they will not return as long as his is available.

A shipper of cut flowers, flowering plants and nursery stock from a point near Eureka stated that his company began using Callison's service in 1938 under an oral contractual arrangement and would continue its use if certificated. His company is establishing a new nursery at McKinleyville, about 13 miles north of Eureka. These nurseries are off-rail and he stated that he has been refused pickup and delivery service at the Eureka plant by the common carriers. Expensive packing and extra handling is not necessary when using Callison's present service. Nursery stock and plants move in full truck loads as a rule. Speed is essential to avoid deterioration of most of this class of merchandise. (4) Representatives of nurseries at San Francisco testified as to the quality of Callison's present service and complained that use of common carriers for shipments northbound for cut flowers has been unsatisfactory. Service of common carriers used for northbound shipments of potted plants has been satisfactory. They expressed a desire for Callison's service for their shipments, if certificated, since he offers to provide pickup and delivery service at their plants for

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- (2) One witness stated that his company engaged in proprietary truck operation "... on account of lack of service by the carriers".
- (3) The lowest and highest monthly tonnage of fish in various forms transported by Callison during the year 1944 was in the months of January and June. Such tonnage was about 115 tons and 830 tons for these months, respectively. The month of lowest tonnage for fish was the month in which the greatest tonnage of nursery products was transported, while the month of highest tonnage for fish was the month of lowest tonnage of nursery products. For the period January - September 1944, approximately 4,150 tons of fish and related products were transported. During the last 8 months of 1944 about 550 tons of fish, principally filets, were transported for the Army and Navy to San Francisco and Oakland. During the first 7 months of 1945, the fish traffic increased to an extent requiring the use of additional equipment.
- (4) This witness stated that his company pays Callison approximately \$11,000 annually in shipping charges.

truck loads as well as less-truck loads.

Retailers and representatives of wholesalers of groceries at Eureka testified in regard to the service accorded them. One has used Callison's service for four years under a contractual arrangement which has been satisfactory. He desires Callison's service continued under a certificate so that he may transport shipments which move charges prepaid. This witness claimed that common carrier services he has used are not wholly satisfactory and settlements for claims are often subject to delay. A witness from a wholesale grocer desires to use applicant's service provided he would make split deliveries at points south of Eureka as far as Weott. Another witness from the same company states that use of common carriers is satisfactory although time in transit from San Francisco to Eureka averages about three days. Grocery retailers at Eureka who receive relatively small shipments complained that service by common carriers is not satisfactory as to time in transit, losses and damages to shipments and settlement of claims. A witness called in support of Callison's proposal testified that his company, which operates a chain of grocery stores, receives adequate service from another contract carrier.

EVIDENCE IN SUPPORT OF APPLICATION OF  
A. W. WAY

In his testimony this applicant described the nature of his proposed operation for the transportation of fish and related commodities and fresh meat. He stated that he has sufficient

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(5) This witness stated that such traffic hauled by Callison averages about 65 tons monthly throughout the year. His company has about 12 tons monthly, on the average, of prepaid shipments moving by common carriers which it desires that Callison should transport.

(6) Callison has not proposed any service for grocery items to the points south of Eureka referred to by this witness.

equipment and ample finances to acquire any needed additional equipment to provide his proposed additional common carrier operation. He maintains terminals at San Francisco and Eureka in connection with his present operations. He testified that he has received requests by meat packing houses and meat dealers to transport fresh meat. <sup>(7)</sup> With respect to his proposal to transport fish and fish products, he asserts that he is ready, willing and able to provide such service if the Commission determines that there is a public need therefor. He also stated that it would not be good operating practice to haul fresh fish with the products he now hauls under certificate. On cross examination Way stated that he filed his supplemental application for authority to transport fish and fish products, to offer a service similar to that proposed by Collison. The only other witness for Way was his local manager who testified principally in regard to the availability of equipment to provide the proposed service.

#### PROTESTANTS

The type and character of service provided by protestants were described by operative witnesses and officials. Service provided by Northwestern Pacific Company is over night from San Francisco to San Rafael thence over the Northwestern Pacific rail lines. At weekends, the freight cars are operated from San Francisco by barge to Tiburon, thence by freight train arriving the second morning at Eureka.

A. W. Way provides a certificated highway common carrier service for limited commodities under refrigeration as hereinbefore described.

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(7) He requests a certificate to transport meat southbound from Arcata, Ferndale, Eureka, Fernbridge and Scotia to Santa Rosa, Oakland, San Francisco and South San Francisco, in addition to the points he presently serves for the transportation of this commodity. All protests to this proposal of Way were withdrawn.

C. C. McLenegan, C. S. McLenegan and Harold Hayes, partners doing business as Intercity Transport Lines, provide service as an express corporation in the general territory between San Francisco, Oakland, Eureka and McKinleyville. As underlying carriers they use the facilities of Pioneer Express Company, a highway common carrier operating between San Francisco and Garberville; the Eureka-Garberville Truck Lines, operated by the partnership of McLenegan, Hayes and Butler between Garberville and Eureka; and the Butler Freight Lines, operated by George Butler between Eureka and Crescent City. Railway Express Agency uses the facilities of Northwestern Pacific and Pacific Greyhound Lines between the points involved. These carriers have sufficient equipment to serve the territory adequately.

