

Decision No. 25072

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

RAILWAY EXPRESS AGENCY, INC.,  
a corporation,

Complainant,

vs.

CONSOLIDATED PACKAGE SERVICE,  
H. P. MATTHEWS, 20th CENTURY  
DELIVERY SERVICE, INC., and  
LIGHTNING PARCEL DELIVERY CO.,  
and/or JAS. P. CORBETT, JR.,  
FIRST DOE, SECOND DOE, THIRD DOE,  
FOURTH DOE and FIFTH DOE, a cor-  
poration, and/or as individuals,  
doing business with or under the  
firm name of CONSOLIDATED PACKAGE  
SERVICE.,

Defendants.

**ORIGINAL**

Case No.3050.

In the Matter of the Application  
of H. P. MATTHEWS, doing business  
under the name and style of PACKAGE  
SERVICE BUREAU for a certificate  
of public convenience and necessity  
to operate a through motor truck  
service as a common carrier between  
San Francisco and Los Angeles for  
the transportation of property  
consigned to him by Consolidated  
Package service, an "express  
corporation", in the operation  
of its express service.

Application No.17479.

Edward Stern for Railway Express Agency, Inc.,  
complainant in Case 3050, and  
protestant in App.No.17479.Glensor, Clewe & Van Dine, by H.W.Glensor,  
Bacigalupi, Elkus & Salinger,  
by Frank B. Austin, and Hugh Gordon for  
applicant in App.No.17479 for defendants,  
Consolidated Package Service, H.P. Matthews  
and Lightning Parcel Delivery, in Case 3050.Sanborn, Roehl & Brookman, by Douglas Brookman,  
for California Motor Transport Company, Ltd., and  
California Motor Express; Intervenor in Cs.3050  
and protestant in Application No.17479.Guy V. Shoup and W. S. Johnson, for Southern Pacific  
Co., Intervenor in Case 3050 and protestant  
in App.No.17479.Jacob Maniss for Mission Orange, Inc., Intervenor in  
Case 3050.A.B.Roehl for California Motor Transport Co., Ltd., and Calif.  
Motor Express, Intervenor in Case 3050 and  
protestants in App.No.17479.

Thelen & Marrin, by Max Thelen, for Mrs. M. F. Hubler.

Orla St. Clair for Pacific Greyhound Lines.

BY THE COMMISSION:

O P I N I O N

Railway Express Agency, Inc., has filed a complaint against E. P. Matthews, Consolidated Package Service, 20th Century Delivery Service, Inc., Lightning Parcel Delivery Co., Jas.F. Corbett, Jr., First Doe, Second Doe, Third Doe, Fourth Doe and Fifth Doe, a co-partnership, a corporation, or as individuals, doing business with or under the firm name of Consolidated Package Service. Complainant alleges that defendants are operating a motor truck service for the transportation of freight and express between San Francisco and Los Angeles without authority of a certificate of public convenience and necessity as issued by this Commission as required by the statutory law. Complainant prays for an order compelling defendants to cease and desist from the alleged unlawful operation unless a certificate be obtained as required by the statutory law.

Defendants, Consolidated Package Service, E. P. Matthews, 20th Century Delivery Service, Inc., and Lightning Parcel Delivery Co. duly filed their answer to the complaint generally denying the specific allegations. 20th Century Delivery Service, Inc., also filed a separate answer denying the specific allegations of the complaint.

E. P. Matthews, doing business under the name and style of Package Service Bureau, has petitioned the Railroad Commission for a certificate of public convenience and necessity to operate a through motor truck service as a common carrier between San Francisco and Los Angeles for the transportation of property consigned to him by Consolidated Package Service, an "express corporation", in the operation of its express service. During the hearings the application was amended to transport property, in

full truck loads only, as a common carrier, for any portion of the public that might apply for such transportation between San Francisco and Los Angeles.

Public hearings on this complaint and application were conducted by Examiner Handford at San Francisco and Los Angeles, the matters were duly consolidated for the receipt of evidence and for decision, were duly submitted upon the filing of briefs and are now ready for decision.

