

Decision No. 28783

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
L. R. KAGARISE, doing business under)
the fictitious name of KEYSTONE EXPRESS) Application No. 19068
SYSTEM, for an in lieu certificate of)
public convenience and necessity.)

Libby & Sherwin, by W. E. Libby, for Applicant.
Edward Stern, for Railway Express Agency, Inc.,
protestant.
R. E. Wedekind, for Pacific Motor Transport
Company, Southern Pacific Company, Pacific
Motor Trucking Company and Pacific Electric
Railway Company, protestants.
H. J. Bischoff, for Rice Transportation Company,
protestant.
W. K. Downey, for Motor Freight Terminal Company,
protestant.
Phil Jacobson, for Rex Transfer Company, protestant.
Robert F. Brennan and W. F. Brooks, for The
Atchison, Topeka & Santa Fe Railway Company,
protestant.
M. E. Richards, for Richards Trucking and Warehouse
Company, protestant.

BY THE COMMISSION -

OPINION

ORIGINAL

Applicant L. R. Kagarise, operating as Keystone Express System, seeks modification of Decision No. 19410, dated February 25, 1928, on Application No. 13087, by which restrictions as to weight and time schedules imposed therein may be modified to permit the transportation of freight on schedule without a weight limit over routes designated Nos. 20 to 50, inclusive.

A public hearing thereon was conducted by Examiner Kennedy at Los Angeles.

To reach a logical conclusion in this matter it is essential first to consider applicant's operating rights.

In Application No. 13087 authority to perform two classes of service was sought - one designated as "scheduled" and the other "on demand." There is no doubt about the first. The second, by applicant's own language, was

"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." Context of the application plainly shows that applicant offered certain service which he would perform on schedule regardless of quantity but that as to the remainder (Routes Nos.20 to 50), he required as prerequisites 5000 pounds, or more, (not less), for which demand was made to haul over one or more routes in a general direction. In other words, he would accommodate such traffic if a sufficient quantity of traffic moving "in a general direction" was available. Otherwise he had no duty. Obviously, such traffic, because of its irregularity, could not be scheduled over thirty-one separate rights, and it appears plain that applicant did not intend to offer any service except for quantities sufficient to enable him to profitably render the service. Decision No.19410 gave him no greater rights than he asked for.¹

By Decision No.25546, dated January 16, 1933, on Application No.17383, all the rights of Kagarise were consolidated, except scheduled Routes Nos.10 to 19, inclusive, and "on demand" Routes No.20 to 50, inclusive.² Applicant now selects Routes Nos.20 to 50 and requests a certificate, in lieu of the one granted by Decision No.19410, for their unlimited operation.

¹ By Decision No.19410 applicant was authorized to extend certain services from his route via the Foothill Boulevard between Pasadena and Pomona to other points. Fifty separate routings were sought. Of these 19 were applied for as "scheduled service." All were granted as applied for. Thirty-one routes were applied for as "on demand service, applicable when carrier has accumulated freight weighing in aggregate 5000 pounds, or more, for distribution along one or more route, or routes, in a general direction," and were granted exactly as applied for.

² It was erroneously stated in Decision No.25546 that all routes except Nos.20 to 50 were consolidated with other operations. Only Routes Nos.1 to 9, inclusive, were included in the order of consolidation.

The record discloses that applicant in 1930 filed daily schedules of service at tariff rates over said Routes Nos. 20 to 50 "in the belief that such daily and scheduled service could be properly and lawfully maintained" without further or additional certificated authority. From thence on daily scheduled service was conducted and, in addition, contracts for express carriage³ were made and performed. The service included shipments to and from Los Angeles city and from and to the territory lying between the east city limits of Los Angeles and San Gabriel Boulevard.

