

ORIGINAL

Decision No. 12474

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Investigation into)
the methods and practices of operation : Case No. 1916
of C. T. BOYD, doing business under the
firm name and style of Highway Transpor-)
tation Company. On the Commission's
own initiative.

W. P. Butcher, Jr., for Respondent C. T. Boyd.

W. E. Libby and H. N. Blair, for Triangle
Orange County - Santa Ana Express,
Protestant.

W. F. Lemon, for Railroad Commission.

BY THE COMMISSION:

O P I N I O N.

Under date of May 23, 1923, this Commission issued its order to C. T. Boyd and C. S. Kent to appear and show cause, if any they had, why the certificates heretofore granted them by Decision No. 5836 on Application No. 4094 (decided October 9, 1918) and by Decision No. 8720 on Application No. 6368 (Decided March 9, 1921) should not be revoked and annulled and for such other and further action as the Commission might deem proper in the premises. This citation was based on the allegation that respondents had collected money due consignors on C.O.D. shipments and had failed promptly to remit same and that, when remittance had been made by check to consignors said checks were returned unpaid for lack of funds.

A public hearing herein was conducted by Examiner Williams at Los Angeles at which respondent, C. T. Boyd

appeared by attorney only and at which C. S. Kent made no appearance. It is in evidence that notice mailed as required by law to respondent Kent at his last known address, No. 221 South San Pedro Street, Los Angeles, was returned undelivered. It was further admitted by Counsel for respondent Boyd that the interest of Kent in the business had been acquired by Boyd about two years ago, though without application having been made to the Commission for approval of said transfer and that Kent has now no interest in the business and that his present address is not known.

Respondent Boyd operates a freight and express transportation service under Decision No. 5836 between Los Angeles and Santa Ana under the name of the Highway Transportation Company, and also under Decision No. 6368 between Los Angeles and Santa Barbara under the name of the Highway Express. The service is generally known as the Blue Line because of the distinctive color of its vehicles. That portion of the certificate between Los Angeles and Venice granted by Decision No. 6368 was revoked under date of February 27, 1922 (Decision No. 10136) for the reason that respondent had abandoned the service without notice to the Commission. In support of the allegations in the Order Mr. W. F. Lomon, Assistant Service Inspector of the Commission, presented sixteen informal complaints against the respondents. These complaints covered a period of fourteen months and each involved delay on the part of the respondents in making settlement with consignors. It was stipulated by counsel for respondent Boyd that these complaints in their entirety are accurate and that they be admitted as evidence.

In addition to the complaints, as testified to by

Mr. Lemon, the testimony of Eugene Atkins, Credit Manager of the Kay Motor Supply Company, was presented.

The following tabulated statement epitomizes the testimony as relating to the respondent's failure, promptly, or at all, to transmit C.O.D. amounts:

NAME	SHIPMENT	AMOUNT	COMPLT.	PAYMENT.
Pacific Welding & Supply Co.				
	Apr.17-22	\$16.75	May 11-22	June 8
	" 21-22	19.61	"	N.S.F.
	" 21-22	25.11	"	
	" 29-22	25.11	"	June 22
	May 4-22	24.66	"	Paid
Western Wholesale Drug Co.				
	Feb.10-23	57.02	Mar.13-23	Mar.15-23
Firestone Tire & Rubber Co.				
	Dec.18-22	37.46	Mar.24-23	June 7-23
Oldfield Tire Co.	Dec.18-22	37.46	Mar. 6-23	
H. L. Arnold	Feb.20-23	74.00	May 5-23	May 11 Refer to Maker. May 17-Wired from Santa Barbara.
Western Mechanical Works.				
	Apr. 3-23	51.15	May 22-23	June 8-23
Kay Motor Supply Co.				
	Apr.16-23	65.07		June 27-23.
	Dec.30-22	176.90		June 22-23.

In addition on April 14, 1923, the Oldfield Tire Company presented further complaint to the Commission that its C.O.D. shipments to the Blake Motor Company of Santa Barbara were unsatisfied as follows:

July 12, 1922-\$40.74; July 26, 1922-\$64.37; December 18, 1922-\$39.36

It was shown that these amounts had been paid a few days before

the hearing, which was held June 27, 1923. It is important to note that many of these accounts were settled after the date of the institution of the proceedings herein, which was May 23, 1923.

The files of the informal complaints show much correspondence with the respondent Boyd and reveal the fact that he was several times warned of the danger of delaying remittances, that such conduct imperiled his operative certificate, and no communication of respondent disputes the essence of the complaint, whenever the files show the respondent answered the communications from the Commission. For more than a year the Commission has wrested amounts due consignors and others from respondents only with great delay and difficulty.

