

ORIGINAL

Decision No. 18165

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

UNITED PARCEL SERVICE OF LOS ANGELES,
a corporation,

Complainant,

vs.

INTER-CITY PARCEL SERVICE, INC., a corporation; S. B. COWAN, doing business under the name of Triangle Orange County & Santa Ana Express; L. R. KAGARISE, doing business under the name of Keystone Express; CITY TRANSFER & STORAGE COMPANY, a corporation; LOS ANGELES AND SAN PEDRO TRANSPORTATION CO., a corporation; RICE TRANSPORTATION COMPANY, a corporation; T. C. ORVIS, doing business under the name of Los Angeles & Compton Transportation Co.; BIRDIE M. MACEY, doing business under the name of Auto Package Delivery; TOLSON TRANSPORTATION SYSTEM, INC., a corporation; A. J. RICHARDSON, doing business under the name of Richardson Transportation Co.; FRANK G. MATTHEIJSSEN, doing business under the name of San Fernando Haulage Co.; SIERRA VAN & STORAGE COMPANY, a corporation; J. R. STADLER, doing business under the name of S. & M. Transfer; E. E. WALKER, doing business under the name of Walker Transfer & Storage Co.; L. H. ZIMMERMAN and A. F. ZIMMERMAN, a co-partnership, doing business under the name of Zimmerman Bros.; R. V. HARDIE, doing business under the name of Glendale Interurban Express; ADAM BAKER, doing business under the name of Belt Line Express; FIRST JOHN DOE; SECOND JOHN DOE; THIRD JOHN DOE; FOURTH JOHN DOE; FIFTH JOHN DOE AND SIXTH JOHN DOE.

CASE NO. 2249

Defendants.

Devlin & Brookman by Douglas Brookman, for Complainant,
Warren E. Libby, for all Defendants, excepting Zimmerman Bros. and Sierra Van & Storage Company.

BY THE COMMISSION -

OPINION

United Parcel Service of Los Angeles, Inc., a corporation, operating a transportation company in the carriage of property by auto truck, for compensation, in Los Angeles and adjacent territory under the authority contained in certificates of

public convenience and necessity as heretofore granted by the Railroad Commission, complains of defendants and alleges:

(1) That defendant Inter-City Parcel Service, Inc., was formed for the purpose of engaging in the business of a common carrier for the transportation by auto truck of parcels and packages of merchandise for compensation over the public highways of California between points within the City of Los Angeles and some 220 other points and communities outside the City of Los Angeles, and that said Inter-City Parcel Service, Inc., is now owned, controlled and operated by defendants, S. B. Cowan, L. R. Kagarise, City Transfer & Storage Co. and/or its officers, Los Angeles and San Pedro Transportation Company and/or its officers, and Rice Transportation Company and/or its officers.

(2) That defendant, Inter-City Parcel Service, Inc., for many months last past has continuously and now is unlawfully holding itself out to the public as being engaged and is engaged in the business of a common carrier by auto truck of packages and parcels for compensation over the public highways between Los Angeles and 220 named cities, towns and communities; that said defendant has never applied for or received from the Railroad Commission a certificate of public convenience and necessity authorizing it to engage in said transportation business, or any portion thereof; and that said defendant is engaged in the transportation business in violation of Chapter 215, Statutes of 1917, and amendments thereto, and without any legal authority.

(3) That all of the defendants herein, other than said Inter-City Parcel Service, Inc., are engaged in the business of transporting packages and parcels by auto truck, for compensation, under operative rights acquired either by virtue of operations conducted in good faith prior to May 1, 1917, or by certificates of public convenience and necessity heretofore obtained from the Railroad Commission; that there exists between defendant Inter-City Parcel Service, Inc., and each and all of the other defendants herein certain agreements and arrangements whereby Inter-City Parcel Service, Inc., is conducting a transportation business by auto truck in the carriage of packages and parcels for compensation over the routes included within the operative rights of each and all said other defendants herein, and under which said Inter-City Parcel Service, Inc., is unlawfully permitted by said other defendants, and by each of them, to operate the cars of each and all of said defendants between Los Angeles and each and all of the several cities and communities heretofore referred to; and that the result of said agreements and arrangements was designed to and has had the effect of unlawful leasing, joining and co-mingling of the operative rights of each and all of said defendants without authority therefor having been granted by the Railroad Commission and in violation of

Chapter 213, Statutes of 1917, and amendments thereto.

(4) That defendants, and each thereof, excepting Inter-City Parcel Service, Inc., have published rates for the transportation of packages and parcels delivered to them by Inter-City Parcel Service, Inc.; that said defendants, other than Inter-City Parcel Service, Inc., are not complying with said rate schedule, are receiving parcels and packages from said Inter-City Parcel Service, Inc., for transportation in violation of said rate schedule and are being paid rates which are not in conformity with the published rate schedule but are in violation thereof; that each of said defendants is unlawfully giving to defendant Inter-City Parcel Service, Inc., rebates on transportation charges; and that all of such facts and practices are known, acquiesced in and abetted by defendant Inter-City Parcel Service, Inc., and the officers thereof.

