

Decision No. 26509

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

HARBOR FRANCHISE CARRIER'S ASSOCIATION,)

Complainant,)

vs.)

Case No. 3214.)

WESTERN WAREHOUSE AND TRANSFER COMPANY,)
A CORPORATION,)

Defendant.)

H. M. Wade for Complainant.

Dana R. Weller and C. F. Culver for Defendant.

BY THE COMMISSION:

O P I N I O N

Harbor Franchise Carrier's Association has complained of Western Warehouse and Transfer Company, a corporation, alleging that said defendant is now regularly operating auto trucks as a common carrier for compensation over the public highways of this state and particularly between Los Angeles on the one hand and Wilmington, San Pedro and East San Pedro on the other hand, without having the authority of a certificate of public convenience and necessity issued by this Commission in accordance with the statutory law.

A public hearing on this complaint was conducted by Examiner Handford at Los Angeles, the matter was duly submitted on the filing of briefs and is now ready for decision.

It appears from the record that Western Warehouse and Transfer Company operates a warehouse in the City of Los Angeles and also in connection with its warehouse business operates

trucks for local hauling within the city and also between Los Angeles Harbor points (Wilmington, San Pedro, East San Pedro and Terminal Island). The business, other than that transacted within the city, is confined to the hauling of merchandise, principally food products, for account of merchants with whom it has contracts and who have merchandise delivered from Los Angeles Harbor points either to the warehouse in Los Angeles or to such of their customers as they may direct. The service between Los Angeles and Los Angeles Harbor points (San Pedro, Wilmington, East San Pedro and Terminal Island) has been operated for the past six years. Defendant operates five trucks and four trailers in the transportation from the Los Angeles Harbor to Los Angeles and about twelve trucks in the city hauling at Los Angeles.

All the hauling from Los Angeles Harbor to Los Angeles is that performed under contract with the shippers. Sixteen contracts were presented as evidence. An inspection of these contracts shows them to be practically uniform in their terms, that they are to exist for a period of three years and are cancelable on thirty days' notice by either contracting party.

George F. Schneider, President of Western Warehouse and Transfer Company, testified that no hauling of goods either to or from Los Angeles Harbor was performed for anyone other than those with whom his company has contracts and that the present business handled was all that was sought, it being sufficient to keep the trucks and trailers used in the hauling from Los Angeles Harbor points regularly employed.

The contracts submitted show that a great proportion of the tonnage moves in interstate traffic. Several contracts are with concerns out of the State of California and others are with agencies for out of state concerns whose merchandise moves on order to consignees in California. The bulk of this movement is by water to Los Angeles Harbor and thence to consignees. Mr. Schneider testified that 95 percent of the transportation from the harbor to consignees, whether to

defendant's warehouse or to consignees direct, was shipments originating out of the State of California. This evidence is not rebutted nor disputed in the record by complainant. This being the fact, the Commission cannot order defendant to cease and desist from hauling interstate shipments between the water point and the consignee (Meyers v. Railroad Commission, 85 Cal. Decs. 624, June 1, 1933.) As to the remaining five per cent of defendant's transportation the complainant has failed to prove it to be common carrier in character. For this reason complainant has not sustained the allegations of the complaint and it should be dismissed. This conclusion renders discussion of other points raised by defendant unnecessary.

An order accordingly will be entered.

ORDER

A public hearing having been held upon the above entitled complaint, the matter having been duly submitted on the filing of briefs, the Commission being now fully advised and basing its order on the statement of facts as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED that this complaint be and the same is hereby dismissed.

Dated at San Francisco, California, this 7th day of November 1933.

C. J. [Signature]
Leon [Signature]
W. J. [Signature]
M. B. [Signature]
[Signature]
Commissioners