

Decision No. 28780

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CITIZENS TRUCK COMPANY, LTD.,
COAST TRUCK LINE, a corporation,
LOS ANGELES-NEWPORT FREIGHT LINE,
MOTOR FREIGHT TERMINAL COMPANY,
PACIFIC MOTOR TRANSPORT COMPANY,
REX TRANSFER INTERURBAN EXPRESS
AND FREIGHT LINE,
RICE TRANSPORTATION COMPANY, a
corporation,
RICHARDS TRUCKING & WAREHOUSE
COMPANY, a corporation,

Complainants,

v.

L. R. KAGARISE, doing business as
KEYSTONE EXPRESS SYSTEM, and
J. NELSON KAGARISE, doing business
AS KEYSTONE EXPRESS COMPANY.

Defendants.

ORIGINAL

Case No. 3686

H. J. Bischoff, for Coast Truck Line and Rice
Transportation Company, Complainants.
N. N. Blair and Hugh C. Maddox, for Defendants.
W. K. Downey and G. C. Foster, for Motor Freight
Terminal Company,
R. E. Wedekind, for Southern Pacific Company,
Pacific Electric Railway Company, Pacific
Motor Trucking Company, Intervenor.
Phil Jacobson, for Rex Transfer Company and
Citizens Truck Company, Complainants.
Edward Stern, for Railway Express Agency, Inc.,
Intervenor.
W. F. Brooks, for The Atchison, Topeka & Santa
Fe Railway Company, Intervenor.

BY THE COMMISSION -

OPINION

Complainants are auto truck transportation companies,
operating between Los Angeles and points in Los Angeles,
Orange, Riverside and San Bernardino counties, under due
authority from this Commission. They allege that defendants
L. R. Kagarise, operating as Keystone Express System, a common
carrier, and J. Nelson Kagarise, operating as Keystone Express

Company, an express corporation, are conducting transportation between Los Angeles and points in Orange county (Santa Ana, Orange, Anaheim, Fullerton, Huntington Beach, etc.), and San Bernardino county (San Bernardino, Colton, Redlands, etc.), without authority so to do. Complainants also allege such service to Whittier in Los Angeles county.

Public hearing herein was conducted by Examiner Kennedy at Los Angeles, and the matter was duly submitted and now is ready for decision.

The controversy is based on the order of consolidation in Decision No.25546, on Application No.17383, by which all L. R. Kagarise's rights were, by certificate, consolidated into one through system, except Routes 10 to 50, inclusive, granted by Decision No.19410. The record plainly disclosed that these routes, which lead into Los Angeles, Orange, Riverside and San Bernardino counties, were never made available for shipments originating at Los Angeles or between Los Angeles and San Gabriel Boulevard. The record also shows that defendant, L. R. Kagarise, since August, 1933, has transported more than 8000 pounds daily over the routes in question and to points in the counties named, either as a common carrier, or under contract with J. Nelson Kagarise, as an express company, the bulk of which, if not all, originated at Los Angeles. Some of the shipments were received from Pacific Steamship Company and Valley Motor Express. The number was small. They were received, defendants assert, because they did not originate at Los Angeles, although destined to disputed points. They did originate, as far as L. R. Kagarise's operations are concerned, at Los Angeles and were transported over one or more of the routes in question. The restriction imposed by Decision No.19410 (to which Kagarise stipulated at hearing of Application No.13087), provides:

"Excepting, however, from and to Los Angeles proper and from and to territory intermediate between Los Angeles and San Gabriel Boulevard."

The certificate granted was for "extension of his present freight and express truck service." In the consolidation this restriction was not removed, and Routes 1 to 9, inclusive, were all that were consolidated with the other operations. He now has no right to transport property between the prohibited area, including all of the City of Los Angeles (which is Los Angeles proper), and any points on Routes 10 to 50, inclusive, as a common carrier transportation company. Having no such right as a common carrier, he cannot transport property for an express corporation. To do so would be linking separate operating rights without proper certificate of this Commission. (Western Transport Co. 20 C.R.C. 1038; Motor Service Express v. Baker, 31 C.R.C. 231; Pacific States Express, 22 C.R.C. 920).

