

Decision No. 25960.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Suspension by the)
Commission on its own motion of Local)
Freight Tariff No. 1, C.R.C. No. 1 of)
FRANK WONG DUN and PON TIMOTEY WAI, as)
copartners, doing business under the)
firm name and style of CANTON EXPRESS)
COMPANY.)

Case No. 3505.

Oscar T. Barber and Percy A. Smith, for Canton
Express Company, respondent.

T. C. McGettigan, for China Draying Company.

Gwyn H. Baker, for Merchants Express & Draying
Company, Interurban Express Corporation,
Kellogg Express Company, United Transfer,
East Bay Drayage and Warehouse Company,
Peoples Express Company, and Haslett Ware-
house Company, protestants.

BY THE COMMISSION:

O P I N I O N

Frank Wong Dun and Pon Timothy Wai, doing business un-
der the firm name and style of Canton Express Company (herein-
after referred to as the Canton Express), filed with this Com-
mission February 3, 1933, to become effective March 10, 1933,
its Local Freight Tariff No. 1, C.R.C. No. 1, naming rates,
rules and regulations for the transportation of freight between
San Francisco and Oakland, Alameda, Emeryville and Berkeley.
It appearing from the records of the Commission that the re-
spondents have never obtained a certificate of public convenience

and necessity as required by Section 5 of Chapter 213, Auto Stage and Truck Transportation Act, an order was issued February 14, 1933, suspending the tariff.

A public hearing was had before Examiner Geary at San Francisco on March 13, 1933, and the matter submitted.

The testimony showed that the Canton Express had its origin in the year 1909, when it performed a service between San Francisco and the Alameda County points with horses and wagons, and that during the entire period to date it has functioned under the name of the Canton Express Company. Following the introduction of self-propelled vehicles the organization acquired at different times five trucks, but today, due to the business depression, is operating only one small truck. The documentary files of respondent are most complete and show the operating details over a period of 20 years, including such items as the purchase of trucks, records of repairs to the trucks, manifests of the freight handled, etc. The commodities transported consist mainly of Chinese merchandise, and the consignors and consignees are people of that nationality who speak the Chinese language and follow their fixed customs. Freight for other than Chinese has been and will be accepted by the Canton Express, but it is not solicited. A schedule of one round trip a day is maintained, leaving San Francisco in the morning and Alameda and Oakland in the afternoon.

Frank Wong Dum, the originator of the Company, has been continuously operating the trans-bay service, while his partner, Pon Timothy Wai, entered the organization in the early part of February in the year 1917. Respondents filed an affidavit dated February 2, 1933, reciting that prior to May 10, 1917 (effective date of the Auto Stage and Truck Transportation Act) and at all

shows that on May 10, 1917, it was actually operating in good faith as a common carrier by truck between San Francisco and Oakland, Alameda, Emeryville and Berkeley. The prescriptive right required by the statute has been definitely proven by the record in the instant proceeding, and the mere elimination of an investment partner or partners does not void the existing right to operate. We are of the opinion and find that said Frank Wong Dun and Pon Timothy Wai, operating under the fictitious name of the Canton Express Company, should be authorized to maintain the services between the communities in question. The tariff designated as Local Freight Tariff No. 1, C.R.C. No. 1, offered February 3, 1933, will be accepted as having been legally filed, and the proceeding will be discontinued.

O R D E R

A public hearing having been held in the above entitled proceeding, and the matter having been submitted,

IT IS HEREBY FOUND AS A FACT that Frank Wong Dun and Pon Timothy Wai, doing business under the firm name and style of Canton Express Company, were on May 10, 1917, and continuously thereafter operating as a common carrier trucking service between San Francisco and Oakland, Alameda, Emeryville and Berkeley and as such will be permitted to continue the service under proper tariffs.

IT IS HEREBY ORDERED that in all other respects this proceeding be and it is hereby dismissed, and our suspension order dated February 14, 1933, be vacated and set aside.

Dated at San Francisco, California, this 22nd day of May, 1933.

C. C. Seaver
Leon A. ...
W. A. ...
W. B. ...
...
Commissioners.