

Decision No. 26302

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

RICE TRANSPORTATION COMPANY,
a corporation,

Complainant,

v.

Case No. 3437

L. R. KAGARISE, doing business
as Keystone Express System, and
LOUIS M. GOODMAN, doing business
as Goodman Delivery Service,

Defendants.

ORIGINAL

H. J. Bischoff, for Complainant.
F. G. Athearn and Douglas Brookman, for Defendants.
H. W. Hobbs, for Southern Pacific Company and
Pacific Motor Transport Company.
Edward Stern, for Railway Express Agency, Inc.
W. F. Brooks, for The Atchison, Topeka & Santa
Fe Railway Company.

BY THE COMMISSION -

OPINION

By complaint filed on December 12, 1932, complainant charges L. R. Kagarise and L. M. Goodman with unlawful common carrier operations by auto truck between Los Angeles and Redlands, Santa Ana and other Southern California points.

Public hearing was had before Examiner Kennedy on March 1, 1933, on which date the case was submitted.

The facts as developed at the hearing may be summarized briefly as follows:

Defendant Kagarise, operating under the name Keystone Express System, possesses a certificate of public convenience and necessity for the transportation of property between Los Angeles and Pomona, Redlands, Riverside, Santa Ana and other points by various routes in Southern California.

Defendant Goodman operates a package delivery service within the municipal limits of the city of Los Angeles and also operates as an express corporation under the name Goodman Delivery Service by tariffs filed with the Commission over the lines of Kagarise and several other automotive carriers topoints in Southern California. Complainant contends that in the operation of the express service over the lines of defendant Kagarise, defendant is undertaking transportation at rates in violation of published tariff rates and is performing service on schedule and in quantities not authorized by his certificate.

J. Nelson Kagarise, General Manager of Keystone Express System, testified that the transportation of packages for Goodman Delivery Service as an express corporation is conducted over all the routes and over all the points served by Keystone System. The packages are carried to Pomona and there transferred to trucks operating a schedule between Pomona, San Bernardino, Riverside and Redlands or trucks operating between Pomona, Santa Ana and other points in Orange county.

For this transportation service defendant Kagarise receives 30% of the rates charged by Goodman in his express tariff. The Goodman rates are 9¢ per package plus 1¢ per pound for certain distances, with an increased proportional rate up to 10¢ per package and 3¢ per pound for extreme points, such as El Centro and Fresno. The maximum weight of any package for the Goodman Delivery is 41 pounds.

Analysis of the record presented does not disclose any irregularity in the operations of Kagarise and Goodman in their inter-relationship as common carrier and express corporation, nor does it disclose any discrepancy, discrimination or other illegal practice as to either, or between them.

The question appears to be whether defendant Kagarise in transporting express for defendant Goodman is performing any service

not authorized by any certificate heretofore granted by this Commission. Analysis of these grants appears to confirm, in part, a contention of complainant that the express service maintained by defendant Kagarise from the Foothill Boulevard to points south thereof, as granted by Decision No. 19410, is in excess of these rights. There is little testimony as to the daily gross quantity shipped by Goodman and consolidated with other cargo moving "on demand" to the routes in question.

Decision No. 19410 provides for scheduled service over all routes mentioned and enumerated in the order to and including No. 19. The order further continues:

"On demand service, applicable when carrier has accumulated freight weighing in the aggregate 5000 pounds or more for distribution along one or more routes in a general direction."

Thereafter follow thirty-one separate and distinct routes, none of which is parallel, in whole or in part, with any of the preceding nineteen routes. These thirty-one routes were not consolidated with Kagarise's other operations by Decision No. 25546. Obviously applicant could, under the terms of his certificate, offer no service over the routes thus designated numerically (Nos. twenty to fifty), unless the prerequisite of 5000 pounds cargo weight was accumulated. As to the remainder of Kagarise's operations it appears that he was operating by proper authority on schedule and without restriction, under consolidation of rights by Decision No. 23546, to all places except the particular thirty-one routes set up in Decision No. 19410, and not consolidated.

It is urged by counsel for defendant Kagarise that there is no law or ruling of the Commission that an "on call" service may not be transferred into a daily schedule service by sufficient demand. We cannot adopt such a broad construction. Scheduled

service may not be reduced to "on call" without the authorization of the Commission. An applicant who proposes only "on demand" service and specifically without schedule, and further imposes upon the shipping public an obligation to provide 5000 pounds or more cargo, is not contemplating any more than the limited service he offers and is not entitled to enlarge that right at his will to a regular scheduled service or for quantities less than the minimum fixed by himself, except by further proper authorization of the Commission. Complainant does maintain scheduled service to the bulk of the points affected.

It is obvious that if defendant Kagarise may not operate a scheduled service for quantities less than 5000 pounds, defendant Goodman may not legally, as an express company, offer through rates and service to Orange County points involved. To permit such offer and its consummation over the lines of defendant Kagarise would be to permit an enlargement of the rights of Kagarise without proper authorization. Goodman, therefore, will be required to amend his tariff filings by eliminating that portion offering service and rates to points on routes Nos. Twenty (20) to Fifty (50), as set forth in Decision No. 19410.

It is our conclusion, therefore, based upon the record, that defendant Goodman is not entitled to transport express matter of any weight less than 5000 pounds and only then on demand, over all the routes Twenty (20) to Fifty (50) inclusive, as set up by Decision No. 19410 and which were not altered in any way by subsequent decisions concerning his operating rights and particularly by Decision No. 25546.¹ In all other respects his express carriage

¹ "An automobile transportation company cannot lawfully make a special contract with an express company to carry property which it cannot itself carry by virtue of its own operative rights." (Pacific States Express, 22 C.R.C. 920.)

seems to be proper and should not be interrupted.

A cease and desist order should issue.

ORDER

IT IS HEREBY FOUND AS A FACT that L. M. Goodman, operating as an express company under the name Goodman Delivery Service, is operating as an express company, and is offering through service over the common carrier lines of L. R. Kagarise, operating under the name Keystone Express System, between Los Angeles and certain points on Routes Nos. 20 to 50, as set forth in Decision No. 19410, on Application No. 13087, which said Kagarise is not authorized to transport except and when, on demand, he has first an accumulated load of 5000 pounds, or more, and without other authority or prior right so to do.

Based upon the finding herein and the opinion,

IT IS HEREBY ORDERED that L. R. Kagarise and L. M. Goodman shall cease and desist directly or indirectly or by any subterfuge or device from continuing such operations.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon L. R. Kagarise and L. M. Goodman; that he cause certified copies thereof to be mailed to the District Attorneys of Orange, Los Angeles, San Bernardino and Riverside Counties, to the Board of Public Utilities and Transportation of the City of Los Angeles and to the Department of Public Works, Division of Highways, at Sacramento.

The effective date of this order shall be twenty (20) days after the date of service upon defendants.

Dated at San Francisco, California, this 28th day of August, 1933.

CC Sherry
Leon Whitely

W. J. Lee

M. B. Harris

Commissioners.