

DECISIONS OF

The Public Service Commission

OF THE

COMMONWEALTH OF PENNSYLVANIA

September 10, 1929 to May 11, 1931

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Considering the evidence in this case and deciding the questions on the principles of the Davies' report, we find and determine that the applicant has failed to establish the necessity of his proposed transportation for all kinds and classes of freight and merchandise; we further find and determine that the approval of the application limited to the transportation of cakes and similar bakery products, silk and silk products, meats and provisions and automobile parts and accessories, but with no right to carry any kind of freight or merchandise locally between Scranton and Wilkes-Barre and intermediate points and locally between intermediate points on route from Philadelphia to Scranton, is necessary for the service, accommodation and convenience of the public.

An appropriate order making effective the above finding will issue.

DELAWARE, LACKAWANNA AND WESTERN RAILROAD
COMPANY et al.

v.

CHESTER T. DAVIES, INC.

COMPLAINT DOCKET No. 8185

Fines and penalties—Motor carrier—Common carrier—Freight and merchandise—Failure to obtain Commission approval.

A fine of \$500 was imposed against a common carrier of freight and merchandise by motor truck for operations without Commission approval.

G. W. Morgan for The Delaware, Lackawanna and Western Railroad Company.

F. B. Smillie for Lehigh Valley Railroad Company.

C. T. Wolfe for Reading Company.

H. B. Thomas for The Central Railroad Company of New Jersey.

H. Z. Maxwell for The Pennsylvania Railroad Company.

Paul Bedford for The Delaware & Hudson Company.

James K. Peck and *Walter W. Kohler* for Arrow Carrier Corporation.

Cornelius B. Comegys and *Clarence J. Wing* for Respondent.

REPORT BY THE COMMISSION, *May 26, 1930:*

The respondent, Chester T. Davies, Inc., is a limited partnership, composed of Chester T. Davies, J. M. Seamans and Sophia Seamans,

Scranton. On August 30, 1929, the respondent filed with the Commission an application for approval of the right to transport freight and merchandise as a common carrier by means of motor trucks between the cities of Scranton and Philadelphia, Scranton and Nanticoke via Wilkes-Barre, and Scranton and Forest City. At the hearing on the application, the complainants appeared as protestants and developed, during cross-examination of witnesses called by the applicant, facts and information which occasioned filing of this complaint proceeding on November 6, 1929.

The answer of the respondent denied operation as a common carrier and averred that his business during the past two and a half or three years was transacted as a private or so-called contract carrier. This position was not pressed by the respondent. Its attorneys in brief and argument frankly admitted that under decisions of the Appellate Court the transportation service which the respondent has been and is furnishing was common carriage rendered without legal sanction or authority. It is, therefore, unnecessary to discuss the evidence. Under the law and facts the complaint must be sustained.

The only question remaining for consideration is the nature and extent of the penalty to be imposed. In determining this question the Commission has given consideration to the maximum fine which can be imposed under the law, to-wit, \$50.00 per day for each and every day of unlawful operation covering a period of approximately two years; the certification to the Secretary of Revenue under Act approved May 8, 1929, P. L. 1647, for suspension of registrations of motor truck licenses, and immediate cease and desist order; the probable effect of the discontinuance of service upon respondent's two hundred and fifty customers; the fact that the respondent began its business as a private carrier and later extended it to that of common carrier; and the nature and character of the goods and merchandise transported.

We find and determine that an order issue sustaining the complaint, imposing a fine of \$500.

APPLICATION OF CHESTER T. DAVIES, INC.

APPLICATION DOCKET No. 21431

Certificate of public convenience—Motor carrier—Express service—Prior operation—Necessity—Evidence—Admissibility.

The Commission approved motor truck express service subject to restrictions and limited to prescribed commodities where applicant had been operating for

over two years and was serving 250 patrons with 8 trucks and with 15 employees. The necessity for motor trucks as a medium for transporting perishable goods and other merchandise requiring quick door-to-door delivery was recognized.

Testimony of applicant of illegal operation was held admissible the weight to be given being left to the Commission.

Clarence J. Wing and *Cornelius B. Comegys* for Applicant.

G. W. Morgan for The Delaware, Lackawanna and Western Railroad Company.

Paul Bedford for The Delaware & Hudson Company.

F. B. Smillie for Lehigh Valley Railroad Company.

H. Z. Maxwell for The Pennsylvania Railroad Company.

Walter W. Kohler and *James K. Peck* for Arrow Carrier Corporation.

C. T. Wolfe for Reading Company.

O'Brien & Kelly for Lackawanna & Wyoming Valley Railroad Company, Laurel Line Bus Company and Blue Line Quick Delivery Express Company.