If the operations were conducted by error, the error was in (a) performing scheduled daily service for quantities less than 5000 pounds, and (b) for shipments to and from the area west of San Gabriel Boulevard, including Los Angeles. The record abundantly proves that both such "errors" were continuously committed and are still being committed by Keystone Express System on its own part as a transportation company and as a carrier of express. The volume of traffic appears not to have been large until the express contracts were made in 1933. In January 1933 the volume for the entire month was only 5034 pounds. In other words, the routes in question were used in an unlimited manner for both traffic of the carrier under its own tariffs, and for various express companies. Reference to Exhibits Nos. 12 and 5 shows an average daily haul to and from the routes of 8554 pounds, or in excess of the minimum of 5000 pounds. It appears that a large portion of this traffic, if not practically all, was from Los Angeles. No definite information as to the amount prior to August, 1933, is given.

³ Keystone Express Company, Valley Express Company, Goodman Delivery Service, California Motor Express, Ltd.

Shipper witnesses presented by applicant have all been users of Keystone service over the routes involved from two years to six months. The combined traffic offered by these witnesses apparently would not approximate 5000 pounds daily. Kagarise testified that he did not begin to take less than 5000 pounds at any time after the certificate was granted (1927), until 1930. The record justifies the conclusion that 5000 pounds daily were not available until August, 1933, when contracts with Keystone Express Company and other express services were made. The shipper witnesses expressed satisfaction with the service and regarded the rates as lower than other carriers. Some of them testified Keystone System had given service to and from Los Angeles. Their testimony is the reason urged for receiving the certificate sought.

Ordinarily, the testimony presented herein would be regarded as substantial and perhaps persuasive if the service had not already been given for two years by applicant. He has established and built up a service over the routes in question that was not authorized by Decision No. 19410, or any other. The testimony in support of the applicant is the result of such unauthorized acts.⁴ He has developed the business during the preceding years and now seeks authority, based on testimony of shippers who were served without authority, to perpetuate the service, to the apparent injury of other carriers, duly authorized after careful compliance with the law, to serve the Orange county points. In addition, Kagarise now is, and long has been, transporting shipments from Los Angeles and points west of San Gabriel territory to the points on Routes Nos. 20 to 50, in plain defiance of the order in Decision No. 19410,

4 Applicant urges that it has prescriptive rights between Los Angeles and Alhambra and Pomona and that it must forward shipments via the connecting carrier because they are express shipments not originating, in part, at Los Angeles, but received by the carrier at Los Angeles. An automotive carrier cannot link up separate rights without authority from the Commission, nor may a carrier "contract with an express company to carry property which it cannot

which says:

"* * * excepting, however, from and to Los Angeles proper and from or to territory intermediate between Los Angeles and San Gabriel Boulevard, into that certain territory and over and along those certain routes delineated and shown on that certain map, marked Applicant's Exhibit No.1, attached to the application, etc."

There are no extenuating circumstances in this record which would justify the Commission in condoning the obvious illegal acts of applicant.

The application will be denied and applicant directed to withdraw and cancel all time schedules affecting Routes Nos.20 to 50, inclusive, and immediately to discontinue all transportation for less quantities than 5000 pounds, and to discontinue transporting to points on the routes named shipments from or to "Los Angeles proper," which we define hereby as all within the corporate limits of the City of Los Angeles and the territory between San Gabriel Boulevard and Los Angeles.

ORDER

L. R. Kagarise, doing business as Keystone Express System, having applied for an in lieu certificate of public necessity and convenience, modifying Decision No.19410, on Application No.13087, to permit transportation of all shipments, regardless of weight, a public hearing having been held and the matter having been duly submitted,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity do not require the modification requested, or any modification and

4 (Contd)

itself carry by virtue of its own operative rights." (Western Motor Transport, 20 C.R.C. 1038; Pacific States Express, 22 C.R.C. 920).

IT IS HEREBY ORDERED that the application be and the same hereby is denied.

Dated at San Francisco, California, this 6th day of February, 1934.

D. L. Leary.

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W. A. Lee

W. B. Harris

W. B. Harris

COMMISSIONERS.