

Decision No. 18032

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

LOS ANGELES AND SAN PEDRO TRANSPORTATION
COMPANY,

Complainant,

vs.

RICHARDS TRUCKING AND WAREHOUSE COMPANY,

Defendant.

Case No. 1819.

ORIGINAL

Harry N. Blair, for Complainant.
C. H. Tribit, Jr., for Defendant,
A. B. Roehl, for American Railway Express Company,
Intervenor.

BY THE COMMISSION:

O P I N I O N

Los Angeles and San Pedro Transportation Company, a corporation, by its amended complaint herein alleges that defendant Richards Trucking and Warehouse Company, a corporation, is the successor in interest to Thomas Richards, an individual doing business under the fictitious name of Thomas Richards Motor Express; that said Thomas Richards filed a tariff with the Railroad Commission as of May 1, 1917, being C.R.C. No. 3, effective March 8, 1919, naming rates for the transportation of freight between Los Angeles, Huntington Park, Vernon, Lynwood, Long Beach and Wilmington; that subsequent to the filing of said tariff said Thomas Richards did not operate a freight line in accordance with the provisions of the aforesaid tariff filing; that by such failure of Thomas Richards to operate in accordance with tariff provisions the right to operate has been abandoned without authority of this Commission; that the inclusion in the tariff of rates to Wilmington via Long Beach was an attempt by the predecessor of defendant to secure an expansion of operative rights by a tariff filing; that the service rendered by the predecessor of defendant on May 1, 1917, consisted

of the transportation of newspapers from Los Angeles to Long Beach; and that the present transportation of all freight as a common carrier is in violation of law in that the right of defendant to operate as a transportation company is fixed by the service rendered by defendant's predecessor as of May 1, 1917.

Complainant further alleges that defendant is now engaged in the transportation of freight by motor trucks, as a common carrier, for compensation over the public highways and over a regular route between the business center of Los Angeles and the harbor districts of said city at Wilmington and San Pedro; that defendant is now unlawfully engaged in the transportation of freight between Los Angeles and Wilmington by reason of no rates applicable to the route traversed being filed with this Commission; that defendant has expanded its operative rights between the business section of the city of Los Angeles and the harbor district of said city at Wilmington by including the harbor district at San Pedro; that such expansion exceeds the proffer of service as contained in original tariffs filed by defendant's predecessor which did not propose service between Los Angeles and San Pedro; and that defendant is now unlawfully engaged in such transportation.

Complainant prays for an order of the Commission requiring defendant to discontinue the transportation of property by auto trucks between Wilmington-San Pedro and Los Angeles as a common carrier, for compensation; and to cease and desist from said alleged illegal operation.

A public hearing on this complaint was conducted by Examiner Handford at Los Angeles at which time evidence was received, and the matter was duly submitted for decision.

J. O. Ernest, a witness for complainant, testified he was employed as a driver for the Thomas Richards Express in 1917, operating over a route to Santa Ana; that in November, 1918,

he operated as a driver for the same employer on the route between Los Angeles and Long Beach, said route leaving the Los Angeles terminal of the Richards Express via a route from Jefferson Street to Central Avenue, or over 36th Street to Santa Fe Avenue, thence over Slauson Avenue to Long Beach Boulevard and over said Boulevard to the City of Long Beach.

T. E. Marx, a witness for complainant, testified he was employed as a freight and claim agent by complainant; that his first knowledge of the operation of defendant between Los Angeles and Wilmington was in April, 1922; that service was furnished by his company upon the request of Thomas Richards in the transportation of freight for the Richards line between Wilmington and Los Angeles during the period December 11, 1920, to April 29, 1921. A total of 65 shipments consigned to Schilling Company, Los Angeles, aggregating a weight of 23,395 pounds; and that drivers of his company had reported observing the trucks of defendant operating between Wilmington and Los Angeles via Main Street Boulevard.

Harry N. Blair, a witness for complainant, testified regarding an investigation made of the operation of the Thomas Richards line between Wilmington and Los Angeles; that prior to April 1, 1922, there was no operation direct between such points; that one customer, the Pacific Tank & Pipe Company, was served between Wilmington and Long Beach, and occasionally between Los Angeles and Wilmington, via Long Beach; that the service for the Pacific Pipe & Tank Company was first rendered in 1918, and was continued until 1920, the service being rendered via the Anaheim Road to the plant of the pipe company then located at the northerly portion of the East Basin of Wilmington Harbor or approximately two to two and one-half miles from the business district or wharves at Wilmington.

