

Decision No. 40236

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joseph Miller, an individual doing
business as)

BAY RAPID TRANSIT COMPANY,)

Complainant,)

ws.)

BRYANT GUERNSEY, an individual,)

Defendant)

ORIGINAL

Case No. 4833

BEROL & HANDLER, by EDWARD M. BEROL, for complainant
GEORGE D. POLLOCK, for defendant

O P I N I O N

The complaint in this case, filed June 25, 1946, in substance alleges that defendant for more than one year has failed and refused to render passenger stage service in the vicinity of Monterey as authorized and required by his certificates, and that he has abandoned his operations without the knowledge or approval of the Commission. Revocation of defendant's operative rights is sought.

The answer avers that at no time has defendant failed "to attempt" to render, nor has he ever refused to render, the required service, and denies abandonment of any part of the operation.

On the issues thus framed, a public hearing was held at Monterey before Examiner Gregory at which evidence was received on behalf of both parties, and the case was submitted upon the record.

(1)
 Bay Rapid Transit Company, the complainant, operates a certificated passenger stage service between Monterey, Pacific Grove, Carmel and East Monterey. Defendant Guernsey holds certificates⁽²⁾ authorizing service between Seaside, Monterey and intermediate points in East Monterey (Dec. 30762, April 11, 1938, as modified by Dec. 30835, May 2, 1938, App. 21837), later extended to include service to Del Monte Heights, Fort Ord Village and intermediate points (Dec. 35511, June 23, 1942, App. 24698), and to the United States Naval Air Base (Monterey Airport) (Dec. 36416, June 8, 1943, App. 25651). No local service is authorized within the city limits of Monterey.

For a better understanding of what is involved in this controversy it will be necessary to refer to some geographical and historical background.

The unincorporated area known as East Monterey fronts Monterey Bay for a distance of some three miles between the Hotel Del Monte grounds and the community of Seaside. About a mile north of Seaside, and approximately five miles from downtown Monterey, is Fort Ord Village, located east of the Monterey-Castroville Highway in the Fort Ord Military Reservation. Del Monte Heights, primarily a community of small residences, slopes somewhat sharply upward to the east of the highway. The Monterey Airport lies south of Del Monte Heights just north of the Monterey-Salinas Highway. Besides

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- (1) Bay Rapid Transit Company, a corporation, having acquired the properties of Joseph Miller prior to the hearing (Dec. 39447, Oct. 1, 1946, App. 27825), was by stipulation of the parties substituted for Miller as complainant.
- (2) The East Monterey Line, operating between Monterey and Fort Ord Village via Seaside and East Monterey, including service to Monterey Airport (near Del Monte), was authorized over Guernsey's protest (Dec. 36947, March 21, 1944, App. 25763), and with minor exceptions duplicates Guernsey's routes.

the Southern Pacific tracks the area is traversed by two main arteries — the Monterey-Castroville Highway just mentioned, and Fremont Street, which takes off from the highway near the southern boundary of Fort Ord, and at a distance of about a half mile southeasterly roughly parallels the highway into the City of Monterey.

Defendant inaugurated his service between Monterey and Seaside in 1938 in response to public demand of residents of East Monterey, then numbering about 3500, for suitable public transportation to and from Monterey for business and shopping purposes. By agreement with Bay Rapid Transit Company, which at that time did not desire to extend its service to East Monterey, passengers destined to points beyond defendant's terminal in Monterey were interchanged with that carrier under a joint fare arrangement, and defendant agreed not to transport passengers locally within the City of Monterey. Service was initially begun with a 21-passenger used bus operating 10 round trips daily on an hourly frequency, and by the end of 1941, due to increased traffic occasioned by the development of defense projects in the area, defendant was operating between Monterey and Seaside, so he testified, at a peak of 144 trips per day, using three buses and five drivers.

In 1942, following development of the Federal Housing Project known as Fort Ord Village, with a population of about 1500, and the rapid growth of the Del Monte Heights section, defendant applied for and secured an extension of his operative authority to include service between Monterey and those points, and he was also at that time granted an additional route between Monterey and Seaside via Fremont Street. In July of 1943, as a result of the commissioning of the Naval Air Station at Monterey Airport, with an estimated personnel of about 1000, defendant sought and was accorded a further

extension of about 1.5 miles to serve that facility, reached from his existing route on Casa Verde Avenue (which connects Fremont Street and the Monterey-Castroville Highway a short distance east of the Hotel Del Monte grounds), via a loop passing through the Air Station and terminating at the intersection of Airport Road and Fremont Street. The evidence of record shows that at this time (July, 1943) defendant was operating two 23-passenger model 1930 used ACF stages and one 29-passenger model 1925 used Fageol stage.

