

DECISIONS OF

The Public Service Commission

OF THE

COMMONWEALTH OF PENNSYLVANIA

September 10, 1929 to May 11, 1931

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McKeesport and Westview, it actually renders such street railway service.

The two points involved in the operation in question are on the lines of complainant, and, therefore, within the meaning of the restriction. To hold otherwise would defeat the purpose of the limitation.

For these reasons the Commission is of the opinion and finds that the operation by respondent on July 28, 1930, constituted a violation of the restriction contained in its certificate of public convenience; **THEREFORE,**

NOW, to-wit, January 13, 1931, **IT IS ORDERED:** That the complaint be and is hereby sustained and that the Mon Valley Bus Company, respondent, forthwith cease and desist from engaging in this or any other operation not authorized by its certificate of public convenience heretofore granted to it.

DELAWARE, LACKAWANNA AND WESTERN RAILROAD
COMPANY

v.

JONES, T/A LACKAWANNA TRUCKING COMPANY

COMPLAINT DOCKET No. 8342

Common carrier—Motor truck—Freight and merchandise carriage.

An operator of a truck is engaged in common carriage when he maintains telephone service under listing as a trucker and hauls merchandise indiscriminately as his business.

G. W. Morgan for Complainant.

Cornelius B. Comegys for Respondent.

REPORT AND ORDER BY THE COMMISSION, January 20, 1931:

The complainant alleges that respondent, Sidney P. Jones, doing business as Lackawanna Trucking Company, is engaged in the transportation of freight and merchandise as a common carrier by motor truck between Scranton, Lackawanna County, and Stroudsburg, Monroe County, without having first obtained a certificate of public convenience evidencing approval thereof. Respondent denies that he is

operating as a common carrier, averring that he is merely a private carrier and not subject to the jurisdiction of the Commission.

The record establishes that respondent maintains a place of business at a rented garage in the City of Scranton, where a telephone is installed, listed in the name of the Lackawanna Trucking Company, and where calls for service are handled by a young woman. He operates a 1 $\frac{1}{4}$ ton motor truck with canvas sides and top without name or marking. It is usually driven by the respondent, but at times an assistant driver accompanies the respondent and at other times operates the truck alone. Respondent does not operate on schedule and has no definite standard of rates. No solicitation of business by advertising is made. Calls for service at Stroudsburg are handled by a young woman at the Paramount Dry Cleaning Company. Her services are given without compensation as a personal favor to respondent.

Complainant's case was based largely upon testimony of two of its police officers who trailed the respondent's truck from Stroudsburg to Scranton on one day and back to Stroudsburg the following day. A variety of articles, including caps, meats and groceries, pipe, ice-cream containers and automobile accessories and parts, were picked up or delivered at various points along the route.

Telephone calls both to the Scranton and Stroudsburg headquarters by representative of complainant regarding the proposed shipments were acknowledged, rates quoted and service promised.

Respondent testified that he had only one regular customer, the Cudahy Packing Company, whose shipments of meats are carried under written contract; that he hauls furniture to and from cottages in the Pocono Mountains during the summer season and that he has previously hauled coal in and about Scranton, but not recently. Upon cross examination in answer to the statement "But you stand ready to answer any call to deliver packages at any point between Stroudsburg enroute to Scranton" the respondent answered "Yes, Sir." Later under re-direct examination he qualified this answer to the effect that he would not handle such shipments without "first making a special arrangement as to price and as to time for carriage." The making of such special arrangements is not the test for determination of status of a given service, whether private or common carriage.

The Commission under the evidence is convinced and finds that the business conducted by the respondent in the transportation of merchandise between Scranton and Stroudsburg is common carriage undertaken and furnished without the approval of this Commission; **THEREFORE,**

NOW, to-wit, January 20, 1931, IT IS ORDERED: That the complaint be and is hereby sustained.

IT IS FURTHER ORDERED: That Sidney P. Jones, trading as Lackawanna Trucking Company, his agents, servants, and employes, forthwith cease and desist from operating a motor vehicle, or motor vehicles, as a common carrier of freight within the Commonwealth of Pennsylvania, unless and until he shall have obtained from the Commission a certificate of public convenience in approval thereof, in accordance with the provisions of the Public Service Company Law.

APPLICATION OF DELAWARE, LACKAWANNA AND
WESTERN RAILROAD COMPANY

APPLICATION DOCKET No. 22396

Service—Discontinuance—Stations—Change to non-agency.

The Commission approved the withdrawal of a station agent from a station serving a small community where revenues of the railroad had steadily decreased and the public would not be unreasonably inconvenienced thereby.

G. W. Morgan for Applicant.

Kelly, Balentine, Fitzgerald & Kelly for Borough of Elmhurst.

REPORT AND ORDER BY THE COMMISSION, *January 20, 1931:*

Application is made by The Delaware, Lackawanna and Western Railroad Company for permission to discontinue the maintenance of an agent at its station at Elmhurst, Lackawanna County. The application is protested by the Borough of Elmhurst.

The territory served by the station is a general rural community about ten miles east of Scranton and has a population of about 800. Shipments consist principally of mill products,—coal, stone, sand and general merchandise. Under the present arrangement all incoming and outgoing shipments are taken care of by the station agent.

Upon the withdrawal of the agent, the company proposes to employ a caretaker to keep the station opened, heated and lighted, when necessary, for the convenience of passengers; the caretaker to be at the station during specified hours of the day to take care of inbound and outbound less than carload freight and express shipments. The accounting matters in connection with freight shipments at Elmhurst will be handled at Moscow, 2.3 miles distant. Passengers from Elm-