W. F. Lemon, assistant service inspector of the Com-

mission, called as a witness for defendant, testified that he made an investigation in the year 1919 to ascertain the scope of the Thomas Richards operation as regards the serving of Wilmington, such investigation developing that no operation had been made to Wilmington on any definite schedule, although it had been the practice to operate into Wilmington through Long Beach frequently whenever traffic was offered to or from Wilmington, the operation always being via Long Beach.

Defendant, by its counsel, submitted the matter on the showing appearing in the tariffs of defendant as filed with the Commission and by stipulation the records of the Commission as contained in applications and decisions thereon affecting the territory under investigation, were to be considered.

Thomas Richards, operating under the fictitious name of Thomas Richards Express, was the predecessor in interest to Richards Trucking and Warehouse Company, defendant herein. The files of the Commission show that on April 16, 1917, prior to the effective date of Chapter 213, Statutes of 1917, Mr. Richards advised he was operating a daily service in Los Angeles and Orange Counties, and requested information regarding the law as applicable to his business. The Commission advised Mr. Richards, on April 18, 1917, that the proposed law was not then effective and that when same was operative he would be advised regarding its provisions. Under date of February 14, 1919, Mr. Richards was requested by the Commission to file tariffs covering his operations, and on May 12, 1919, tariffs were filed covering operation over three routes, between Los Angeles and Orange County points; between Los Angeles, Pasadena, South Pasadena, Lamanda Park and Arcadia; and between Los Angeles, Huntington Park, Vernon, Lynwood, Long Beach and Wilmington. The tariff covering the route herein considered was Local Freight Tariff No. 3, C.R.C. No. 3, issued March 8, 1919, effective March 8, 1919, and received for filing by the Commission on May 12, 1919.

By its Decision No. 10033, on Application No. 7355, as decided January 30, 1922, Thomas Richards was authorized to transfer his operative rights to Richards Trucking and Warehouse Company, a corporation, the order providing, among other things, the following:

"Thomas Richards, operating under the fictitious name of Thomas Richards Motor Express, shall cancel immediately all time schedules, tariffs, rates and classifications at present on file with the Railroad Commission, and Richards Trucking and Warehouse Company shall file immediately new time schedules, tariffs, rates and classifications, or adopt as its own the time schedules, tariffs, rates and classifications heretofore filed by Thomas Richards, all schedules, tariffs, rates and classifications to be identical, with those heretofore filed by Thomas Richards, such cancellations and filings to be in accordance with the provisions of General Order No. 51 and other regulations of the Railroad Commission."

Based on the authority contained in the Commission's Decision No. 10033, Richards Trucking and Warehouse Company filed on February 28, 1922, its tariff showing Local Freight Rates, C.R.C. No. 1, issued February 27, 1922, effective March 1, 1922, Section 3 thereof naming rates between Los Angeles, Pasadena, Huntington Park, Vernon, Lynwood, Long Beach, Wilmington and intermediate points.

On June 22, 1922, Richards Trucking and Warehouse Company filed its tariff publishing proportional freight rates between Los Angeles and Wilmington, C.R.C. No. 2, issued June 16, 1922, effective June 22, 1922, applying only on shipments received from or delivered to steamship wharves. On October 23, 1923, Richards Trucking and Warehouse Company filed its tariff publishing proportional rates between Los Angeles, Wilmington and San Pedro, C.R.C. No. 3, issued September 29, 1923, effective October 3, 1923. No authority was ever obtained for the extension of service to San Pedro.

On May 31, 1924, Richards Trucking and Warehouse Com-

pany filed its tariff publishing proportional freight rates between Los Angeles and Los Angeles Harbor District applying only on shipments received from or delivered to steamship wharves. No authority was ever obtained for the extension of service to the Los Angeles Harbor District, Wilmington being the only point authorized to be served.

