

Decision No. 24703

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

BOULEVARD EXPRESS, INC., a corporation,

Complainant,

-vs-

A. L. MOCKENHAUPT, LOUIS L. MOCKENHAUPT;
A. L. MOCKENHAUPT and LOUIS L. MOCKENHAUPT,
doing business under the fictitious name
and style of "B & L TRUCK & TRANSFER CO.";
FIRST DOE, and SECOND DOE,

Defendants.

Case No. 3136.

ORIGINAL

Wallace K. Downey for Complainants,
Richard T. Eddy for Defendants,
H. J. Bischoff for Coast Truck Line,
interested parties.

BY THE COMMISSION:

O P I N I O N

Boulevard Express, Inc., a corporation, complainant in the above entitled proceeding, complains and alleges in substance and effect that A. L. Mockenhaupt, Louis L. Mockenhaupt; A. L. Mockenhaupt and Louis L. Mockenhaupt, doing business under the fictitious name and style of "B & L Truck & Transfer Co.", have been operating for a long time past auto trucks as a common carrier in the business of transporting property for compensation over the public highways of the State of California between Los Angeles and San Diego and intermediate points without having obtained from the Railroad Commission of the State of California a certificate of public convenience and necessity authorizing such operation.

The defendants, by their written answer filed herein, deny generally and specifically all the material allegations contained in said complaint and allege further that they and each of them are operating as private carriers under contract.

Public hearings on this proceeding were conducted by Examiner Satterwhite, ^{at Los Angeles} the matter was duly submitted and is now ready for decision.

Motor Freight Terminal Company, upon motion of complainant, was substituted as complainant in the place and stead of Boulevard Express, Inc. by reason of the fact that the Motor Freight Terminal Company has succeeded to the operative rights and properties of said Boulevard Express.

Complainant called A. L. Mockenhaupt and several other witnesses in support of its complaint against the defendants.

For several years last past defendants have been engaged in the truck transportation business between Los Angeles and many points and places in Southern California. The evidence shows that during the year 1931 and up to the present time the defendants have conducted a truck transportation business between Los Angeles and San Diego and certain intermediate points and the volume of tonnage has been so large that almost daily trips have been made in order to meet the requests of at least seven large business firms for whom defendants have been hauling. 18 trucks and 4 trailers are used by defendants and they practically operate daily between Los Angeles and San Diego. Defendants employ a solicitor or "contact man" by the name of R. H. Brown and considerable of their business is obtained by solicitation.

The record shows that for the past year the following firms have been the principal large customers of the defendants:

Great Atlantic & Pacific Tea Company,
Safeway Stores, Inc.,
Western Auto Supply Company,
Cudahy Packing Company,
Young's Market Company,
Van Camp Sea-food Company,
Knudsen Creamery Company.

The trucking operations of defendants have been carried on under written agreement with three of the foregoing firms and under verbal arrangements with the others.

The Great Atlantic & Pacific Tea Company, a large chain store, has been patronizing under verbal understanding the trucking services of defendants since February, 1931, for the transportation of groceries, fruit, vegetables and other perishables to San Diego from its warehouse at Vernon.

The shipments have been daily and generally in truck load lots and on return trips empty containers have been hauled.

Safeway Stores, Inc., another chain grocery store, used the services of defendant in November and December, 1931, to transport large quantities of merchandise from its warehouse at Vernon to various retail stores in several towns and cities in Orange County, many of which towns are intermediate between Los Angeles and San Diego. Six trucks of defendants were operated in this hauling on a continuous daily service while it lasted.

Defendants have been hauling daily the products of the Cudahy Packing Company since April 1, 1931, between Los Angeles and San Diego consisting largely of fresh meats and packing house products. The daily loads south-bound average about six tons. On north-bound trips hides and pelts have been carried from the Cudahy plant at San Diego.

Canned fish has been transported for many months last past by the defendants from the Van Camp Sea-food Company between Terminal Island at Los Angeles Harbor and its plant at San Diego. The shipments have moved on an average of two or three times a week and run from 5 to 40 tons, the average load being 12 to 15 tons.

Young's Market Company at Los Angeles, upon solicitation of defendant's representative R. J. Brown, during portions of October and November, 1931, shipped several consignments of freight consisting of different perishable commodities to its market in San Diego. It appears that during the rendition of this truck service for Young's market there were some negotiations looking toward an exclusive contract which was never consummated.

During the past four months defendants have hauled almost daily, except Sundays, for the Western Supply Company shipments to San Diego of auto accessories and supplies, tires, batteries and other miscellaneous commodities. The average weight of the shipments was about 1500 pounds. It appears that this shipper recently became dissatisfied in some manner with the services of defendant and discontinued its patronage.

Since April 1, 1931, the defendants have transported daily between San Diego and Los Angeles for the Knudsen Creamery Company all its dairy products, supplies and merchandise from and to its dairy plant in these two cities under a specific written contract. This contract embraces a definite period of three years and provides for the exclusive hauling by the defendants of all commodities and products moved by this creamery between Los Angeles and San Diego.

The record shows that the trucking operations of defendants have been carried on under written or oral agreements as above indicated on an "on call" service with the exception of the Knudsen Creamery Company. All of the trucking services of defendants have been rendered at a charge or rate quoted by defendants and accepted by the shippers during the period of service. The evidence further shows that, with the exception of the Knudsen Creamery Company, no time limit as to the period of service or volume of tonnage to be hauled was ever definitely agreed upon save and except that defendants' patrons had in several instances indicated their willingness to use the services of defendants as long as it proved satisfactory. The defendants have obviously been interested only in that portion of the shipping public whose shipments, either daily or less frequently, consist of a very substantial tonnage for the testimony indicates that its solicitation of business and trucking services have been confined primarily to those patrons or shippers whose shipments fairly or generally fall within the tonnage class. Defendants refusals from time to time to transport proffered freight has been based upon the fact that the shipments offered were small or that available equipment was not at hand.

We have carefully considered all the evidence in this proceeding and are of the opinion and hereby find as a fact that A. L. Mockenhaupt, Louis L. Mockenhaupt; A. L. Mockenhaupt and Louis L. Mockenhaupt, doing business under the fictitious name and style of "B & L Truck & Transfer Co." are operating as a transportation company and as a

common carrier within the meaning of Chapter 213, Statutes of 1917, as amended, between Los Angeles and San Diego and intermediate points without having first obtained a certificate of public convenience and necessity therefor.

O R D E R

Public hearings having been held in the above entitled proceeding, the matter having been duly submitted, and being now ready for decision,

IT IS HEREBY ORDERED that said defendants, A. L. Mockenhaupt and Louis L. Mockenhaupt, doing business under the fictitious name and style of "B & L Truck & Transfer Co.", immediately cease and desist from common carrier operations between Los Angeles and San Diego and intermediate points until they have obtained the requisite certificate of public convenience and necessity from this Commission.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission cause a certificated copy of this decision to be personally served upon A. L. Mockenhaupt and Louis L. Mockenhaupt, doing business under the fictitious name and style of "B & L Truck & Transfer Co." and that he shall cause certificated copies of this decision to be mailed to the District Attorneys of Los Angeles, San Diego and Orange Counties.

Dated at San Francisco, California, this 18th day of April, 1932.

W. A. Sawyer
Leon J. ...
W. A. ...
6. W. B. ...
Fred G. ...
Commissioners.