In his brief defendant Kagarise urges that, being possessed of certain rights, created by operation in good faith before the passage of the Auto Truck Transportation Act, that such prescriptive rights were and are governed solely by the Public Utilities Act as it then existed (presumably Section 22(a)), and that such prescriptive right required the delivery of shipments to connecting carriers for transportation to destination. Further, that the Auto Truck Transportation Act created a separate class of "other transportation companies" not enjoying the advantages possessed by prescriptive operations under Section 22, Article XII of the Constitution and Section 22(a) of the Public Utilities Act.

In other words, defendant's theory is that if he possesses a prescriptive right from A to B, and a certificated right from B to C, he is authorized as a prescriptive carrier to unite with his non-prescriptive, through service from A to C.

Such a difference in the rights is not supported by the citations. As was said by the Supreme court in discussing both rights:

"The only difference recognized in the statute between those established before and those established after the passage of the act is in the method of the creation of their operative rights." (Motor Transit Co. v. Railroad Commission, 189-573)

In this case defendant has linked up separate routes by offering and performing through service against the plain restriction of a certificated grant and an order permitting partial consolidation. That any common carrier is charged with the duty of receiving off-line shipments and transferring them to connecting carriers may not be disputed, but the connecting carrier can only receive and transport such shipments as it is authorized to receive and transport. The connecting carrier (Kagarise operating under a certificate), in the instant case is disabled from receiving or transporting the shipments shown by the record, or any shipment where the volume is less than 5000 pounds, and no shipment from Los Angeles or points between Los Angeles and San Gabriel Boulevard.

"The practice of joining routes which were acquired by transfer of existing rights, either when same were acquired by operation in good faith as of May 1, 1917, or granted by certificate thereafter, and of thereafter operating through service over the acquired routes was prohibited by the Commission in * * *."
(Re Western Motor Transport Co., 20 C.R.C. 1038)"
* * * in which it was held that, in the absence of express authorization therefor by the Commission, the linking up and combining of local operations was not lawful." Re A.B. Watson 24 C.R.C. 481, 487.

The linking up of operations of separate routes was also determined in Blair v. Coast Truck Line, (21 C.R.C. 530), and this decision was affirmed by the Supreme court in Coast Truck Line v. Railroad Commission (California Report,

191, 257).

A finding must be made that the defendants are conducting operations without valid authority. A cease and desist order will be entered.

An order of this Commission finding an operation to be unlawful and directing that it be discontinued is in its effect not unlike an injunction issued by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a party is adjudged guilty of contempt, a fine may be imposed in the amount of \$500.00, or he may be imprisoned for five (5) days, or both. C.C.P. Sec. 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 8 of the Auto Truck Act (Statutes 1917, Chapter 213, as amended), a person who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding \$1000.00, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. Likewise a shipper or other person who aids or abets in the violation of an order of the Commission is guilty of a misdemeanor and is punishable in the same manner.

O R D E R

IT IS HEREBY FOUND that L. R. Kagarise, doing business as Keystone Express System, is operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Act (Chapter 213, Statutes 1917, as amended), with common carrier status between Los Angeles and all points on Routes 10 to 50, inclusive, as set forth in Decision No. 19410,

on Application No.13087 and without a certificate of public convenience and necessity or prior right authorizing such operations.

Based upon the finding herein and the opinion,

IT IS HEREBY ORDERED that L. R. Kagarise, doing business as Keystone Express System, 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; that he cause certified copies thereof to be mailed to the District Attorneys of Los Angeles, Orange, Riverside and San Bernardino 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.

IT IS HEREBY FURTHER ORDERED that J. Nelson Kagarise, doing business as Keystone Express Company, shall immediately withdraw and cancel all rates now on file with this Commission between points on and over Routes 10 to 50 and from and to Los Angeles proper and points between Los Angeles and San Gabriel Boulevard and points on said routes and any and all rates in conflict with the order herein as it affects L. R. Kagarise, co-defendant herein.

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

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

C. J. Jones
M. J. Carr
W. H. Moore
COMMISSIONERS.