We have fully considered the record in this proceeding and it appears defendant has expanded its operative rights to include routes and points for which no authority exists by reason of operation as of May 1, 1917, by Thomas Richards, predecessor to defendant herein, or by certificate of public convenience and necessity being granted to defendant or its predecessor since May 1, 1917. The record shows the original operations to Wilmington to have been from Long Beach as an extension of the route between Los Angeles and Long Beach via Long Beach boulevard. Defendant has no authority to operate from Los Angeles to Wilmington via Harbor Boulevard, nor to serve San Pedro or Los Angeles Harbor District other than Wilmington which must be served via Long Beach,

There is here presented an attempted enlargement of operative rights by tariff filings instead of by compliance with the statutory law and the securing of a certificate of public convenience and necessity as provided by the statute. The Commission has heretofore considered such a condition in its Decision No. 13454, on Application No. 8454, as decided April 22, 1924, (Opinions and Orders 26 C.R.C. 807), in which appears the following comment:

"In accordance with the principle enunciated by this Commission in its Decision No. 9065, of June 7, 1921, on Case No. 1442, A. B. Watson vs. White Bus Line, et al. (Opinions and Orders, C.R.C., Vol. 20, p. 18), no transportation company, subject to the regulation of this Commission under authority contained in Chapter 213, and effective amendments thereto, can enlarge or expand operative rights beyond those existing as of May 1, 1917, or subsequently granted by this Commission by a certificate of public convenience and necessity unless in accordance with the provisions of the statutory law a certificate of public convenience and necessity has been applied for and thereafter issued by the Commission in an appropriate proceeding. This

decision was thereafter sustained by the California Supreme Court on September 19, 1922, by its decision in Case S. F. No. 10099 (64 Cal. Dec. 278). With the establishment of this principle and its affirmation by the California Supreme Court, it is now obvious that no enlargement of operative rights, either as to routes served or expansion of rights for the carriage of property, can be made without a proper showing in an appropriate proceeding resulting in authority as conferred by a certificate of public convenience and necessity. It is equally applicable as regards increase in the scope of operative rights, such as the enlargement of same by the inclusion of additional stations or operative points in territory not specifically covered either by operative right existing as of May 1, 1917, or rights thereafter conferred by certificate. The particular instance as cited as regards express tariff of applicant, Motor Transit Company, is typical of many instances appearing in passenger tariffs where rights beyond those authorized have been included at the time of filing such tariffs and which are now apparently relied upon by applicant as justifying their existence and continued use."

"The rules and regulations as adopted by this Commission under its General Order No. 51, provide the method and procedure under which rates should be filed with this Commission and for the public. These regulations do not and can not change the requirements imposed by the statutory law as to authority required to be obtained by any transportation company desiring to operate over the highways of this state between fixed termini or over a regular route in the carriage of persons or property for compensation."

After full consideration we hereby conclude and find as a fact that defendant Richards Trucking and Warehouse Company, a corporation, has no authority for the operation of an automobile truck line as a common carrier of property, for compensation, between Los Angeles and Wilmington via the Harbor Boulevard, nor for serving San Pedro or the so-called Los Angeles Harbor District, except as to service to Wilmington from Long Beach as an extension of defendant's service between Los Angeles and Long Beach via Long Beach Boulevard.

O R D E R .

A public hearing having been held on the above-entitled complaint, the matter having been duly submitted, the Commission being now fully advised and basing its order on the conclusion and finding of fact as appearing in the opinion which precedes this

order,

IT IS HEREBY ORDERED that Richards Trucking and Warehouse Company, a corporation, immediately cease the operation of trucks as a common carrier, for compensation, between Los Angeles and Wilmington or the Los Angeles Harbor District via Harbor Boulevard, and operation between Long Beach and San Pedro or Los Angeles Harbor District, other than Wilmington, either as to local service between such points or as an extension of its route between Los Angeles and Long Beach via Long Beach Boulevard, and

IT IS HEREBY FURTHER ORDERED that said Richards Trucking and Warehouse Company, a corporation, immediately cancel in accordance with the Commission's tariff rules and regulations all tariffs now filed covering service to points to which service is hereinabove ordered discontinued.

Dated at San Francisco, California, this 20th day of June, 1927.

Edmunds
H. B. Brundage
C. Seamy
Leon Whiteley
Thornton
Commissioners.