EBM

Decision No. 19396

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

MOTOR SERVICE EXPRESS, SAN BERNARDINO TRANSPORTATION COMPANY, PACIFIC MOTOR EXPRESS, and LOS ANGELES & NEWPORT FREIGHT LINE,

Plaintiffs,

-vs-

ADAM BAKER, doing business under the fictitious name of BELT LINE EXPRESS,

Defendant.

Case No. 2405

MOTOR SERVICE EXPRESS, SAN BERNARDINO TRANSPORTATION COMPANY, PACIFIC MOTOR EXPRESS, and LOS ANGELES & NEWPORT FREIGHT LINE,

Plaintiffs,

-vs-

S. B. COWAN, doing business under the fictitious name of TRIANGLE, ORANGE COUNTY and SANTA ANA EXPRESS and ADAM BAKER, doing business under the fictitious name of BELT LINE EXPRESS,

Defendants.

Case No. 2410

H. J. Bischoff, for Plaintiffs,

Richard T. Eddy, for Defendants.

BY THE COMMISSION:

O P I N I O N

A public hearing on the above entitled cases was held by Examiner Gannon in the city of Los Angeles October 27th and 28th.

The two were consolidated for hearing since they related to the same matter. The San Bernardino Transportation Company withdrew as a party plaintiff prior to the hearing.

The defendants have moved that the complaints be dismissed on the ground that nowhere in the complaints was it alleged that the acts done were in violation of law, nor that they were done as common carriers for compensation. The motion is denied. The alleged acts are clearly set forth and the complainants pray therein that the defendants be restrained from continuing such operations. The defendants could not have been misled thereby or have been unable to prepare their defense.

Defendant Cowan operates a motor truck line under the name of the Triangle, Orange County and Santa Ana Express from Los Angeles southward to Anaheim and Santa Ana. Defendant Baker operates the Belt Line Express from Balboa Beach northeastward through Anaheim and Santa Ana and on to Riverside, San Bernardino and Redlands on the east.

The main issue is whether the defendants have been operating their business in such a manner as to constitute an illegal expansion of the operative rights granted to them by this Commission. The complainants in substance allege that the defendants have by agreement published proportional rates and otherwise maintained such a close relationship in the operation of their respective lines that they have virtually established a through service. Defendants admit that they have filed such proportional rates and insist that they have a right to fix such rates at will. It will be necessary, therefore, to consider the meaning and purpose of ~~xxx~~ proportional rates and under what right motor carriers may incorporate them in their tariffs.

By proportional rates is meant those which differ from the corresponding local rates and which apply only to traffic which is destined to or is brought from a point on the line of a connecting carrier. They are not the same as joint rates. A joint rate is one applicable to shipments from a point located on the line of one carrier to a point on the line of another, made by agreement between the carriers and published in a single tariff under proper concurrences of all lines over which the rates apply. When the connecting carriers for some reason fail to make arrangements for the establishment of joint rates, it has been the practice for one carrier alone to publish so-called proportional rates on shipments received or delivered to connecting carriers at a designated point. Both joint rates and proportional rates are in nearly every case less than the aggregate of corresponding local rates, and are permitted to be so on the theory that a longer haul is entitled to a relatively lower rate per mile than a shorter haul. The fact that such rates are in many cases established for the purpose of meeting competition does not of itself make them illegal.

There may not be any inherent vice in the establishment by carriers of either proportional or joint rates. They are, however, subject to regulation under the general power of the state to regulate common carriers. Section 33 of the Public Utilities Act of California refers to joint rates, but this section has no application to carriers by motor truck, nor is there any provision in reference thereto in the Auto Stage and Truck Transportation Act. Though there have been a number of cases before the Commission involving the right of motor carriers to establish joint rates, the instant case is the first apparently in which the question of proportional rates has been presented.

