

ORIGINAL

Decision No. 20421

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application)
of RICE TRANSPORTATION COMPANY, a)
corporation, for certificate of)
public convenience and necessity to)
operate auto truck transportation)
service between Los Angeles, Ingle-)
wood, Hawthorne, El Segundo, Man-)
hattan, Hermosa, Redondo Beach and)
intermediate points and 5 miles)
either side of highway traveled.)

APPLICATION NO. 14530.

R. J. STADLER (S. & M. Transfer &)
Storage Company), and F. A. ODER)
(Redondo-Inglewood & Los Angeles)
Transfer),)
Complainants,)

CASE NO. 2580.

vs.

RICE TRANSPORTATION COMPANY, a cor-)
poration, and M. H. HOLMAN (Hart's)
Express),)
Defendants.)

In the Matter of an Investigation)
on the Commission's own motion into)
the practices and operations of)
RICE TRANSPORTATION COMPANY, a cor-)
poration, between Los Angeles and)
Santa Monica and intermediate)
points.)

CASE NO. 2594.

In the Matter of an Investigation)
on the Commission's own motion into)
the practices and operations of)
DONOVAN TRANSPORTATION CO., a cor-)
poration, between Long Beach and)
Santa Monica and intermediate)
points.)

CASE NO. 2595.

Richard T. Eddy, for Applicant.

D. Brookman, for United Parcel Service of Los Angeles, Inc., Protestant in Application No. 14530 and Intervenor in Cases 2580, 2594 and 2595.

H. J. Bischoff, for Motor Service Express, Inc., R. J. Stadler ("S & M Transfer & Storage Company") and F. A. Oder ("Redondo-Inglewood-Los Angeles Transfer"), Protestants in Application No. 14530 and Interveners in Cases 2580, 2594 and 2595.

C. A. Bridge, for Donovan Transportation Company, Protestant in Application No. 14530 and Respondent in Case 2595.

BY THE COMMISSION:

O P I N I O N

Rice Transportation Company, a corporation, has applied to the Railroad Commission for a certificate of public convenience and necessity to extend its trucking service between Los Angeles and Redondo Beach via Inglewood and intermediate points.

R. J. Stadler, operating under the fictitious name of S & M Transfer & Storage Company, and F. A. Oder, operating under the name of the Redondo-Inglewood-Los Angeles Transfer, have filed complaint against the Rice Transportation Company and M. H. Holman, operating under the name of "Hart's Express", alleging illegal operation between Los Angeles and Inglewood and other points, and seeking an order from this Commission requiring said defendants to desist therefrom.

In Case No. 2594 and Case No. 2595 the Railroad Commission instituted an investigation on its own motion into the practices and operations of the Rice Transportation Company and

the Donovan Transportation Company, and in each case respondent was cited to show cause why its certificate should not be revoked because of alleged unlawful operation.

A public hearing herein was conducted by Examiner Williams at Los Angeles, at which time all matters, by stipulation of the parties, were consolidated for hearing and decision.

The application of Rice Transportation Company was based upon the fact, admitted by all parties, that the Donovan Transportation Company, owned by F. A. Oder, had refused to carry out joint tariffs with the applicant in the transportation of property between Venice and Redondo. It was admitted that this tariff had been duly established by the Commission and is still in force.

Formerly the Donovan Transportation Company line was under lease to the Rice Transportation Company and joint operation was conducted over the route between Venice and Redondo. The lease expired January 1, 1928, and thereafter controlling interest was acquired by Oder. It is admitted that Rice Transportation Company had tendered to this carrier shipments intended for Redondo and points intermediate to Venice, but that such shipments had been refused on the ground that the lease had expired. At the outset of the hearing these facts were admitted by the parties and applicant stated that the only purpose of making the application was to gain a means of delivery into the Redondo territory, but that if Oder was willing to receive the business under joint tariff, the application would be withdrawn. Whereupon Oder expressed

a willingness to abide by the joint rates, which he stated he had misunderstood and believed to have been vitiated by the expiration of the lease; and upon this assurance, applicant moved the dismissal of its application.

The complaint of Stadler and Oder against the Rice Transportation Company and M. H. Holman was heard without formal answer having been made by defendants and under stipulation that defendants waived the right to file an answer, as the same matters were involved in formal complaints for which separate investigations had been instituted by the Commission and which were combined in the present proceeding.

According to the testimony of S. B. Cowan, president of Rice Transportation Company, and M. H. Holman, operating Hart's Express, it appears that shipments tendered to the Rice Transportation Company for delivery at Inglewood, Hawthorne, El Segundo and Redondo were turned over to defendant Holman to transport to the points named, although two carriers, Stadler and Oder, were conducting services under the authority of this Commission, and were ready, willing and able to transport such shipments at their tariff rates. It appears further from the testimony that Holman had access to the terminal of the Rice Transportation Company at Los Angeles, that shipments were delivered for him at this point, that he solicited business in both Los Angeles and Inglewood, and that to all intents and purposes he was receiving preference over the legally established lines. It further appears from the testimony of Holman that he operates three trucks into Los Angeles, that he averages trips between Inglewood and Los Angeles

five days each week, and that he obtains practically all of his shipments from Los Angeles at the depot of the Rice Transportation Company. He testified further that he has no certificate from this Commission and no interurban permit from the Board of Public Utilities and Transportation of the city of Los Angeles; also that his rates are from 35 to 45 cents per 100 pounds, and that 50 per cent of his entire business is composed of transportation between Inglewood and Los Angeles and vice versa. Bills of lading introduced by complainants indicate that this defendant's operation was facilitated by defendant Rice Transportation Company in the making of bills of lading and freight bills at this company's terminal, and that for this service no charge was made on Holman. It was further testified that this arrangement has been in existence between Holman and Rice Transportation Company since June, 1928.

