

Decision No. 22274

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the Commission's own motion into the operations and practices of ROBERT W. LACEY, COUGHLAN BROS., and E. SUNBERG, as individuals or under the fictitious names of CALIFORNIA FREIGHT FORWARDERS, RED LINE EXPRESS OF LOS ANGELES, RED LINE EXPRESS OF SAN FRANCISCO or LIGHTNING EXPRESS in the transportation of property over the highways of the State of California.

ORIGINAL

Case No. 2739

In the Matter of the Application of ERNEST SUNBERG for a certificate of public convenience and necessity to operate through van-truck service between San Francisco and Los Angeles.

Application No. 16027

- Douglas Brookman for Applicant in Application No. 16027.
- A. L. Hammel and Edward Stern and L. P. Bergman, for Railway Express Agency, Inc., Protestant in Application No. 16027.
- W. S. Johnson, for Southern Pacific Company, Protestant in Application No. 16027.
- Reed J. Bekins, for Bekins Van Lines, Inc., Protestant in Application No. 16027.
- F. W. Hodge, for San Joaquin Valley Transportation Company and Valley Motor Lines, Protestants in Application No. 16027.
- G. R. Anderson, for Pacific States Express, Protestant in Application No. 16027.
- B. F. Mc Kibben, for Pacific States Express, Protestant.

CARR, Commissioner -

O P I N I O N

Case No. 2739 is an investigation instituted by the Commission, on its own motion, into the operations and practices of Robert W. Lacey, Coughlan Bros., and E. Sunberg as individuals, or under the fictitious names of California Freight Forwarders, Red Line Express of Los Angeles, Red Line Express of San

Francisco or Lightning Express in the transportation of property for compensation over the highways of the state, for the purpose of determining whether or not said operations or practices are those of an express corporation within the purview of the Public Utilities Act or those of a transportation company as defined by the Auto Stage and Truck Transportation Act. Application No. 16027 is an application by Ernest Sunberg for a certificate of public convenience and necessity to operate a through van truck service between Los Angeles and San Francisco for the transportation of property consigned to him by California Freight Forwarders.

Public hearings were held, the matters consolidated, evidence taken and an order of submission made.

Early in the hearings it developed that Lacey, operating under the fictitious name of California Freight Forwarders, had built up and was conducting a substantial business, the status of which was not entirely clear, lying as it did in the twilight zone between the private business of a freight forwarder and the public business of an express company. No element of concealment or bad faith appeared.

The necessity of determining the character of these operations, whether private or public, has been obviated by the voluntary filing by Lacey of tariffs as an express company, thus giving to his business a public cast, and by Sunberg, who has been transporting the freight handled by Lacey under private contract, applying for a certificate to transport between Los Angeles and San Francisco the express matter delivered to him by Lacey. Such certification of Sunberg finds precedent in re Walkup Drayage & Warehouse Company, Decision No. 20279, dated September 23, 1928 and issued on Application No. 14791; Southern Pacific Motor Transport Company, Decision

No. 21275, dated June 24, 1929 and issued on Application No. 15471.

The fact that Lacey has gradually built up a substantial business indicates that his operation fills a need in the complicated transportation system of the State and which, under the doctrine of the cases cited, may appropriately be allowed to continue as a public business under regulation by the certification of Sunberg.

Ernest Sunberg is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

I recommend the following form of order:

#### ORDER

The above entitled matters having been duly heard and an order of submission made, and the Commission being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by Ernest Sunberg of a through automobile truck service between San Francisco and Los Angeles, such service to be limited to the transportation of property consigned to it by Robert W. Lacey, operating an express corporation under the fictitious name and title of California Freight Forwarders, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such a service be and it is hereby granted to Ernest Sunberg, subject to the following conditions:

1- That no service shall be given between intermediate points between San Francisco and Los Angeles nor between the terminals and intermediate points and that Sunberg shall not accept for transportation commodities requiring refrigeration, fresh vegetables or cut flowers.

2- That no pick-up or delivery service shall be performed by said Sunberg in either the City of Los Angeles or the City and County of San Francisco, the operating right herein granted authorizing service only between main terminal depots of said California Freight Forwarders.

3- That applicant Sunberg shall within ten (10) days from the date hereof file an acceptance of the certificate herein granted.

4- That within twenty (20) days from the date hereof applicant shall file with the Railroad Commission tariffs and time schedules in conformity with Exhibit A, attached to the application herein, and Paragraph V of said application, or tariffs and time schedules satisfactory in form and substance to the Railroad Commission.

5- The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

6- No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that Case No. 2739 be and the same is hereby dismissed.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

The above opinion and order are hereby made the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2nd day of

April, 1930.

C. Leavy  
Leon C. Kelly  
W. D. Curtis  
M. L. ...  
COMMISSIONERS.