(5) That said unlawful agreements and arrangements between defendant Inter-City Parcel Service, Inc., and each and every other defendant herein have been entered into in order to establish and provide a parcel delivery service covering all of the points served by the complainant and for the purpose of unlawfully competing with said complainant by reason of not securing from the Railroad Commission a certificate of public convenience and necessity as required by the statutory law; and that in conducting operations under said agreements and arrangements said defendants, and each of them, are unlawfully transporting parcels and packages for compensation to points beyond and not included within the operative rights possessed by said defendants, in violation of Chapter 213, Statutes of 1917, and amendments thereto.

Complainant requests an investigation by the Commission into the matters set forth in the allegations and a finding that defendants herein, and each of them, is operating unlawfully and for an order directing said defendants, and each of them, to cease said unlawful operation and for such other and further order as to the Commission may appear just.

All defendants, excepting L. H. Zimmerman and A.F. Zimmerman, a co-partnership doing business under the name of Zimmerman Bros., and Sierra Van & Storage Company, a corporation, filed their joint answer herein denying the material allegations of the complaint.

Public hearings on the above entitled complaint were conducted by Examiner Handford at Los Angeles, the matter was duly submitted upon the filing of brief by attorney for defendants and is now ready for decision.

Inter-City Parcel Service, Inc., is a California corporation organized under date September 16, 1925. The business of the corporation has been the collection and delivery of packages and parcels, originally in the city of Los Angeles, for the various carriers who are authorized to transport property by motor truck between Los Angeles and other points in Southern California. The collection and delivery service handled parcels and packages between the point of shipment or delivery to the stations of the carriers, or to a central point at which carriers picked up or delivered shipments in connection with their operation over their authorized routes. Later the handling of packages and parcels was extended to a degree where the services and supervision of Inter-City Parcel Service, Inc., practically continued from original point of origin until the delivery of the shipments was accomplished at destination.

Agreements were made between the Inter-City Parcel Service, Inc., and certificated operators, some of which were reduced to writing, and the same conditions expressed in the written agreements were observed in the oral agreements and arrangements made with other certificated carriers. An agreement under date September 14, 1925, between Inter-City Parcel Service, Inc., and Robt. V. Hardie, proprietor of Glendale Interurban Express Company, filed herein as Complainant's Exhibit No. 2, is typical of the arrangement under which the handling of parcels and packages was to be cared for. The agreement provides briefly as follows:

- 1- Inter-City Parcel Service, Inc., to deliver to carrier at its terminal all packages collected within the City of Los Angeles which are destined to points on the route of the carrier.

2- That a terminal charge shall be paid by carrier to Inter-City Parcel Service, Inc., for each package or parcel.

3- That the Inter-City Parcel Service, Inc., shall have the exclusive right to collect shipments for the carrier within the City of Los Angeles, when such parcels (up to a weight of 150 pounds per package per delivery or shipment) are addressed to any destination on the line of carrier's authorized route, and the carrier agrees to file a rate schedule with the Railroad Commission "of nine (9) cents per package plus one (1) cent per pound for each pound weight or portion thereof, up to and including forty-one (41) pounds on quantities of packages, or more, delivered per day," which shall be the charge for the delivery of said packages by the carrier and which the Inter-City Parcel Service, Inc., agrees to pay.

4- Inter-City Parcel Service, Inc., agrees to deliver to carrier not less than ten packages or deliveries per day per shipment, exclusive of Sundays and holidays, and if such minimum number of shipments is not maintained, carrier may charge Inter-City Parcel Service, Inc., the regular tariff rate for the delivery to destination.

5- Carrier agrees to transport for Inter-City Parcel Service, Inc., all shipments included on its franchise route.

6- Carrier agrees to purchase or furnish to Inter-City Parcel Service, Inc. a proper package delivery car and at all times to keep said car in first class condition.

7- Carrier agrees to make a specified number of deliveries over the entire route as covered by its operative rights.

8- Neither party to the agreement is to be considered as the agent of the other party; nor either as a partner of the other, the agreement being made expressly for the purpose of entering into a private contract for the delivery of packages which are collected by Inter-City Parcel Service, Inc., to be shipped to destinations on the route of carrier.

9- Inter-City Parcel Service, Inc., is not bound to collect any and all packages which may be destined to points on the authorized routes of carrier, but Inter-City Parcel Service, Inc., agrees to cover the Los Angeles territory as efficiently as possible so that each and every shipper desiring to ship parcels and packages to points located on the route of the carrier will be satisfied with the service rendered by both parties to the agreement, and the Inter-City Parcel Service, Inc., will make every effort to collect every package within the city of Los Angeles that may be destined to points on the route of the carrier.

