

Decision No. 50763

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JAMES F. TROUT, et al.,
Complainants,

vs.

Case No. 5583

CATALINA ISLAND STEAMSHIP LINE,
a Corporation,

Defendant.

ORDER DENYING MOTION TO DISMISS

A copy of the above complaint was mailed to defendant, allowing five days within which to point out asserted defects in the complaint. ⁽¹⁾ Thereupon, defendant filed a motion to dismiss for failure to state a cause of action.

(1) Rule 12 of the Commission's Rules of Procedure provides as follows:

"Procedure Upon Filing of Complaint. When a complaint is filed, the Commission shall mail a copy to each defendant. A defendant shall be allowed five days within which to point out in writing such jurisdictional or other defects in the complaint as, in defendant's opinion, may require amendment. Trivial defects will be disregarded in considering statements of asserted defects. If it appears to the Commission that the defects brought to its attention are so vital that the complaint should be amended, complainant may be required to amend the complaint. The Commission, without argument and without hearing, may dismiss a complaint for failure to state a cause of action, or strike irrelevant allegations therefrom.

If the complaint is in substantial compliance with these procedural rules, and appears to state a cause of action within the Commission's jurisdiction, the Commission shall serve a copy thereof upon each defendant, together with an order requiring that the matter complained of be satisfied, or that the complaint be answered within ten days after the date of such service. In particular cases, the Commission may require the filing of an answer within a shorter time. Requests for extension of time to answer shall be made to the President of the Commission in writing, with copies thereof to complainant."

Defendant operates vessels as a common carrier of passengers and freight between Wilmington and Avalon, Santa Catalina Island. The complaint alleges in substance that adequate service is a necessity; that defendant is proposing to substitute the motor launch Descanso for the steamship Catalina; and that the Descanso is wholly inadequate. Complainants ask that defendant be required to discharge properly its responsibility to furnish adequate and safe transportation facilities.

The motion to dismiss asserts failure to state a cause of action, contending that Commission authorization is unnecessary for temporary substitution of a different type of vessel during the slack winter season; that during past temporary suspension of operations adequate service was conducted by substituted small vessels of other carriers; that the Descanso is a safe, speedy, and adequate vessel; that temporary use of the Descanso for passenger transportation and of water taxis and barges for freight transportation during the winter months will more adequately serve the community of Avalon than would another temporary suspension of service; and that passenger transportation is also available through the facilities of other carriers.

Attached to the motion is a copy of "Notice to the Public", posted by defendant in its terminals one day prior to the filing of the complaint, and showing the schedules under which the Descanso would be operated effective November 1, 1954.

In essence the complaint alleges inadequacy of service, and thus states a cause of action within the Commission's jurisdiction. The motion to dismiss is hereby denied. The Secretary is directed

to cause the complaint to be served in accordance with the procedural rules.

Dated, San Francisco, California, this 16th day
of November, 1954.

Arthur E. Mitchell
President

Justus J. Caswell
Deane Higgins

Raymond L. ...

Commissioners