In August, 1943, Bay Rapid Transit Company, alleging inadequacy of defendant's existing service, applied for and, following extensive hearings, secured a certificate authorizing expansion of its operations so as to render service between Monterey, Fort Ord Village, East Monterey, the Naval Air Base, Seaside and intermediate points, thus practically duplicating defendant's routes. (Dec. 36947, Mar. 21, 1944, App. 25763.) No service, however, was authorized through that portion of Del Monte Heights east of Fremont Street traversed by defendant's route in that area.

With the foregoing recital of events in mind, we may now turn to a consideration of the evidence bearing on the issues raised by the pleadings. The pleadings, incidentally, do not present a clear-cut issue on the question of whether or not defendant failed to render the service authorized by his certificates, since the answer is not responsive to that allegation of the complaint. Instead, defendant says that he "has at no time failed to attempt to render any part of the service required." (Emphasis supplied.) His denial, however, of refusal to render service and of total unauthorized abandonment thereof is categorical. The state of the pleadings is of importance in view of defendant's testimony, which dealt chiefly with his efforts during the period from July, 1943,

to December 1946, to secure equipment with which to provide service over his authorized routes.

It is clear from the evidence that at least by the end of 1943 defendant was involved in serious operational difficulties which grew progressively worse as time went on. On April 11, 1944, the last of his three buses went out of service, and all were taken to Salinas and sold, and the proceeds (\$40.00) were turned over to the State Board of Equalization for taxes. Defendant then purchased a used 40-passenger Consolidated bus, which he operated for three or four weeks until it could run no longer. Thereafter, he neither purchased nor leased any motor vehicle equipment, but operated his small Chevrolet commercial truck over his routes once a day between June, 1944, and November, 1945, when that vehicle, too, finally wore out. Between June 1944, and September, 1945, defendant also used his personal car, a Ford Sedan, on about ten occasions when the Chevrolet truck was laid up for repairs. He also employed taxicabs between November, 1945, and March or April, 1946, so that, he testified, he "would be active on the routes each day." Under this procedure, defendant hired a taxi, paid the taxi fare ranging from \$1.50 to \$3.00, got in the cab with a sign bearing the words "East Monterey" and occasionally picked up a passenger from whom he collected his published fare of 10 cents. One trip per day over each route was made in this manner, he stated, leaving Fort Ord Village at 7:30 p.m., Monterey Airport at 8:00 p.m. and Del Monte Heights at 8:30 p.m. (3)

(3) These trips were made, it seems, in purported compliance with reduced time schedules which defendant stated he had attempted to file with the Commission in May, 1944, but which appear to have been rejected for non-compliance with tariff filing procedure. Defendant said he believed such reduced schedules were authorized by Emergency Resolution EM-T No. 1. One of those schedules (Ex. 4 - Airport Route) bears an issued date of May 4, 1944, an effective date of May 9, 1944, a Commission receipt date of May 1, 1946, and a rejection stamp dated May 3, 1946. Defendant stated he had been requested by the Commission to put his schedules in order, and that he had resubmitted the reduced schedules in May, 1946, for that purpose. A letter from the Commission dated May 3, 1946, (Ex. A) points out the deficiencies in the various schedules.

There is some discrepancy between defendant's testimony and his daily trip records (Ex. B) as to when he discontinued utilizing taxicabs in the manner just related. The daily records, going back to May 9, 1944, indicate that he first employed taxicabs about September 25, 1945, and continued using such vehicles almost daily until about September 18, 1946. From the latter date until December 18, 1946 (the day preceding the hearing), defendant testified and his "trip" records indicate that he walked once a day over his routes carrying the East Monterey destination sign. The "trip" records also indicate that September 11, 1945, was the last day on which defendant collected any revenue from his transportation activities. On this day his records show that the sum of 20 cents was received for the transportation of two passengers in the Chevrolet truck. (4)

In addition to eliciting the foregoing evidence from defendant himself, complainant produced three witnesses whose uncontradicted testimony corroborated the other evidence of record dealing with the cessation of defendant's operations. The first of these witnesses, the office manager of Fort Ord Village, whose office was just inside the gate where he could see vehicles pass by during the day, stated that he had seen Bay Rapid Transit Company school buses

(4) Defendant's annual reports for 1943, 1944, and 1945, included in the record by reference, reveal the deterioration of his service in a striking manner. Summarized, they show revenues, expenses and other data as follows:

	<u>1943</u>	<u>1944</u>	<u>1945</u>
Total revenues	\$ 34,787.00	\$ 6,578.00	\$ 186.20
Total expenses	\$ 33,304.77	\$ 5,668.00	109.20
Profit	\$ 1,482.23	\$ 910.00	77.00
Passengers carried	428,382	87,225	1092
Passenger car mileage	316,361 (est.)	86,400	3822

and Army buses going in and out of the village, but for the last twelve months had seen no buses of defendant, although, he said, defendant did operate a service in and out of the village in 1942 and 1943. The next witness was a resident of East Monterey, whose home was on Casa Nova Avenue about two blocks from Fremont Street (one of defendant's routes), and who stated that during 1942 and 1943 she saw defendant's buses operating but never rode on one. During the last twelve months, the witness said, she had seen no buses of defendant operating. The last of the three witnesses was the City Clerk of Monterey, who testified that the records of his office showed that defendant's license to operate as a public carrier on the city streets of Monterey, required by a city ordinance, expired June 30, 1944, and had not since been renewed, and that no certificate of insurance required to be filed upon the issuance of such license had been on file for the past two years.

Besides testifying as an adverse witness at the instance of complainant, defendant also took the stand in his own behalf and related the history of his efforts to secure automotive equipment with which to conduct his operations. He stated that although he had made numerous requests of the Office of Defense Transportation, commencing in 1942, for permission to buy new buses, he was told to get used ones, which he did. Those were the three vehicles which were no longer fit to run after April 11, 1944. Defendant admitted that no permission was required from the ODT to purchase used buses, and counsel stipulated that after December, 1945, it was no longer necessary to secure the approval of that agency in order to buy new equipment. Defendant testified, however, that subsequent to May, 1945, he was not financially able to purchase buses. He also stated that he had placed no orders for new buses with any manufacturer or seller of such equipment up to the date of the hearing, but had made

numerous attempts to secure the loan or lease of used equipment from a number of bus operators in many parts of the state, without success, and had even offered to sell his line if by that means his former patrons might obtain service, particularly in the Del Monte Heights area.

It would serve no useful purpose to relate further details of this unfortunate affair. With all deference to defendant's valiant efforts to provide transportation for his patrons, many of whom are his friends and neighbors, and mindful of the difficulties with which he was confronted, we are nevertheless impelled to the conclusion that for several years past defendant has been unable to provide even the barest essentials of a public transportation service. Moreover, the evidence shows that even the reduced service which he attempted to render subsequent to April 11, 1944, was performed without lawful authority, due to his failure to comply with tariff filing provisions. We are unable to agree with defendant's view that the Commission's Emergency Resolution EM-T No. 1 conferred authority to reduce service in the manner and to the extent shown by this record. That measure, adopted December 12, 1941, purported to grant permission to carriers operating over the public highways to deviate from established routes or to suspend service where, because of lawful orders of public authority or other conditions arising from the war emergency, operations over established routes or service to authorized points became impossible. This record reveals no evidence of conditions under which defendant might have availed himself of the relief afforded by that order.

Based upon the evidence of record, we find as a fact that defendant, for more than one year prior to the filing of the complaint herein, has failed to provide the transportation service

authorized by certificates issued to him by this Commission, and that since on or about May 1, 1944, whatever service defendant may have rendered has been conducted without lawful authority. We are accordingly unable to perceive any reason for withholding the relief sought by complainant, and therefore conclude that defendant's operative authority must be revoked.

O R D E R

A public hearing having been held on the complaint filed herein, the matter having been submitted, and the Commission now being fully advised, and basing our order upon the findings and conclusions in the foregoing opinion,

IT IS ORDERED that the certificates of public convenience and necessity heretofore issued to Bryant Guernsey by Decision No. 30762, dated April 11, 1938, in Application No. 21837, as modified by Decision No. 30835, dated May 2, 1938, and as extended by Decision No. 35511, dated June 23, 1942, in Application No. 24698 and Decision No. 36416, dated June 8, 1943, in Application No. 25651, said certificates authorizing service as a passenger stage corporation between Monterey, Fort Ord Village, Seaside, Del Monte Heights, Monterey Airport and intermediate points, be and they are hereby revoked and annulled, and all effective tariffs and schedules filed thereunder are hereby cancelled.

The effective date of this order shall be the 20th day after the date hereof.

Dated at San Francisco, California, this 6th day of May, 1947.

Harold A. Kula
James R. Powell
R. J. [unclear]
Marionette [unclear]
COMMISSIONERS