In the working out of arrangements and agreements between Inter-City Parcel Service, Inc., and the carriers operating routes from Los Angeles to adjacent territory the arrangement proposed by the form of agreement has been extended by the leasing of equipments. In some instances, the record shows, equipment units have been leased from a carrier and then operated over the line of such carrier, a charge being made on an hourly basis for the rental of the equipment during the time it was operated on the carrier's route, and an additional charge for the wages of the driver, said driver being employed by the Inter-City Parcel Service, Inc. From the evidence and exhibits filed herein it appears that it is the custom for Inter-City Parcel Service, Inc. to render a monthly accounting to each of the carriers participating in the foregoing arrangement, said account crediting the carrier with the revenue accruing at tariff rates for the transportation of parcels and packages. Deductions are made for car rental, wages of drivers and a charge for terminal expense. The balance due the carrier, if any, is paid by monthly check but if no balance is due the carrier by reason of the expenses above outlined exceeding the revenue the carrier has not been required to meet the deficit, although the record is not clear as to whether it is the intention of Inter-City Parcel Service, Inc., to itself absorb these deficits or to have same remain as a charge against the carrier to be offset by future profits which may accrue under the continued operation under the existing arrangement.

Mr. S. B. Cowan, Manager of Inter-City Parcel Service, Inc., testified that the corporation owned 8 or 9 trucks and leased three trucks, and that the corporation could delegate any particular truck to go over any route upon which a lease existed.

From the record herein it is apparent that the business of defendant Inter-City Parcel Service, Inc., has been established as that of a forwarding company, such company collecting packages and parcels in the city of Los Angeles and forwarding same to points and destinations in the vicinity of Los Angeles by the use of facilities now operated by existing carriers, which latter are subject to the jurisdiction of the Railroad Commission by the provisions of the statutory law. Rates are quoted by the Inter-City Parcel Service, Inc., to shippers which cover delivery to destination, and such company collects shipments in Los Angeles, transports same to either its warehouse at such point or to the Los Angeles terminal of other defendant carriers. Shipments are then transported to destination by said other defendant carriers usually under the parcel rates as appearing in published tariffs. Settlement of the carrier's charges under the tariff rates are made by Inter-City Parcel Service, Inc., and from the revenue accruing to the carrier under the published tariff rates there is deducted a terminal or pick-up charge for the service rendered by Inter-City Parcel Service, Inc., and also any charges which may have accrued for leased cars operating on the routes of the carriers and for the payment of driver's wages on such leased cars, which latter according to the record herein are advanced by Inter-City Parcel Service, Inc., for the account of the various carriers over whose lines the leased cars are operated. An illustration of the package rates under which Inter-City Parcel Service, Inc., ship consignments over the lines of authorized carriers is shown by the following extract from the Local Freight Tariff of Glendale Interurban Express, Robert V. Hardie, Owner, (Supplement No.4 to C.R.C. No.3, issued June 2, 1926, effective June 5, 1926):

"PACKAGE RATES

Packages weighing 16 pounds, or less, each, in lots of 10 packages, or more, from one consignor to one or more consignees.

From Los Angeles (Terminal Depot) to all points shown in tariff: Rate:- One (1) cent per pound plus nine (9) cents."

In the arrangements made for the transportation of packages and parcels with the defendant carriers covering service over their routes, Inter-City Parcel Service, Inc., and some of the other defendant carriers have exceeded the provisions and limitations contained in the Commission's General Order No.67, which General Order provided for the leasing of equipment by automotive stage lines operating under the provisions of Chapter 213, Statutes of 1917, and amendments thereto, and was effective August 1, 1923, said order reading, in part, as follows:

"IT IS HEREBY ORDERED, that all transportation companies as defined in chapter 213, laws of 1917, and amendments thereto, shall either own their equipment (proprietary control being deemed ownership) or lease such equipment for a specified amount on a trip or term basis, the leasing of equipment not to include the services of a driver or operator. All employment of drivers or operators of leased cars shall be made on the basis of a contract by which the driver or operator shall bear the relation of an employee to the transportation company by whom such operator or driver is engaged.

The practice of leasing equipment or employing drivers or operators on the basis of compensation on a percentage basis and dependent on the gross receipts per trip or for any period of time is hereby prohibited from the effective date hereof."

The so-called leasing of some of the equipment, as reflected by the record herein, has not been in accordance with the provisions of the Commission's General Order No.67, as above referred to, in that drivers have not been employed on the basis of bearing "the relation of an employee to the transportation company by whom such operator or driver is engaged." Defendant carriers, other than defendant Inter-City Parcel Service, Inc., have in some instances had little, if any, con-

trol over drivers who by the Commission's regulation are required to be employees of such carriers.

