

Decision No. 19508

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

BAKERSFIELD & LOS ANGELES FAST FREIGHT
COMPANY, a corporation, and LOS ANGELES
& WEST SIDE TRANSPORTATION COMPANY, a
corporation,

Complainants,

vs.

WALTER WILLEHOUR and WILLEHOUR TRUCK
COMPANY.

Defendants.

ORIGINAL

Case No. 2394

Hugh Gordon, for Complainants,
John M. Herron, for Defendants,
W. S. Johnson, for Southern Pacific Company.

BY THE COMMISSION -

O P I N I O N

Bakersfield & Los Angeles Fast Freight Company, a corporation, and Los Angeles & West Side Transportation Company, a corporation, have filed complaint against Walter Willhour and Willhour Truck Company alleging that said Walter Willhour has operated and now continues to operate auto trucks in the business of transporting property, for compensation, over the public highways in this state between fixed termini and over a regular route, to-wit, between Los Angeles and Bakersfield, Taft, Maricopa, Fellows and other points in the San Joaquin Valley, and points intermediate between Los Angeles and Bakersfield over the Ridge Route; and that in such operation defendant Walter Willhour has operated, and continued to operate, as a transportation company as defined by the Auto Stage and Truck Act (Chapter 213, Statutes of 1917, and effective amendments thereto) in the transportation of general merchandise of a kind and character different from that specified in this Commission's Decision No. 14939 on Application No. 10891, as decided.

May 15, 1925, granting to said Walter Willhour authority for the transportation of cotton, cotton seed, cotton products and cotton gin supplies between Bakersfield, Weed Patch, Arvin, Lamont, Magunden, Shafter, Wasco, Mc Farland, Delano, Corcoran, Fresno, Porterville, Mendota, Firebaugh, Madera and Merced, and Los Angeles and Los Angeles Harbor, and between Bakersfield, Weed Patch, Arvin, Lamont and Magunden, and Fresno, Mendota and Firebaugh, and between Corcoran and Fresno or Bakersfield, and to or between no other points, over and along main traveled roads to and from the state highway between Merced and Los Angeles, thence to Los Angeles and Los Angeles Harbor; that defendant Willhour Truck Company has for more than six months prior to the filing of the complaint operated and is now engaged in the operation of auto trucks in the business of transporting property over the public highways between fixed termini and over a regular route, to wit, between Los Angeles and Bakersfield, Taft, Maricopa, Fellows and other points in the San Joaquin Valley and points intermediate between Los Angeles and Bakersfield, over the Ridge Route, without first having obtained from the Railroad Commission a certificate declaring that public convenience and necessity required such operation; and that in such operation defendant, Willhour Truck Company, has held itself out and does hold itself out to transport property for a large number of shippers and has engaged generally in a transportation business and has accepted for shipment and transported property for all who sought said defendant for that purpose.

Complainants pray for an order cancelling and revoking the certificate of public convenience and necessity heretofore granted to defendant Walter Willhour; and that each of the defendants be restrained from further operation of auto trucks over the highways for the transportation of freight, for compensation, between fixed termini or over regular routes without first having obtained a certificate from this Commission declaring that public convenience

and necessity require such operation.

Defendants duly filed their answer herein, same being a general denial of the allegations of complainants and alleging that all transportation herein complained of has been conducted by Walter Willhour under the fictitious name of Willhour Trucking Company and that a certificate of fictitious name has been filed by Willhour Trucking Company, as required by law.

A public hearing on this complaint was conducted by Examiner Handford at Los Angeles, the matter was duly submitted and is now ready for decision.

Walter Willhour, called as a witness for complainants, testified that he was the owner of the certificate granted by the Railroad Commission's Decision No. 14939 on Application No. 10891, as decided May 15, 1925, and that no other authority had been obtained from the Commission; that he had been operating under the fictitious name of Willhour Trucking Company having filed a certificate of fictitious name with the County Clerk of Kern County on June 11, 1925; and that all hauling had been done under said fictitious name. Defendant owns 6 trucks and 6 trailers and has been in the general trucking business. Cotton has been hauled at the tariff rate as filed with the Railroad Commission and other rates have been used for other commodities. No regular rate schedule had been established for commodities, other than cotton, it being the practice to give a price on each piece of work. Witness has not advertised for business, obtaining same by personal solicitation. Defendant operates his trucks anywhere that business requires, using the Ridge Route for trips between Los Angeles and Bakersfield or Taft. No terminal has ever been maintained in the City of Los Angeles and business has been refused when tendered by some shippers, due to the fact that trucks were busy or that the rate offered was not satisfactory.