Public witnesses called by protestants stated in general that they had used some or all of the services of protestants. They had no complaints and needed no additional common carrier service.

#### CONCLUSIONS AND FINDINGS

The record shows that Callison is now transporting the bulk of fresh and frozen fish and fish products, and nursery products, assertedly under contract, southbound from Eureka. The restrictive nature of his contract service makes it impossible for him to devote to the public the utility character of service which is required in its interest. The record establishes that there are shipments of fish which could be transported by him more efficiently and expeditiously than by existing common carriers, but which he cannot transport and preserve the contract carrier nature of his service. The increasing scope of the movement and the number of shippers desiring his service for these commodities require certification to meet lawfully the public demand for a permanent and stabilized service. This traffic moves in substantial volume, and we believe

the record indicates that sufficient volume of such traffic will continue in peace times to support common carrier operations. In our judgment, the record is ample and shows a public need for this service and a certificate therefor will be granted.

The chief opposition to Callison's application was the request for authority to transport grocery items. According to the record, the bulk of this movement is by contract carrier facilities. While it was shown that receivers of groceries and grocery items at Eureka have in some cases received an inadequate service by the common carriers, and delays and damages to shipments have occurred, we do not believe that the record justifies a finding that there is a public need for the highway common carrier service that Callison proposes for the transportation of these commodities. Therefore, we find that this portion of his application should be denied.

With respect to the application of Way for authority to transport fresh fish and related items, it was clearly shown that his only reason for such application was that if a certificate therefor is granted he desired to be the recipient. All protest to his request for authority to transport fresh meat was withdrawn. There is evidence and we find that there is a public need for applicant Way's proposal to transport fresh meat as a highway common carrier. We further find that there is not a public need for his proposal to transport fresh fish and related commodities.

Veryl Callison and A. W. Way are 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

Applications having been made as above entitled, a public hearing having been had, and the Commission finding that public convenience and necessity so require,

IT IS ORDERED as follows:

(1) That a certificate of public convenience and necessity is hereby granted Veryl Callison authorizing the establishment and operation of service as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act;

(a) For the transportation of fresh, frozen and cured fish, crustaceans, fish livers, fish viscera; equipment, materials and supplies used or useful in the fishing business, namely: liver cans, fiber board cartons; wooden fish boxes; hemp, sisal, iron or steel rope; iron or steel cable; cork, glass, wood or aluminum floats; ammonia cylinders or tanks, set up; fish net preservatives; ice shovels; fishing tackle, NOIBN (not otherwise indexed by name in the Western Classification); running gear which is used on boats and is described under that heading in the current classification; weighing scales, NOIBN; iron crab pots; fish bait, fish nets, winches, fishing boat engines and parts for fishing boats and engines, between Eureka and Fields Landing and points within a radius of one mile of Fields Landing, on the one hand, and San Francisco and Oakland, on the other hand.

(b) For the transportation of dormant nursery stock, potted plants and cut flowers between McKinleyville and Eureka and points within three miles of Eureka, on the one hand, and, on the other hand, Santa Rosa and San Jose and intermediate points via Napa, Vallejo, Oakland, Hayward, Petaluma and San Francisco.

(2) That in providing service pursuant to the certificate herein granted, applicant Callison shall comply with and observe the following service regulations:

- a. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days from the effective date hereof.
- b. 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 60 days from the effective date hereof and on not less than 5 days' notice to the Commission and the public.
- c. 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 and along the following routes:

Over U.S. Highway 101 between McKinleyville and San Jose; over Payshore Highway and El Camino Real between San Francisco and San Jose; and over State Highway 12 between Santa Rosa and Napa; over State Highway 29 between Napa and Vallejo; over U.S. Highway 40 between Vallejo and Oakland; and over U.S. Alternate Highway 101 and State Highways 17 and 21 between Oakland and San Jose; over U.S. Highways 40 and 50 between Oakland and San Francisco; and over the public highway and San Mateo toll bridge between Hayward and San Mateo.

(3) That Application No. 26391 in all other respects is hereby denied.

(4) That a certificate of public convenience and necessity is hereby granted to A. W. Way authorizing the transportation of fresh meat southbound from Arcata, Eureka, Ferndale, Fernbridge and Scotia to Santa Rosa, San Francisco, South San Francisco and Oakland,

only by motor equipment maintained in its interior at not more than 40 degrees Fahrenheit.

(5) That in providing service pursuant to the certificate herein granted, applicant Way shall comply with and observe the following service regulations:

- a. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days from the effective date hereof.
- b. 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 60 days from the effective date hereof and on not less than 5 days' notice to the Commission and the public.
- c. Subject to the authority of this Commission to change or modify them by further order, applicant shall conduct operations, pursuant to the certificate herein granted, over and along the following routes:

Over and along U.S. Highway 101 between Arcata and South San Francisco, serving Ferndale by diversion over the public highway from Fernbridge; over U.S. Highway 50 between San Francisco and Oakland.

(6) That First Supplemental Application No. 19612, as amended, in all other respects is hereby denied.

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

Dated at San Francisco, California, March 5, 1946.

David Anderson  
Francis J. Quinn  
Joseph T. Rayell  
Harold P. Huls  
 COMMISSIONERS