Nor was this the only evidence of the reluctant attitude of respondents. Mr. D. W. Davis, Accountant of the Commission, testified that he had great difficulty in gaining access to the books of respondent; that the books were not kept at the office and that only certain books were brought from the home of respondent Boyd on the demand of witness.

Respondent's showing of cause why the certificates should not be revoked was through the testimony of J.S. Hunter, manager of the Santa Barbara office, and after June 1, 1923, manager of the entire operation under both certificates. He testified that all collections were deposited to the accounts of respondent Boyd but that Boyd alone could draw checks. On June 1, 1923, Hunter entered into an agreement by which Hunter was to purchase the operative rights for a consideration of \$25,000 - \$5,000 cash and \$400 a month until paid, and interest at the rate of 7 per cent a month on deferred principal. Hunter to assume all debts. Hunter testified that the operation of the respondent was sufficiently profitable to carry such charges,

approximately \$600 a month. He also testified that the \$5,000 "cash" payment consisted of money advanced by Hunter to Boyd, salary due Hunter and truck lease amounts due Hunter aggregating \$3,000. The equipment proposed to be transferred consists of equities in trucks aggregating about \$3,000 and shop equipment, tools etc. This agreement (respondent Boyd's Exhibit No.4) was executed by W. P. Butcher, Jr., under general power of attorney for Boyd.

This transaction, as presented in the record, is not reassuring, even if, as stated by respondent's counsel, it is to the interest of creditors of respondent. The assumption of the debts of respondent Boyd in addition to the amount to be paid for the operating right, by Hunter, is asking the shipping public to contribute in rates the cost of unwise management or worse over a period of years. These debts were not explained either in detail or aggregate, although the proposed agreement included them and Hunter agreed to assume them. The show of great profit is inconsistent with the acts of Boyd before June 1, 1923, and the essence of the contract is to burden the operation for many future years for Boyd's benefit.

In conclusion, and basing our findings upon the record, we hereby find as a fact, that respondent C. T. Boyd did in the matters enumerated on Page 3 of this Opinion willfully retain amounts of money legally due his consignors for shipments entrusted to him for delivery C.O.D. and that repeated efforts on the part of this Commission to induce settlement of the just claims of consignors were ignored until after the proceedings to revoke certificates herein were instituted by this Commission, and that such conduct was ~~very~~ irresponsible and illegal; and, basing our conclusion,

upon these facts, we find that just legal cause has been given by respondent Boyd for the revocation of all operating rights now possessed by said respondent C. T. Boyd, and also such contingent or other right or interest therein as one C. S. Kent may have, or may have had.

Since the submission of the proceeding herein this Commission has been advised, and from investigation of its own officers, is in possession of the fact that respondent Boyd has abandoned his entire operations; that for at least a week subsequent to July 21, 1923, applicant's office at 221 South San Pedro Street, Los Angeles, has been abandoned without notice to the shipping public or to this Commission, and that shippers have delivered in ignorance of such cessation of operations various consignments to this office where they were left for transportation by said respondent's service; that no protection was given these consignments, and that they have been pilfered from by reason of their exposed condition and that consignors and consignees alike have suffered from the abandonment of business.

O R D E R.

An Order having been issued on May 23, 1923, to C. T. Boyd and C. S. Kent to show cause why the certificate of public convenience and necessity heretofore granted them under their Application No. 4094, by Decision No. 5836 (dated October 9 - 1918) and under Application No. 6368 by Decision No. 8720 (dated March 9 - 1921) should not be revoked, and a public hearing having been held, the matter having been duly submitted, and the Commission being now fully advised and basing its Order on the findings of fact as set forth in the opinion preceding this order;

-IT IS HEREBY ORDERED, that the certificate of public convenience and necessity heretofore granted by the Commission by its Decision No. 5826 on Application No. 4094 dated October 9, 1918, the respondents C. T. Boyd and C. S. Kent doing business under the fictitious name of the Highway Transportation, as a common carrier of freight and express between Los Angeles and Santa Ana and certain intermediate points, be, and the same hereby is, revoked and cancelled and that no further operation by said C. T. Boyd or C. S. Kent may be made over the route as hereinbefore referred to.

IT IS FURTHER ORDERED that the certificate of public convenience and necessity herein granted by the Commission by its Decision No. 8720 on Application No. 6368 dated March 9, 1921, granting to C. T. Boyd, doing business under the fictitious name of the Highway Express Company, as a common carrier of freight between Los Angeles and Santa Barbara, and between Los Angeles and Venice be, and the same hereby is revoked and cancelled and that no further operations by said C. T. Boyd may be given over the route as hereinbefore referred to.

Dated at San Francisco, California, this 14th day of

August, 1923.

W. J. Seaver
H. B. Brundage
Wm. J. Martin