J. M. Champion, a resident of Bakersfield, testified that he was employed by Willhour Trucking Company from February to May, 1927, at Bakersfield as a dispatcher of trucks, also making collections and assisting in the office, being in charge of the Bakersfield operations during the absence of defendant Willhour. Seventy five percent of the business transacted was consigned from Los Angeles to Bakersfield or Taft. Witness solicited business from consignees, either on Willhour's suggestion or on his own judgment as to the securing of business. Witness during his employment with Willhour Truck Company had nothing to do with the operation of trucks at Los Angeles but had observed loads brought from that point daily and consignees paying freight charges on business that he had solicited. Very little hauling, except cotton, was done from Bakersfield to Los Angeles during the time of witness' employment. Some of the consignees for whom hauling had been done, their location, and the commodities hauled were as follows:

<u>Consignee</u>	<u>Location</u>	<u>Commodity</u>
Acme Beverage Co.	Bakersfield	Beverages and Mineral Water
Kern Plumbing Co.	Bakersfield	Plumbing Supplies
United Iron & Metal Co.	Bakersfield	" "
Suburban Plumbing Co.	Bakersfield	" "
Associated Supply Co.	Bakersfield	Oil Well Supplies
Cal. National Supply Co.	Bakersfield	" " "
Pacific Ready Cut Houses	Bakersfield	Building Materials
Furniture Exchange	Bakersfield	Furniture
Western Pipe & Steel Co.	Bakersfield	Tanks and Pipe
Consolidated Pipe Co.	Bakersfield	Sheet Iron
Allard Furniture Co.	Bakersfield	Building Lumber
Ensco Company,	Taft	---
West Side Coco Cola Bottling Works	Taft	Beverages
Taft Soda Works	Taft	Beverages

<u>Consignee</u>	<u>Location</u>	<u>Commodity</u>
A. H. Carpey	Bakersfield	Hardware and Agricultural Implements.
King Lumber Co.	Bakersfield	Stucco, Rock Products and Brick
Builders Supply Co.	Bakersfield	Plumbing Supplies
Kern Valley Packing Co.	5 miles south of Bakersfield	Commercial fertilizer and Tallow (Hauled to Los Angeles)

H. S. Simmons, residing at Bakersfield, testified that he was employed as a driver for the Willhour Trucking Company for about one year, leaving its employment in April, 1927; that he operated trucks for defendant all over Kern County and between Los Angeles and Bakersfield or Taft. Witness hauled cotton from Bakersfield to Los Angeles Harbor and on return loads had picked up shipments in Los Angeles destined to Bakersfield and Taft, some with final delivery at oil field leases in Kern County; and that these shipments consisted of various commodities, usually in truck load lots, and were picked up at the shipper's place of business, no terminal being maintained in the city of Los Angeles. Witness, when employed as a driver for defendant hauled everything that was offered for movement and only refused one load when a prospective customer complained that the rate was too high. Witness operated on no regular schedule and knew nothing regarding contracts existing between defendant and shippers or consignees. Approximately eighty percent of the hauling on trucks operated by this witness was between Los Angeles and Bakersfield or Taft.

L. V. Branch, employed as a traffic solicitor for complainants, testified as to his knowledge of the business transacted by defendant, his acquaintance with shippers and some of the consignees; that the operation of defendant had affected the business

of complainants in that many shippers would have used the service of complainants if defendant had not been operating; and that a representative of the Standard Oil Company, when solicited for business, had told witness he could secure lower rates from defendant on lots of two tons or over than were available by complainants' service and lawfully filed rates.

