

Decision No. 28540

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

REGULATED CARRIERS, INC., a corporation,

Complainant,

vs.

LOUIS ERICKSON, JOHN DOE GLASER, and
LOUIS ERICKSON and JOHN DOE GLASER,
doing business under the fictitious
name and style of WEST BERKELEY EX-
PRESS AND DRAYING COMPANY, FIRST DOE
CORPORATION, SECOND DOE CORPORATION,
THIRD DOE CORPORATION, FOURTH DOE
CORPORATION, FIFTH DOE CORPORATION,
FIRST DOE, SECOND DOE, THIRD DOE,
FOURTH DOE and FIFTE DOE,

Defendants.

ORIGINAL

Case No. 3642.

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
WEST BERKELEY EXPRESS AND DRAYING
COMPANY.

Case No. 3674.

R. L. Vaughan and Scott Elder, for complainant in
Case 3642 and for Regulated Carriers, Inc.,
protestant in Case 3674.
McCutchen, Olney, Mannon & Greene, by Allan P.
Matthew, for Bay Cities Transportation Co.,
in behalf of complainant in Case 3642 and
protestant in Case 3674.
Highland Hinman, for Peoples Express Co., protestant.
Louis Friedman, for Kellogg's Express & Draying Co.,
protestant.
B. S. Rasmussen, for Interurban Express, protestant.
H. L. Hinman, for Richards Express & Drayage Co.,
protestant.
A. B. Wellington, for Haslett Warehouse Co., pro-
testant.
Sanborn & Roehl and W. E. Kessler, for defendant in
Case 3642, and for respondent in Case 3674.

CARR, Commissioner:

O P I N I O N

By complaint filed on July 22, 1933, Regulated Carriers,
Inc. complained of Louis Erickson and others, doing business under
the name of West Berkeley Express and Draying Company, charging

unlawful common carrier operations inter-city in the East Bay and between East Bay cities and San Francisco. By answer it is alleged that Louis Erickson is the sole owner of the business conducted under the name of West Berkeley Express and Draying Company, the defendant Clyde O. Glaser being merely the manager with no financial interest. It is denied that the operations of Erickson are those of a transportation company but that if they are deemed such Erickson is willing and is entitled to file tariffs covering the service rendered, in which connection it is alleged that the business has been carried on continuously since prior to 1917. A proposed tariff is attached to the answer.

This same tariff having been tendered the Commission, it was on August 28, 1933 suspended.

The complaint case and the suspension case were heard together on September 28, October 31 and November 14, 1933, and on the last mentioned date were submitted.

There is no question but that Erickson is now operating as a transportation company inter-city and transbay and that his continued operations should be forbidden except to the extent he has shown possession of a prescriptive right by reason of operations in good faith on May 1, 1917. The existence and extent of his prescriptive right are presented for determination. (See Pac. Freight Lines Co. vs. Lawrence Warehouse Co., 37 C.R.C. 199; Re Suspension Pac. Motor Tariff Bur. Tariff No. 6, 37 C.R.C. 898; Re Suspension Canton Express Tariff, Dec. No. 25960, of date May 22, 1933; Re Larkin Transp. Co. etc., Dec. 26424, of date Oct. 16, 1933.)

The development of rights both inter-city East Bay and transbay are of sufficient interest to justify mention. No certificates have ever been granted covering transbay service,

rights being grounded upon operations conducted in 1917. The same is largely true of East Bay inter-city operations. The express companies active in the instant cases are operating both inter-city and transbay under so-called prescriptive rights. Until the decision in the Lawrence Warehouse case it seems to have been the common understanding of operators in the East Bay cities that inter-city operations were not those of a transportation company. Following this decision, however, many of these operators joined in a tariff covering inter-city operations. This was suspended, but upon the parties to the tariff establishing the fact of operation in 1917 the suspension was removed. (Re Suspension, Pacific Motor Tariff Bureau Tariff No. 6, supra.) As to transbay operations, various tariffs were filed within a year of the enactment of the Auto Stage and Truck Transportation Act. These have been refiled or supplemented until now the filed tariffs cover the service tendered. As would be expected, these various tariff filings reflect the development of truck transportation from its early beginnings to the finished service it now represents. Early in 1933, Frank Wong Dun and Pon Timothy Wai, doing business under the name of Canton Express, filed a tariff covering transbay movements. Following its suspension it was shown that the Canton Express was operating since prior to 1917 and the tariff tendered was accepted. (Re Suspension Canton Express Tariff, supra.)

