

Decision No. 14578

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
M. R. WAGNER to sell and A. F. SCHWARTZ
and FRED A ODER to purchase auto truck
freight line operated between Los Angeles
and Inglewood, El Segundo and intermediate
points.)

APPLICATION NO.
10578.

ORIGINAL

M. R. Wagner, for Wagner's Inglewood Express,
Applicant, in Propria Persona.
A. F. Schwartz, for Redondo-Los Angeles Express,
Applicant.
Richard T. Eddy, for S. & M. Transfer Company,
Protestant.

BY THE COMMISSION.

O P I N I O N.

M. R. Wagner, operating under the name of Wagner's Inglewood Express, has made application to transfer all rights granted him in Decision No. 6527 on Application No. 4534, to A. F. Schwartz and Fred A. Oder, operating under the name of Redondo-Los Angeles Express, who join in the application and who also ask that the two operations be merged and consolidated. This application was filed October 28, 1924.

A public hearing was conducted by Examiner Williams at Los Angeles.

The application was opposed by S. & M. Transfer Com-

pany, R. J. Stadler, owner, on two grounds: First, that applicant Wagner had abandoned the operation under his certificate on November 1, 1924, and that this service had been continued by applicant Redondo-Los Angeles Express without authority from this Commission; and, second, upon the ground that consolidation of the two operations into one would injure the business of this protestant.

As to the first ground, the testimony showed that on or about November 1, 1924, applicant Wagner had delivered his equipment, consisting of one truck, to applicant Redondo-Los Angeles Express; that Wagner's terminal was vacated by him, and that the sign "Wagner's Express" was removed to the terminal of the Redondo-Los Angeles Express; that at the abandoned terminal, a sign was posted, directing shipments to be taken to the Redondo-Los Angeles Express, and telephone inquiries at the terminal, which was shared by other carriers, were answered to the same effect. Further testimony showed that inquiries of the Redondo-Los Angeles Express brought the response that this carrier had taken over Wagner's business and would conduct it in the future. There was also testimony that shipments were made by Redondo-Los Angeles Express over the route of Wagner's Express to El

Segundo and Inglewood and the shipping bills therefor were made Exhibits (Protestant's Exhibits Nos. 2 and 3). There was also testimony that in this service the vehicle sought to be transferred by Wagner was not used at all times in the conduct of this business.

Applicants met this testimony by introducing an agreement between them dated November 1, 1924, by which applicant

Wagner appointed A. F. Schwartz, manager of the Redondo-Los Angeles Express, as the manager of Wagner's Inglewood Express, "until such time as the Railroad Commission grants the Redondo-Los Angeles Express a franchise to operate in Inglewood and surrounding territory." The agreement further provided that Wagner should lease "any of the Redondo-Los Angeles Express equipment when my truck will not handle the Inglewood business." Wagner testified that he agreed to pay Schwartz \$100. per month as manager of the line, pending action on the application to transfer, and agreed to pay one dollar per hour for truck and driver when his own vehicle would not care for the traffic. He further testified that no settlement between him and the Redondo-Los Angeles Express had been made, and that he did not know the status of the business. This agreement was not filed with this Commission.

A. F. Schwartz confirmed all of Wagner's statements, with the additional explanation that the use of Redondo-Los Angeles Express shipping bills was a matter of oversight on their part, and that the business was actually conducted for and in behalf of Wagner's Inglewood Express. Both witnesses testified that they expected the approval of the Commission to be almost immediate after the filing of the application.

It seems clear from the testimony that Wagner actually turned his business over to the Redondo-Los Angeles Express, and that he gave it no further attention except to receive and deliver some consignments in and about Inglewood. The terms of agreement between the parties called for a consideration of \$1500.00, of which \$1250.00 represents the value of one 2-ton truck, \$240.00 the

value of depot equipment and lease, and \$10.00 the value of the operating rights. It was the testimony of Schwartz that no use would be made of the Wagner terminal, and that the equipment consisted of little more than the sign.

Little evidence was presented by applicants justifying the merging of the two operations. Protestant S & M Transfer Company and applicant Wagner's Express transport property between Los Angeles and Hyde Park, Lawndale, Hawthorne, Lennox and El Segundo. Redondo-Los Angeles Express, traveling over the same route, serves only Manhattan, Hermosa and Redondo, which are also served by S & M Transfer Company. To consolidate Wagner's right with the Redondo-Los Angeles Express would be to add five points now served exclusively by the S & M Transfer Company as one operation. There was no proof that the service of the S & M Transfer Company is insufficient or inadequate, and it is reasonable to assume from all the facts in the record that the service maintained to these five points by Wagner's Express is not profitable or applicant Wagner would not be anxious to sell his operating right for \$10.00. However, it is probable that operation of the Wagner Express service by applicant Redondo-Los Angeles Express might be more efficient; and as this service has been established for eleven years and is consequently well known to shippers, its continuance as an independent operation seems justified. We find nothing in the record justifying consolidation. While the record shows that applicant Wagner transferred his business to applicant Redondo-Los Angeles Express in a somewhat irregular and mistaken manner, we believe the transfer should be approved, in view of the necessity for continuation of this service as set forth above.

The application, insofar as it provides for consolidation of the two services, should be denied.

O R D E R

M. R. Wagner, transacting business under the name of Wagner's Inglewood Express, having applied to the Railroad Commission for approval of the sale and transfer of his operating rights under Decision No. 6527 on Application No. 4534 to A. F. Schwartz and Fred A. Oder, operating under the name of Redondo-Los Angeles Express, who join in the application, and merging the two separate operations into one, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

IT IS HEREBY ORDERED that the application herein to sell and transfer be and the same hereby is approved subject to the following conditions:

I. Applicant, M. R. Wagner, will be required to file within ten (10) days from the date of this order a cancellation of all rates, rules and regulations; and time schedules as heretofore filed with this Commission.

II. Applicants, A.F.Schwartz and Fred A. Oder, will be required to file tariffs, rules and regulations, and time schedules in their own name; or to adopt as their own the tariffs, rules and regulations, and time schedules as heretofore filed with this Commission by applicant, M. R. Wagner, all rates, rules and regulations to be in either case identical with those heretofore filed by said M. R. Wagner. The filing of new tariffs, rules and regulations, and time schedules to be made within ten (10) days from the date of this order.

III. The rights and privileges, the transfer

of which is hereby authorized, may not be sold, leased, transferred, or hypothecated nor may the service thereunder be discontinued unless such sale, lease, transfer, hypothecation or discontinuance of service has first been authorized by the written approval of this Commission.

IV. No vehicle may be operated by applicants, A.F. Schwartz and Fred A. Oder; operating under the fictitious name of Redondo-Los Angeles Express, unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to and approved by the Railroad Commission.

IT IS FURTHER ORDERED that the application to merge and consolidate the operations of the parties hereto be and the same hereby is denied.

For all other purposes, the effective date of this order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 18th day of February, 1925.

W. A. Mindige
C. Seavey

Emmuel Scott
Commissioners