H. P. Matthews, one of the defendants and the applicant herein, testified that he was the sole owner of Package Service Bureau and owned two-thirds of the Consolidated Package Service, a co-partnership with Mrs. M. F. Hubler, the owner of one third interest. About 400 to 500 shippers and receivers of freight patronize the Consolidated Package Service, shipments being picked up and delivered in San Francisco by the Lightning Parcel Delivery, Inc., and in Los Angeles by the 20th Century Delivery Service. The line haul between San Francisco and Los Angeles is performed by trucks owned and operated by Miss Elare Morris of Los Angeles under a contract or agreement dated April 6, 1931, said contract being made with Package Service Bureau. The contract calls for the furnishing of daily overnight truck service from Los Angeles to San Francisco, and from San Francisco to Los Angeles, to be paid for at the following rates:

Sixty Thousand (60,000) pounds to be hauled in five (5) round trips for five hundred (500.00) dollars. The next ten thousand (10,000) pounds to be hauled at seventy cents (70¢) per hundred pounds, and all over seventy thousand (70,000) pounds at fifty cents (50¢) per hundred pounds.

The contract or agreement guarantees to Miss Morris the sum of one hundred (100) dollars for each round trip.

Under a memorandum of agreement dated January 2, 1931, the Consolidated Package Service agrees with the Package Service

Bureau that the latter shall transport merchandise between the terminals at San Francisco and Los Angeles at the following rates:

Twenty (20.00) dollars per ton, except on drugs, which will be at the rate of eighty cents (80¢) per cwt., or sixteen (16.00) dollars per ton.

Consolidated Package Service has filed tariffs with this Commission same covering the transportation of property between Los Angeles and San Francisco as well as other points in the State of California. The current tariff is C.R.C.No.3, as filed July 14, 1931, and effective August 14, 1931. This tariff is filed as being the tariff of an "express corporation" engaged in the forwarding of property between the points designated in the tariff. The term "express corporation" as defined by paragraph (k) of Section 1 of the Public Utilities Act, is as follows:

"The term 'express corporation' when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in or transacting the business of transporting any freight, merchandise or other property for compensation on the line of any common carrier or stage or auto stage line within this state."

It appears from the evidence herein that the business of the Consolidated Package Service is conducted as regards the transportation between the terminals of Los Angeles and San Francisco by the trucks of Elare Morris, who claims to have a contract with the Package Service Bureau (E.P. Matthews, sole owner). Elare Morris is not a common carrier, certified as such under the decisions of this Commission, nor is the Package Service Bureau. The operation which has heretofore and is now being rendered in the transportation of property between Los Angeles and San Francisco by the Consolidated Package Service is not that of an "Express corporation" in that property moves by unauthorized

carriers possessing no authority from this Commission. The order herein will direct that H.P. Matthews and Miss Elare Morris cease and desist from the present method of operating (Southern Pacific Co. et al vs. C.P. Stanbrough et al Decision No. 25039 dated August 6, 1932). At one of the hearings the name of Elare Morris was substituted for defendant Second Doe and due service of the complaint was made on said substitute defendant.

H.P. Matthews, doing business under the firm name and style of Package Service Bureau, applies for a certificate of public convenience and necessity to operate an overnight freight service by auto truck between San Francisco and Los Angeles, proposing to transport truck load shipments for the Consolidated Package Service and also truck load quantities for the general public. Applicant proposes to charge rates as set forth in "Exhibit A" attached to his amended application; to operate daily except Sundays and holidays; and to use as equipment motor trucks of the latest type and of sufficient capacity to meet all requirements of the proposed service. Applicant alleges that he now has available and proposes to use in commencing the proposed service, two auto trucks, each of manufacturer's rated capacity of 9000 lbs. and that he is able to furnish such additional equipment as may be needed by the demands of the shipping public.

Applicant relies, as justification for the granting of the desired certificate upon the following alleged facts: That an expeditious overnight daily express service by motor express is required between San Francisco and Los Angeles; that no such service as that proposed is now available or being rendered by any common carrier; that the service as now being rendered by common carriers is inadequate to meet the public needs in that it is not expeditious or is maintained at rates which are higher than those proposed by the applicant or which shippers are willing to pay or is subject to service restrictions which prevent its use

by the shipping public; that a large volume of tonnage is available which is now moved by shippers own trucks or by private contract, which would be moved by applicant under the proposed service; that applicant has received numerous requests from shippers and merchants for the type of service herein proposed and has been assured of a large volume of tonnage to be moved under the proposed service, which tonnage is not now handled by any other common carrier service.

H.P. Matthews, applicant herein, testified in support of the application. The majority of the business to be secured is that now handled by the Consolidated Package Service under the arrangement as hereinbefore outlined. No testimony was presented other than by users of Consolidated Package Service, and that principally by users of the Consolidated Package Service, who are located at Los Angeles. No witness was presented to testify as to the applicant's proposal to transport truck load lots for any shipper.

The granting of the application is protested by presently authorized carriers between San Francisco and Los Angeles, particularly the Railway Express Agency, Inc. These carriers claim that there is no present inadequacy of service between the terminals and that the present facilities are amply sufficient to care for all business that may be offered.