Walter Willhour, defendant, testified that he often hauled shipments before the rate was agreed upon, some of his hauling being done on open account with his customers; that all rates were made as private contracts; that shipments had been refused, specifically a load of horses from Labec and at other times when weather conditions rendered shipments liable to injury; that operation was not conducted on any regular schedule; that no terminal was maintained in the city of Los Angeles; that some trips between Bakersfield and Los Angeles had been made via Lancaster and Mojave; and that hauling had been done to practically all cities in the San Joaquin Valley, sometimes to San Francisco. Witness personally made practically all rates, which in some instances were lower and in others higher than those of authorized carriers. Operation has been conducted since June, 1925, under the fictitious name of Willhour Trucking Company.

We have carefully considered the evidence herein, particularly that of defendant Willhour as to the alleged contracts under which the handling has been performed. It appears that all such contracts were verbal, were made for no specific period of time or for any specific volume or amount of tonnage, and carried no obligation on the part of the shipper to patronize the defendant's service.

The offer of the defendant to the public in the transportation of shipments and his practice in the past is set forth in the portion of his testimony which follows.

Question

***; in the conduct of your business heretofore, Mr. Willhour, have you ever refused to haul anything for any one, with this exception - that the commodity is not of the nature that you thought was liable to be damaged by the elements or the demand came upon you at a time, when by reason of having other work in progress, you would not be able to meet the requirements and demands of the shipper, that rate being satisfactory in every instance?

Answer

If the quantity offered was not sufficient I would refuse the business, yes sir.

Question

I am asking you to assume a condition where there is a sufficient volume of business; in other words, that the shipments came in truckload lots, and were not shipments which might be damaged by the elements, when you were not tied up with other hauling; in other words, you have your trucks free to handle this business, have you ever refused anything under conditions of that kind?

Answer

I don't think I would, working as a general trucker, I am open to work where^{ever} it presents itself.

Question

In other words for material offered in truckload lots between here and Bakersfield and Taft, if the price was satisfactory, and the commodity was such that you could handle it without any possible damage from the elements or anything of that kind, you would handle all you could get hold of, is that the fact?

Answer

Yes, sir.

From the record herein we hereby conclude that defendant Walter Willhour has heretofore operated and now is operating, a truck line as a common carrier of property, for compensation, over the public highways between fixed termini and over regular routes without first having secured a certificate of public convenience and necessity therefor from this Commission in accordance with the provisions of Chapter 213, Statutes of 1917, and effective amendments, and that said defendant should be ordered immediately to cease such operation unless and until a certificate of public con-

venience and necessity shall have been granted following application therefor.

We further conclude that the record herein shows willful and continued violation by defendant Walter Willhour of the provisions of Chapter 213, Statutes of 1917, and effective amendments and for such reason the prayer of complainants for an order canceling and revoking the certificate of public convenience and necessity heretofore granted to said Walter Willhour by this Commission's Decision No.14939 on Application No.10891 should be granted and the order herein will so provide.

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 defendant Walter Willhour, operating under the fictitious name and style of Willhour Trucking Company, be and he is hereby directed to immediately cease the operation of an automobile trucking service as a common carrier of property, for compensation over the public highway between the fixed termini of Los Angeles and Los Angeles Harbor on the one hand and Bakersfield and Taft on the other hand, over the regular routes known as the Ridge Route and via Lancaster and Mojave.

IT IS HEREBY FURTHER ORDERED that the operative right heretofore granted to Walter Willhour by this Commission's Decision No.14939 on Application No.10891, as decided May 15, 1925, for the transportation of cotton, cottonseed, cotton products and cotton gin

supplies between Bakersfield, Weed Patch, Arvin, Lamont, Magunden, Shafter, Wasco, Mc Farland, Delano, Corcoran, Fresno, Porterville, Mendota, Firebaugh, Madera and Merced, and Los Angeles and Los Angeles Harbor, and between Corcoran and Fresno or Bakersfield over the route via main traveled roads to and from the state highway between Merced and Los Angeles, thence Los Angeles and Los Angeles Harbor, be and the same hereby is revoked and annulled.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be and he hereby is directed to forward a certified copy of this order to the Board of Public Utilities and Transportation of the City of Los Angeles and to the District Attorneys of the Counties of Kern and Los Angeles.

The effective date of this order is hereby fixed as twenty (20) days from the date hereof.

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

Leon Whitall

C. L. Seaver

Ernest Scott

Thos. L. Curtis

W. J. Cline
COMMISSIONERS.