That Erickson was rendering a trucking service both inter-city and transbay in 1917 and prior thereto is clearly established. He started a general drayage business in Berkeley in 1904. As trucks came he gradually shifted to this mode of transportation. By 1917 he had a Graham, a Moreland and a Ford truck. He had about 60 regular customers. Most of these were factories in West Berkeley

and vicinity. For these he performed an inter-city business, moving a considerable variety of freight. He also did some transbay business, mostly in truck load lots. He testifies that his business today is not essentially different from that performed by him in 1917, except that the number of his customers has increased to 80 or 85. Many of his present customers were patronizing his service in 1917. In 1917 most of his transbay business was in truck load lots, but the evidence is convincing that he did truck transbay smaller quantities and in mixed loads. A wide variety of articles was carried. He did not, however, perform a scheduled service. It may not be fairly concluded from the evidence that he rendered a transbay service except between Berkeley, Albany and Emeryville and San Francisco. Most of this was between Berkeley and San Francisco.

Erickson is entitled to continue to perform the essential service he was rendering in 1917 (See re Larkin Transp. Co., supra, and cases there cited) and to file tariffs covering the same. The tariff tendered covers somewhat more service than the record indicates was being rendered in 1917. It may be that Erickson, in and prior to 1917, carried an occasional consignment from San Francisco to East Bay cities other than Berkeley, Emeryville and Albany, but the evidence is not sufficient to justify holding that he acquired a prescriptive right for such service. On the other hand, the evidence is not entirely satisfactory as to transbay movements between San Francisco and Emeryville and Albany but would seem to justify the conclusion that he did serve such points.

At the hearing it developed that the tariff proposed followed closely Pacific Motor Tariff Bureau Tariff No.1, being the tariff under which existing transbay lines operate. Erickson indicated his willingness to modify his rates to conform with the rates

there established.

In view of the foregoing and from a careful consideration of the record, it is concluded:

1. That Erickson should be permitted to republish and refile his proposed tariff except in so far as it covers transbay movements between San Francisco and East Bay cities other than Berkeley, Albany and Emeryville, and except as rates proposed vary from the rates stated in Pacific Motor Tariff Bureau Tariff No. 1.

2. That Erickson should be ordered to cease and desist operations other than those covered or to be covered by such tariff filings.

I recommend the following form of order:

O R D E R

Public hearings having been had in the above entitled cases and the cases having been submitted,

IT IS HEREBY FOUND AS A FACT, that LOUIS ERICKSON, doing business under the name of WEST BERKELEY EXPRESS AND DRAYING COMPANY, was on May 1, 1917 and continuously thereafter operating as a transportation company inter-city between Berkeley, Emeryville, Albany, Alameda, Oakland, Piedmont, El Cerrito, Richmond, San Pablo and Stege and transbay between San Francisco and Berkeley, Albany and Emeryville and as such should be permitted to continue the service under proper tariffs.

IT IS HEREBY ORDERED that LOUIS ERICKSON, doing business under the name of WEST BERKELEY EXPRESS AND DRAYING COMPANY, within thirty (30) days from the date hereof, republish and refile his Tariff No. 1 under suspension to conform with the foregoing finding and with the conclusions expressed in the opinion preceding this order.

IT IS FURTHER ORDERED that the said ERICKSON cease and desist his said operations as a transportation company except to the extent such operations are herein held to be authorized and as covered by the tariffs filed as herein ordered.

The effective date of this order shall be thirty (30) days from the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, this 20th day of November, 1933.

~~C. C. Cramer~~
~~Leon Williams~~
~~W. J. Lee~~
~~M. B. Harvey~~
~~Walter Moore~~
Commissioners.