A line of decisions by this Commission beginning with Western Transport Company, Decision No. 9892 (20 C.R.C. 1038), and followed by Blair vs. Coast Truck Line, Decision No. 10338 (21 C.R.C. 530), Oakland, San Jose Transportation Company, Decision No. 13321, (24 C.R.C. 660), and Highway Transport Company, Decision No. 15328 (26 C.R.C. 942), lay down very clearly the rule in respect to the establishment by motor carriers of joint rates. From a study of these decisions we can lay down these conclusions: that because of essential differences between rail and motor truck transportation, this Commission must of necessity adopt different principles in regulating the operations of the two classes of carriers; that motor carriers should be definitely limited in the field of their operations and not permitted to deviate from their prescribed routes nor in any other way enlarge the operative rights granted to them without first obtaining a certificate from this Commission that the public convenience and necessity so require; that the filing of joint rates by the owners of distinct operative rights is to an extent an establishment of a through service, a linking up of the two lines, and to that extent amounts to an enlargement of the two operative rights for which a certificate must be obtained.

The charge of the complainants herein is that the defendants have published proportional rates without first obtaining authority from this Commission, and the complainants argue that proportional rates like joint rates are to be condemned because they effect an unauthorized expansion of authorized operative rights. We need not further examine the technical differences between the two, nor determine whether the establishment of proportional rates without a certificate shall in every case be

prohibited. As we have seen, the jurisdiction of this Commission to regulate such matters rests in its general power to regular rates and to determine generally the route and limit of the operative right granted to each motor truck carrier. And, as we have seen also, the prohibition of joint rates must be upon the ground that they result in an enlargement of the motor carrier's operations. So in this case, we have to decide only whether the defendants have, by the filing of such proportional tariffs and other acts, sought indirectly to enlarge their operations beyond the limit fixed in their certificates.

As stated, proportional rates are filed by a single carrier when it is impracticable for the connecting carriers to join in the establishment of joint rates, or when they refuse to do so. The proportional rates in question were incorporated in tariffs filed concurrently by defendants in September, 1926. Neither tariff specifically named the connecting carrier or carriers, but each provided that the proportional rates were available only when shipments were delivered from or to franchise motor carriers at Santa Ana or Anaheim. We must infer that such tariffs were filed by the two defendants under some agreement. Certainly, since they separately filed such rates, it cannot be contended by either defendant that the other had refused to enter into a joint rate agreement. However that may be, the result obtained by them in the mutual establishment of proportional rates, as we shall see, was substantially the same as that which would have resulted from the publication of a joint rate.

It is true that some carriers other than the defendants themselves may have participated to a slight extent in the business available under such proportional rates, but the fact remains

that practically all of the through movements of freight were routed by one defendant over the line of the other. This is shown by the freight bills of a typical day's business. Defendant Baker admitted that he could not make his proportional rates effective until the Triangle Express Company also established similar rates, for the bulk of the new business was to come from Los Angeles. The combined proportional rates were fixed at about sixty per cent of the combined local rates on shipments from Los Angeles to Riverside and near-by points, and are about equal to the local rates of other carriers, that is, the complainants' lines, which operate over the more direct route between the two cities.

The defendants have not attempted to justify such reductions in their rates on the theory that the charge for a longer haul should be relatively less per mile than for a shorter haul. They explain rather that they were considered to be more in the nature of commodity rates. This brings us to the consideration of the other alleged practices of defendants in respect to their freight tariffs and the manner in which freight has been handled by them.

The evidence shows that a large part of the freight moving over the Triangle Express and Belt Line Express from Los Angeles to Riverside and nearby points is shipped by the Inter-City Parcel Service, a company operating a pick-up and forwarding service for parcels within the city of Los Angeles. The Inter-City Company presents a quantity of parcels to the Triangle Express at the depot of the latter in Los Angeles, consigned to Riverside, San Bernardino and other points on the Belt Line. Now, though the Inter-City Company has apparently

collected full transportation charges in advance from the consignors of the various parcels, it does not at once tender to the Triangle Express the freight charge for either the Triangle haul or the Belt Line haul. Nor is the usual system followed by the Triangle Express nor the Belt Line in billing the shipper, the Inter-City Parcel Service. Apparently all daily records are kept in the office of the Inter-City Company and the only records kept by the defendant carriers are the copies of the Inter-City Company's delivery sheets. These show the names of consignor and consignee of each parcel and the weights, listed on several sheets, one or more for Riverside, San Bernardino and each of the other eastern points on the Belt Line. Once each month some sort of an accounting is had between the Inter-City Parcel Company and the Belt Line Express, but it is apparent that neither of these carriers make out proper bills of lading or render proper freight bills to either consignor or consignee.