REPORT BY THE COMMISSION, *May 26, 1930:*

This application by Chester T. Davies, Inc., Registered, a limited partnership, is for approval of the right and privilege of transporting all kinds of freight, merchandise and personal property by means of motor trucks between the cities of Scranton and Philadelphia, with branches or extensions from Scranton to Forest City and from Scranton to Nanticoke. By agreement and stipulation the service will be limited and confined to a thorough service from Philadelphia to Scranton and the municipalities located on the branches or extensions between Forest City and Nanticoke, and a similar through service from the points and places on the said branches including Scranton and Wilkes-Barre to Philadelphia. No right is asked to pick up and deliver freight at any intermediate point between Scranton and Philadelphia nor to carry any local freight between any two points on the routes from Scranton to Forest City and Scranton to Nanticoke. The applicant proposes to operate a daily service leaving terminal stations in Philadelphia and Scranton at 7:30 P. M., with pick-up and delivery trucks operating from Scranton to Forest City and from Scranton to Nanticoke.

The application is protested by Lehigh Valley Railroad Company, The Delaware & Hudson Company, Reading Company, The Delaware, Lackawanna & Western Railroad Company, Central Railroad Com-

pany of New Jersey, The Pennsylvania Railroad Company and Railway Express Agency, Inc. Other carriers in the territory involved who filed protests or entered their appearance were satisfied by the stipulations of record. The protesting railroad companies, in addition to protesting this proceeding, filed formal complaint alleging that the applicant had been operating as a common carrier without authority of law. By report and order of even date the Complaint filed to Complaint Docket No. 8185 has been determined by the Commission.

Counsel for protestants has excepted to a ruling of the Commissioner who conducted the hearing relating to the admission of certain testimony based on the illegal operation of the applicant. The ruling of the Commissioner is sustained. In our opinion the testimony to which exception was taken is admissible, the weight, however, to be given to it being a matter for the Commission to determine. We know of no rule of law, nor has our attention been called to any decision of the court which holds or from which it could be inferred that in a proceeding before the Commission such evidence is not proper or admissible. In a criminal proceeding before the court testimony of a confessed accomplice is competent and admissible, the weight to be given to such testimony being a matter for the jury. The Commission is an administrative body with quasi judicial powers, and in order to exercise its judgment must be advised of all pertinent facts:

“There is no statutory designation either of the kind or quality of evidence required to induce a decision by The Public Service Commission and it would be impracticable to specifically define the quality necessary to produce that result.” (Schuylkill Railway Company *v.* Public Service Commission et al., 71 Pa. Superior Ct. 204-6.)

The partnership of Chester T. Davies, Inc., was formed June 13, 1927, but for about one year prior the business was conducted by a partnership trading as Davies & Kilker. The business started with a few customers and was operated periodically without doubt as a private carrier for some months. During the past two or two and one-half years the business has grown until the applicant is at present furnishing a daily service to 250 individuals or firms with eight large trucks and employes numbering fifteen. The major portion of the merchandise transported comprises silk, meats, books, automobile parts and accessories.

Numerous witnesses called by the applicant testified to the adequate, convenient and satisfactory service furnished, and that to meet the present economic needs of their business motor vehicle transportation for less than carload shipments was a necessity because it afforded

a quicker service than by rail, a door-to-door delivery and little or no expense for crating.

The protestants' evidence consisted of schedules of trains operating in the territory involved and the testimony of witnesses explaining the schedules. Rebuttal testimony on the part of the applicant was offered to show that the freight trains were frequently late and not on schedule, and that the deliveries by the express company were made late in the afternoon. No conclusive testimony has been presented to establish the need of the proposed truck service for all kinds of freight and merchandise.

The Commission in the case of Arrow Carrier Corporation has recognized the necessity of motor truck transportation for silk and silk products. It has also determined in the application of the Tri-State Motor Freight Corporation and other similar applications that modern business conditions have made the motor truck a necessary medium for the transportation of perishable goods and other merchandise requiring quick door-to-door delivery.

Considering all the evidence and giving such weight to the evidence relating to the service furnished by the applicant without legal sanction as in our opinion it merits, the Commission finds and determines that the approval of this application as limited by agreement and stipulation of record, and further limited to the transportation of silk, silk products, meats, provisions, books and automobile parts and accessories, is necessary and proper for the service, accommodation and convenience of the public.

An order will issue in accordance with the above finding and determination of the Commission.

KREPS et al.

v.

PENNSYLVANIA RAILROAD COMPANY

COMPLAINT DOCKET No. 8193

Railroads—Machine shop yards—Dangerous working conditions—Clearance between track—Track curvature.

In a complaint alleging that insufficient clearance between certain tracks and a track having too sharp a curvature for safe operation, in a machine shop yard where but little shifting was done and having no train movements, the Commission found that the two close clearances did not constitute a hazard to a normal switching movement providing crew members so perform