R. J. Stadler, complainant, testified that he has conducted an operation between Los Angeles, Inglewood and Redondo under certificate of this Commission since 1918; that his service is daily except Sunday; that he has depots in Los Angeles, Inglewood and Redondo; that he has a free pick-up zone in Los Angeles of the usual dimensions of those of other carriers; that he has four trucks and one trailer used in the service; that he operates two or more schedules daily, leaving Los Angeles at 6:00 a. m. and 3:00 p. m., with an additional service, if necessary, at noon.

F. A. Oder, operating the Redondo-Inglewood-Los Angeles Transfer, testified that he has been operating this line over five years, that he has two schedules daily to all points, that he has four trucks used in the service, and that he has depots in Los Angeles and Redondo.

The record herein clearly establishes that the service conducted by Holman has been that of a common carrier between Inglewood and Los Angeles, since last June; that it has been conducted without certificate from this Commission, and that it is not conducted exclusively within the limits of one city. Mr. Holman's own testimony is ample to establish these facts.

No direct testimony was taken with reference to the cases instituted by the Commission against the Rice Transportation Company and the Donovan Transportation Company, involving the continuance of their certificated authority. The only testimony as to these two matters was that produced in the complaint of Stadler and Oder against the Rice Transportation Company. Enough appears, however, to indicate that defendant Rice Transportation Company facilitated the establishment of an illegal service by Holman by permitting him to establish his Los Angeles terminus at this carrier's depot and by receiving and turning over to him shipments which should have been tendered to the authorized carriers. The only excuse urged for this was that Holman's service was cheaper and better adapted to the business of the Rice Transportation Company than was that of the other carriers.

We do not believe the facts produced at this hearing justify the penalty of revocation of the Rice Transportation Company's certificate, although this defendant's action in this respect was highly reprehensible. The service maintained by this carrier is of value to the public and there is no complaint against the efficiency of the service as such. This

carrier is hereby admonished, however, that such action on its part is aiding and abetting an illegal operation and places it in peril not only of revocation of its certificate but of other penalties provided in the Auto Stage and Truck Transportation Act. Because the carriers showed a spirit of conciliation at the time of the hearing and expressed a desire to abide by the strict letter of the law in future, we believe the case against Rice Transportation Company should be dismissed and the order following this opinion will so provide.

The Donovan Transportation Company, of which Oder owns the controlling interest, was also at fault in refusing to carry, at joint rates, shipments tendered to it by Rice Transportation Company, but for reasons similar to those stated in the preceding paragraph we do not deem the circumstances sufficient to justify revocation of this defendant's certificate. This carrier should be admonished, however, that the proper place to determine questions of responsibility and rights is with this Commission, and not on assumptions of the carriers.

In addition, this Commission has, by its decision on Application No. 15125, authorized the transfer of the properties of the Oder line (Redondo-Inglewood-Los Angeles Transfer) to S. B. Cowan, who also controls the Rice Transportation Company, and this action on the part of these contesting parties readjusts the situation, we believe, to the benefit of the public.

O R D E R

Rice Transportation Company, a corporation, having made application to the Railroad Commission for authority to extend its trucking service between Los Angeles and Redondo Beach, a public hearing having been held, at which time applicant moved the dismissal of its application,

IT IS HEREBY ORDERED that the application herein be and the same is hereby dismissed.

R.J. Stadler and F.A. Oder having made complaint against the Rice Transportation Company and M.H. Holman, operating under the fictitious name of "Hart's Express", alleging illegal operation on the part of both defendants, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, basing its findings upon the facts set forth in the opinion preceding this order, now finds as a fact that the operations conducted by M.H. Holman, defendant herein, between Los Angeles and Inglewood and other points, constitute common carrier service, between fixed points and over a regular route, X and it further finds that such service is conducted without certificate from this Commission, and is not conducted exclusively within the limits of one city; therefore,

IT IS HEREBY ORDERED that the defendant herein, M.H. Holman, operating under the fictitious name of Hart's Express, desist forthwith from such illegal operation; and

IT IS HEREBY FURTHER ORDERED that a copy of this order be certified by the secretary of this Commission and filed with

the District Attorney in and for the County of Los Angeles,
California.

IT IS HEREBY FURTHER ORDERED that Case No. 2594,
involving an investigation on the Commission's own motion
into the practices and operations of Rice Transportation
Company, and Case No. 2595, involving an investigation into
the practices and operations of the Donovan Transportation
Company, be and the same are hereby dismissed.

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

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

Leon Whelan

C. S. Sewey

Ernest J. Coe

W. S. Lott

W. H. Linn

COMMISSIONERS.