We shall consider first the evidence in respect to the charges made by the Belt Line against the Inter-City Company for the transportation of parcels. It should be noted that this business all comes to the Belt Line from the Triangle Express by way of Santa Ana or Anaheim destined to Riverside and other points where the parcels are delivered by the Belt Line trucks to the ultimate consignees. Mr. Baker of the Belt Line, testified that he now receives from the Inter-City Company for this service 8 cents per parcel (up to 16 pounds) plus 3/4 of a cent per pound; for parcels weighing from 16 to 50 pounds, 35 cents. Prior to August, 1927, his charge for smaller parcels was 9 cents per parcel, plus 1 cent per pound. Mr. Tobias, Auditor for the Inter-City Parcel Company, testified that he had knowledge of the amounts allowed to the Belt Line for such service and of the records kept by his company and, testifying from

his records, he stated that during the month of August the Belt Line carried for them a total of 4069 parcels having a total weight of 52897 pounds. The amount credited to the Belt Line for these shipments was $773. of which $459.79 had been paid on account. Miss McCleary, also an employe of the Inter-City Parcel Company, testified also that the sum of $773, was the credit allowed to the Belt Line for the August business, but that she had no knowledge of what amount had actually been paid. She herself extended the credits on the delivery records opposite the weights given for each parcel shipped.

A careful analysis of these credits does not reveal that the amounts allowed by the Inter-City Company to the Belt Line were in violation of the Belt Line's tariffs for this class of business, or that the total credit of $773. is incorrect. However, there was no explanation of the testimony that only $459.75 of this amount had actually been paid, or of the unprecedented system of book-keeping on the part of the Belt Line which permitted this shipper to keep all the records, estimate the weights and charges, and to render to the carrier merely a monthly statement of the credits allowed.

Some explanation of the lack of book-keeping method on the part of the Belt Line may be found in the admission of Mr. Cowan of the Triangle Express that he is an owner in the Inter-City Parcel Service. Now, what is the system of the Triangle Express in handling this same class of business from the Inter-City Company for transportation from Los Angeles to the Belt Line at Santa Ana? The evidence shows that the Triangle Express, too, keeps no records and makes no bills, except a monthly statement made up from the same delivery sheets compiled by the Inter-City Parcel Company. Defendant Cowan testified that he had access to the delivery record sheets in the files of the Inter-City Company, which sheets were entered in evidence as Exhibit No. 1. Mr. Cowan

offered in evidence a freight bill purporting to be the bill of the Triangle Express to the Inter-City Company for parcels carried during the month of July, apparently a statement compiled from the same Inter-City delivery records for that month. The Auditor of the Inter-City Company testified that this was similar to other monthly statements, but he did not know whether it or similar bills for subsequent months had yet been paid. There can be but one conclusion from this testimony. The Triangle Express, as well as the Belt Line Express, by their failure to make out proper bills of lading and by their failure to insist upon prompt settlement of accounts with the Inter-City Company, have accorded a preference in favor of this particular shipper, and the manner in which they each have handled this business indicates the existence of some agreement between them to conduct their operations in violations of law.

The charges made by the Triangle Express for hauling the parcels of the Inter-City Company, or, more correctly, the credits allowed by the Inter-City Company to the Triangle Express for such service, are admittedly at the rate of 22½ cents per 100 pounds. This is the first-class proportional rate as given in the Triangle Express tariffs. Defendant Cowan claims that because various parcels consigned by the Inter-City Company are grouped together and hauled in a trailer apart from other freight to Santa Ana and Anaheim they are entitled to a bulk or consolidated package rate. The first answer to this claim is that a mere grouping of a quantity of packages in a trailer does not constitute a consolidated package, and second, the Triangle Express has no such consolidated package rate schedule in its tariffs on file. Consolidated package rates are entirely

distinct from ordinary class rates and must be specifically provided for in a carrier's tariffs.

