

Decision No. 41545

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FLOYD B. CROSS and HARRIET CROSS,
husband and wife, copartners,

Complainants,

vs.

Case No. 4921

MARIO PASTRONE, doing business as
VALLEY MILK TRANSPORT

Defendant.

Herbert Cameron, for complainants; Carter, Young and
Zetterberg, by Richard Young, for defendants.

O P I N I O N

Complainants Floyd B. Cross and Harriet Cross are husband and wife, and copartners operating as a highway common carrier under authority from this Commission in the transportation of "milk and other dairy products from points in the Antelope Valley south of Rosamond, including Rosamond, and from Saugus and Newhall, to Burbank and Los Angeles, and for the return transportation of articles and commodities necessary for the business of dairying, and consigned only to dairymen shipping from the above-mentioned points over applicant's service to the City of Los Angeles, including feed, dairy supplies, acetylene tanks, ammonia vats, utensils, and machinery used exclusively in dairying, and also for the general

transportation of freight of all classes, upon demand, between Bouquet Canyon and Los Angeles."⁽¹⁾

Defendant, Mario Pastrone, is an individual doing business as the Valley Milk Transport, and holds Permit No. 19-26412 H from this Commission, authorizing operations as a highway contract carrier, as defined in Section 1(i) of the Highway Carriers' Act.

The complaint alleges that the defendant has conducted operations as a highway common carrier without having the proper authority therefor, as required by Section 50 3/4 of the Public Utilities Act. In answer thereto, defendant has alleged that his operations are those of a contract carrier. A determination of respondent's status, as shown by his hauling activities, thus becomes the issue we are called upon to decide.

A public hearing in the matter was held at Lancaster on February 16, 1948, before Commissioner Potter and Examiner Syphers. At that time evidence was adduced and the matter submitted. It is now ready for decision.

At the hearing it was developed that there are at present seven shippers in the Lancaster area who use the services of public carriers to ship milk and dairy products to creameries in Los Angeles. Three of these shippers sell their products to the Knudsen Creamery in Los Angeles, whereas the other four sell their products to the Superior Milk Producers which organization comprises a group of

(1) Decision No. 15415, dated September 19, 1925, on Application No. 11232, granted this authority to S. A. Gates. The certificate was transferred from Gates to O. W. Spaulding by Decision No. 19920, dated June 22, 1928, on Application No. 14756, from Spaulding to L. F. McKinney, by Decision No. 24099, dated October 5, 1931, on Application No. 17664; and from McKinney to Floyd Cross and Harriet Cross by Decision No. 36759, dated December 7, 1943, on Application No. 25818.

dairies that have a contract with the Golden State Creamery Company in Los Angeles. Cross transports the milk and dairy products that are destined to the Knudsen Creamery Company and Pastrone does the hauling of the products destined to the Golden State Creamery.

Cross presently has the following equipment: one GMC truck, three Chevrolet tractors, and two semi-trailers. According to his testimony at the hearing, this equipment would be sufficient to serve all of the seven shippers in the so-called Antelope Valley. However, Cross has not been able to obtain the business of the shippers dealing with the Golden State Creamery and, as a result, he contends that he is being damaged by the activities of Pastrone.

The hauling charges for this transportation were paid by the shipper-producers prior to the war. During the war, as a result of a temporary regulation, the dairies paid the charges. This arrangement continued until September 24, 1947, at which time the practice was again resumed of the shippers paying the transportation charges. In actual practice the dairies issue checks to the haulers for the freight charged; however, the dairies, in turn, deduct these charges from the amount paid to the producers for milk so the net result is that the producers ultimately pay these freight charges.