Two witnesses for Railway Express Agency, Inc., testified as to the facilities and pick-up and delivery service offered at San Francisco and Los Angeles, also 23 public witnesses testified that they used the service of the protestant, Railway Express Agency, Inc., and found the service to be satisfactory. These witnesses have no complaint as to rates and no need for additional service, such as has been proposed by the applicant.

We have carefully considered all the evidence as shown by the voluminous record in this proceeding. Outside of the testimony of the applicant there has been no evidence presented that the public need or would use the service if a certificate were to be granted. The public witnesses called were all patrons of the Consolidated Package Service, which is not the applicant herein. There has been no inadequacy shown as to the present facilities available by regular common carriers now operating between Los Angeles and San Francisco, nor any desire, other than that of the applicant personally, for the institution of motor truck service as here proposed. While applicant, due to his intimate connection with Consolidated Package Service, may have by active solicitation, built up in the past a considerable forwarding business between Los Angeles and San Francisco, the need for additional truck service or inadequacy of the present facilities has not been shown.

The Commission has frequently stated, in decisions on applications of this nature, that the desire of an applicant to enter the business of a common carrier by auto truck is not justification for the granting of a certificate. Public convenience and necessity must be shown by proper evidence. We do not find that this has been done in these proceedings and the application will, therefore, be denied.

An order of this Commission finding an operation to be unlawful and directing that it be discontinued is in its effect not unlike an injunction issued by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vests the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a party is adjudged guilty of contempt, a fine may be imposed in the amount of \$500.00, or he may be imprisoned for five (5) days, or both. C.C.P. Co. Sec. 1218; Motor Freight

Terminal Co. v. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 8 of the Auto Truck Act (Statutes 1917, Chapter 213), a person who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding \$1000.00, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. Likewise a shipper or other person who aids or abets in the violation of an order of the Commission is guilty of a misdemeanor and is punishable in the same manner.

The Secretary of the Commission will be directed to mail certified copies of this opinion and order to shippers who appeared as witnesses in the course of the proceeding and to other shippers who are known to be using the service and facilities of defendants, upon the said opinion and order becoming final.

#### O R D E R

Public hearings having been held on the above entitled proceedings, which were duly consolidated, the matters having been duly submitted on briefs of interested counsel, and the Commission being now fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA  
HEREBY FINDS AS A FACT that Elare Morris and H.P. Matthews are operating as a common carrier of property, for compensation, over the public highways between San Francisco and Los Angeles without first having obtained a certificate of public convenience and necessity for such operations.

IT IS HEREBY ORDERED that Elare Morris and H.P. Matthews, operating under the fictitious name of Package Service Bureau, be and they are hereby ordered to immediately cease and desist from the operation of auto trucks for the transportation of property for compensation, over the public highways between San Francisco



and Los Angeles, until a proper certificate of public convenience and necessity shall have been obtained therefor.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be and he is hereby directed to cause a certified copy of this decision to be personally served upon Elare Morris and H.P. Matthews; that he shall cause certified copies of this decision to be mailed to the District Attorney of the City and County of San Francisco, to the District Attorneys of the counties of San Mateo, Santa Clara, San Benito, Monterey, San Luis Obispo, Ventura and Los Angeles, and to the Board of Public Utilities and Transportation of the City of Los Angeles, and to the Department of Public Works, Division of Motor Vehicles, at Sacramento, California, and, upon this decision becoming final, he shall cause certified copies thereof to be mailed to shippers who appeared as witnesses in the course of this proceeding and to other shippers who are known to be using the service and facilities of defendant.

IT IS HEREBY FURTHER ORDERED that this complaint, insofar as it refers to defendants Consolidated Package Service, 20th Century Delivery Service, Inc., Lightning Parcel Delivery Co., Jas. P. Corbett, Jr., First Doe, Third Doe, Fourth Doe and Fifth Doe, a corporation, be and the same is hereby dismissed.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity do not require the operation by H.P. Matthews, doing business under the name and style of Package Service Bureau, of an automobile line as a common carrier of property between San Francisco and Los Angeles.

IT IS HEREBY ORDERED that Application No. 17479 be and the same hereby is denied.

The effective date of this order shall be twenty(20) days after the date of personal service upon defendants, Elare Morris and E.P. Matthews, as hereinabove directed.

Dated at San Francisco, California, this 15<sup>th</sup> day of August, 1932.

W. H. Keenan  
Leon Whiskey  
M. J. Lee  
W. B. Harris  
Fred G. Stewart  
COMMISSIONERS.