This brings us to the matter of the operation of the motor equipment of the Triangle Express over the route of the Belt Line, which the complainants allege is such as to constitute a through service. There is a conflict in evidence as to the operation of trucks over the through route, but defendant Cowan admits that his trailer in which the Inter-City consignments are hauled is taken straight through from Los Angeles to Riverside behind a Triangle truck from Los Angeles to Santa Ana and behind a Belt Line truck from Santa Ana to Riverside. Though this trip is made daily, no lease for the use of such trailer by the Belt Line has been filed with the Commission. General Order No. 67, in respect to the leasing of equipment, makes no distinction between vehicles operating under their own motive power and others, and clearly requires the filing of a lease when any vehicle used for transporting freight is operated by a carrier other than the owner. Moreover, though the evidence offered by the complainants to show that the Triangle Express trucks operated over the Belt Line was not conclusive, it was shown that the two defendants have been so ready to extend favors one to the other that we may consider it at least additional evidence of their concerted plan to do indirectly what they are prohibited to do by law.

Other evidence of the close co-operation between the defendant carriers is found in their advertising and solicitation of business. At Riverside the defendant Baker secured signatures of shippers to a printed agreement instructing him to route all shipments to Los Angeles over the Belt Line Express and the Triangle Express, while at the depot in Los Angeles occupied in part by the Triangle Express there is displayed a large sign

indicating that it is a depot also of the Belt Line Express.

From the foregoing we have reached the conclusion that the defendants have illegally attempted to expand their respective operative rights. The concurrent filing of proportional rates, together with the other evidence of close relationship between the two carriers, supports complainants' allegation that such rates were published for the exclusive purpose of establishing, and that defendants have in fact established, a through service. We do not mean to hold that the filing of proportional rates by a single carrier in a proper case shall of itself constitute an expansion of such carrier's operative right and that it is required to first obtain a certificate from this Commission. Each case must be decided on its merits. We may say, however, that there is no justification for the publication of proportional rates by these two connecting carriers. Any object sought to be attained thereby may be and should be attained through a joint application to this Commission to establish a joint rate.

The complainants' allegation that the Triangle Express has charged the Inter-City Parcel Company a rate not contained in its published tariffs raises the whole question of discrimination in favor of that shipper. Such discrimination was clearly shown.

Accordingly, the following order should be issued:

O R D E R

A public hearing having been held on the above entitled proceeding, the matter having been submitted on briefs, the Commission being duly advised,

IT IS HEREBY ORDERED that the proportional rates published by S. B. Cowan doing business under the fictitious name of Triangle, Orange County & Santa Ana Express and Adam Baker doing business under the fictitious name of Belt Line Express, be cancelled and withdrawn by appropriate tariff publication and that said S. B. Cowan and Adam Baker within twenty (20) days file with this Commission revised tariffs in accordance with this order, and

IT IS HEREBY FURTHER ORDERED that said S. B. Cowan and said Adam Baker quote and apply only such rates as are legally published and filed by them with this Commission and that they immediately cease and desist charging any shipper a consolidated package rate without having first filed with this Commission tariffs specifically setting forth consolidated package rates and the conditions under which such consolidated packages are accepted for transportation.

IT IS HEREBY FURTHER ORDERED that the said Adam Baker immediately cease and desist from the operation of any trucks, trailers or other transportation equipment not owned by him over the route or any portion of the route of the Belt Line Express without first filing with this Commission a lease therefor, as provided by General Order No. 67.

Dated at San Francisco, California, this 21st day of February 1928.

Leon O. Whitsell
E. Stevens
Thos. E. Campbell
Thos. L. Lee
M. J. Carr
Commissioners