There is apparently no question as to the hauling by Cross to the three shippers shipping to Knudsen. Thus, the problem narrows down to the activities in connection with the four shippers who are now shipping by Pastrone. As to these four shippers, the testimony indicated that, in the spring of 1946 the Golden State Dairy offered financial help to certain individuals to enable them to build barns and set up in the business of producing milk. The

individuals operating under these arrangements are the four shippers now using Pastrone for their hauling. At the time these additional facilities were being set up in the Antelope Valley, the Golden State Creamery contends that it attempted to make arrangements for Cross to handle this milk. However, Cross refused to perform this hauling and it was then that a contract was entered into with Pastrone under which he has been performing the hauling since that time. A copy of a contract dated July 16, 1946, between the Golden State Company and Pastrone was introduced in evidence as Exhibit No. 4. According to the testimony, this is the contract under which Pastrone has been, and now is, hauling. Further testimony presented by Pastrone indicated that he deals directly with Golden State. The creamery gets the business and directs him as to the hauls to be made. Pastrone does not make any arrangements with the milk producers.

It is true that the shipping public for dairy products from the Antelope Valley is limited in that it consists of but seven shippers. It is also true that there was some testimony introduced for the purpose of attempting to show solicitation on the part of Pastrone. Exhibit No. 2 is a letter which Pastrone wrote to the Knudsen Creamery Company on April 8, 1947. This letter, in effect, advises Knudsen that Pastrone is hauling in the Antelope Valley and states: "If you are every in need of my service I would be glad to help you." However, other testimony showed that Pastrone had previously hauled for Knudsen in another area and was now advising it of his activities in Antelope Valley. This was the only instance shown where Pastrone contacted Knudsen and he has performed no hauling for it whatsoever in Antelope Valley. Exhibit No. 3 is

a note dated January 28, 1948, which Pastrone left in the milk room of one of the shippers for whom he hauls. The substance of this letter is that there will be a change in the pickup time. The letter states: "starting Feb 1, 1948 we will pick up your milk at 2:30 P.M.".

The principal question at issue, therefore, is whether or not Pastrone's activities are those of a contract carrier or those of a highway common carrier. After a careful review of the testimony, we find his operations to be those of a contract carrier. One of the essential tests of a highway common carrier is a holding out to serve the public. Such a holding out may consist of advertising, solicitation, and other methods. However, the facts here under consideration do not indicate any holding out on the part of Pastrone. He hauls exclusively for the Golden State Creamery Company, all of his deliveries are to one point, he operates under a definite written contract by the terms of which he receives payment for his hauling from Golden State Creamery. Apparently, the arrangements between Golden State and the shippers do not concern Pastrone and he has no part in their making.

Furthermore, we cannot ignore the peculiar circumstances of this case. At the time of making the contract, July 16, 1946, the Golden State Creamery was required by law to pay the transportation charges. It was not until September 24, 1947, that they were again permitted to deduct these charges from the payments to milk producers for their milk⁽²⁾. Secondly, all of the milk sold

(2) Stabilization and Marketing Plan, as Amended, for Fluid Milk, Los Angeles County Marketing Area, Order No. 29, effective September 24, 1947; issued by the Director of Agriculture of the State of California, pursuant to the provisions of Chapter 10, Division 4, Agricultural Code.

by the four producers here involved is sold through one marketing agent, the Superior Milk Producers. As a matter of fact, Golden State has a contract with this organization for the purchase of milk rather than a contract with the actual producers. The deductions for freight charges are blanket deductions from the payments made to Superior Milk Producers, who, in turn, allocate the charges among the various producers. Finally, there was testimony to the effect that the receiving facilities at the Golden State Creamery in Los Angeles are such that the arrival of trucks must be scheduled. There is not room for several trucks to be unloading milk at one time, thus the haulers must arrange with the creamery as to arrival time.

The contractual arrangements and the specialized conditions under which the milk is hauled indicate contract carriage.

We find that the facts in this particular case are insufficient to sustain the complaint, and after full consideration of all the evidence presented herein, we conclude that the complaint should be dismissed.

O R D E R

Public hearing having been held in the above entitled proceedings, evidence having been received, the matter having been submitted, and the Commission being fully advised in the premises,

IT IS ORDERED that Case No. 4921 be and it is hereby dismissed.

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

Dated at Los Angeles, California, this 4th
day of May, 1948.

R. E. Anderson
Arthur F. Casper
Robert Russell
Harold P. Nick
Herbert Potter
COMMISSIONERS