The Inter-City Parcel Service, Inc., neither owns nor controls any certificated operative rights, nor can such defendant in any manner participate in the operation of any route, the rights for which are held by any of the defendant carriers. We, therefore, conclude and hereby find as a fact that any control of operation over the routes of any of defendant carriers by operation of leased cars, or the employment of drivers thereon, by defendant Inter-City Parcel Service, Inc., is in violation of the provisions of Chapter 213, Statutes of 1917, and amendments thereto and of the subsequent regulations of this Commission regarding the leasing of equipment. Violation of the Commission's regulations is also made by any of other defendant carriers who have participated in the car leasing arrangement and have permitted defendant Inter-City Parcel Service, Inc., to direct operation of cars over their respective lines.

Counsel for defendants in his brief contends, citing authorities in support thereof, that defendant Inter-City Parcel Service, Inc., is, in its operations, under the conditions herein at issue, a forwarding agent and not a common carrier and therefore not subject to the jurisdiction of this Commission in that such jurisdiction is restricted by the statutory law to the regulation of automotive transportation, as conducted over the public highways for compensation. The evidence and record herein sustain such contention as regards the evident intent of the incorporators of defendant Inter-City Parcel Service, Inc., and of the managing officials, but in the practical operation the status of a forwarding company has been exceeded to an extent making portions of the operation subject to the jurisdiction of the Commission as directed by the statutory law directing the Commission to supervise and regulate automotive transportations

As regards the operative practices which require the regulation of the Commission it is not proper to urge that if the actual operation of cars over the authorized route of a defendant carrier was delegated to defendant Inter-City Parcel Service, Inc., that it was still under the control of the authorized carrier through an agency relation when the contract or agreement, introduced in evidence as representative of the arrangements and agreement between Inter-City Parcel Service, Inc., and other defendant carriers (Complainant's Exhibit No.2), contains an express provision

"That neither company shall be considered as the agent of the other, nor shall either company be considered as a partner of the other, ****."

The showing of defendants as to the leasing of equipment and employment of drivers indicates that but little effort was made by defendants to observe the requirements of this Commission's General Order No.67, as hereinabove referred to, and we are of the opinion and hereby find as a fact that violations of the terms of the Commission's General Order No.67 have been made by defendant Inter-City Parcel Service, Inc., and other carrier defendants.

After full consideration of the record and the brief of counsel for defendants, we are of the opinion and hereby find as a fact that the complaint herein, insofar as it covers the matters of leasing of cars from and the direction of operation of cars by Inter-City Parcel Service, Inc., over the route, or routes, of defendant carriers, has been justified and the order herein will require the immediate discontinuance by defendants of such practices as are hereby found to be in violation of the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto.

In all other respects, the order herein will direct a dismissal of the complaint.

O R D E R

Public hearings having been held on the above entitled complaint, the matter having been duly submitted following the filing

of brief by counsel for defendants, the Commission being now fully advised and basing its order on the statements, conclusions and findings of fact as appearing in the opinion which precedes this order;

IT IS HEREBY ORDERED that defendant Inter-City Parcel Service, Inc., a corporation, immediately cease all direction of routing of any cars, which may be leased by said defendant to any other defendant or defendants for operation by said carrier defendants over any route or routes for which said carrier defendants are authorized; that said defendant Inter-City Parcel Service, Inc., immediately cease the practice of employing drivers for the operation of any car or cars leased by said defendant to any other carrier defendant or defendants and the payment of compensation to drivers while said drivers are employed in the operation of said leased cars in service on the route or routes of said carrier defendant or defendants; and

IT IS HEREBY FURTHER ORDERED that as to all other defendants herein, excepting said Inter-City Parcel Service, Inc., that said defendants and each of them, hereafter operate all cars on their respective authorized route or routes in strict accordance with the regulations of this Commission which require that no vehicle shall be operated over the authorized route, or routes, unless such vehicle be owned by the authorized carrier or be leased by such carrier under a contract or agreement on a basis satisfactory to the Railroad Commission; that the terms of this Commission's General Order No. 67 regarding the leasing of equipment be hereafter strictly
/complied with in all respects; that employees on leased equipment used on operative lines of carrier defendants be employed directly by said carrier defendants; and that full direct supervision be hereafter exercised by said defendant carriers over the operation

of their respective route or routes unless and until said carrier defendants, or any of them, will have secured written authority from this Commission for the lease or transfer of said operative rights as required by the regulations of this Commission, and

IT IS HEREBY FURTHER ORDERED that as to other matters covered by the complaint herein, and as to all defendants as regards such other matters, this complaint be and the same hereby is dismissed.

Dated at San Francisco, California, this 4th day of ~~March~~ ^{April}, 1927.

Ernesto
H. B. Bourdige
C. C. ...

Thos. S. ...
COMMISSIONERS.