

Decision No. 28923.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of U. C. EXPRESS AND STORAGE CO., a corporation, for a certificate of public convenience and necessity to operate an auto truck service for the transportation of household goods, furniture, pianos and personal effects, including trunks and baggage, between points within the State of California.

Application No. 18655.

ORIGINAL

In the Matter of the Application of C. FRED BAKER, doing business under the firm name and style of Baker's Transfer & Storage Co., for a certificate of public convenience and necessity to operate an auto truck service for the transportation of household goods, furniture, pianos, and personal effects, including trunks and baggage, between points within the State of California.

Application No. 18656.

In the Matter of the Application of VENTURA TRANSFER & STORAGE COMPANY, a copartnership, for a certificate of public convenience and necessity to operate an auto truck service for the transportation of household goods, fixtures, furniture, musical instruments, and personal effects, between points within the State of California.

Application No. 18657.

In the Matter of the Suspension by the Commission on its own motion of Local Freight Tariffs Nos. 1, C.R.C. Nos. 1 of BAKER TRANSFER & STORAGE COMPANY, C. A. BUCK COMPANY, ELECTRIC TRANSFER AND STORAGE COMPANY, HOLMES EXPRESS & STORAGE COMPANY, NICKELL TRANSFER CO., STOCKTON TRANSFER COMPANY, U. C. EXPRESS AND STORAGE CO. and VENTURA TRANSFER & STORAGE COMPANY.

Case No. 3478.

Sanborn & Roehl, by A. B. Roehl, for applicants and respondents.

Reginald L. Vaughan and Scott Elder, by R. L. Vaughan, for Bekins Van & Storage Co. and Lyon Van & Storage Co., as interested parties in Case 3478 and as protestants in all applications.

H. W. Hobbs, E. J. Foulds, R. S. Myers for Southern Pacific Company and Pacific Motor Transport Company, as interested parties in Case 3478 and as protestants in all applications.

G. E. Duffy, for The Atchison, Topeka and Santa Fe Railway Company, protestant and interested party.

CARR, Commissioner:

O P I N I O N

The above proceedings are an aftermath of the Commission's Decision No. 25261, California Interurban Motor Transportation Association vs. Yellow Vans Associated et al., 38 C.R.C. 156. By that decision the Commission ordered C. Fred Baker, U. C. Express and Storage Company, Ventura Transfer Company, Inc., C. A. Buck, Electric Transfer and Storage Company, A. W. Nickell and Stockton Transfer Company and other carriers to cease and desist operating trucks for the transportation of household goods between various points in the State.¹ The order as to the above named carriers has not become

¹ C. Fred Baker: between Bakersfield and San Francisco and intermediate points.

U.C. Express and Storage Company: between San Francisco, Los Angeles and intermediate points.

Ventura Transfer Company, Inc.: between Ventura, Los Angeles and intermediate points; between Ventura and Santa Barbara and between Ventura, Menlo Park and intermediate points.

C. A. Buck: between San Mateo and Los Angeles.

Electric Transfer and Storage Company: between Sacramento and San Francisco and intermediate points.

W. R. Holmes: between Fresno, Los Angeles, San Francisco and intermediate points.

A. W. Nickell: between San Francisco, Oakland, Berkeley, San Jose, Los Gatos, Del Mar, Santa Barbara and intermediate points.

Stockton Transfer Company: between Stockton and San Francisco and intermediate points.

effective. By its terms defendants were allowed to file applications or tariffs for the purpose of permitting the Commission to determine (1) if public convenience and necessity require the continuance of the service found illegally conducted, or (2) if defendants possessed prescriptive rights under which tariffs should be filed. This latitude was allowed as the Commission found in Decision No. 25261:

"With the exception of a few of these defendants, no element of bad faith exists. Many of them are old and established operators, their business being of the same general nature as of 1917. Many of them during the formative years of truck regulation came before the Commission with their applications for certificates, which were in many cases dismissed because the character of operations disclosed were then believed to be such as not to call for certification. It can not be said that they were trying to defeat or evade regulation. * * *

"Some, it appears, may have prescriptive rights by reason of similar operations in 1917 so as to fall within the rule announced by Pacific Freight Lines vs. Lawrence Warehouse Company and Re Suspension Pacific Motor Tariff Bureau Tariff No. 6. Others fall within the precedent announced in Berkins Van Lines et al. v. Griggs, 35 C.R.C. 187, and Re Griggs, 36 C.R.C. 183. Some are within both. * * * It may hardly be gainsaid that the concept both of common carrier and regular route operations is changing in the light of experience and the body of court and commission decisions and determinations made to meet the rapidly developing business of truck transportation."

Thereafter C. Fred Baker, U. C. Express and Storage Company and Ventura Transfer and Storage Company filed both tariffs and applications.² C. A. Busk, Electric Transfer & Storage Company, W. R. Holmes, A. W. Nickell and Stockton Transfer Company filed tariffs, relying entirely upon the tariffs to establish prescriptive rights.

Hearings were had at San Francisco on March 21, 22 and 24, 1934.

Applicants and respondents, hereafter collectively refer-

² Applications were also filed by these three companies in 1925 but were dismissed without prejudice for lack of jurisdiction.

red to as applicants, have been engaged for many years in hauling household goods.³ They render a specialized service usually performed as an adjunct to the storage of household goods. Ordinarily the movement is from residence to residence or between a warehouse and a residence. Special equipment is operated with drivers and helpers trained for this specialized work. The very nature of the service contemplates many and varying points of delivery. Inherently the operation is irregular in the sense that the points of destination shift with the demands of the shippers. But between the more populous centers the service is clothed with some degree of regularity. It must frankly be acknowledged that the interpretation placed upon the Auto Truck Transportation Act (Chapter 213, Statutes 1917) has not always been consistent. Confusion as to the scope and extent of the law has prevailed in the minds of the carriers. This thought must be kept paramount in disposing of these proceedings so that injustice will not be done to the public and the carriers here involved.

The disposition of these proceedings has been withheld for some time to determine whether the decision of the Supreme Court in C. W. Landis et al. v. Railroad Commission, L.A. No. 14079, 27 Cal. Dec. 485, would require a modification of Decision No. 25261, supra. In this proceeding three of the defendants⁴ in California Interurban Motor Transportation Association vs. Yellow Vans Associated et al., supra, attacked the validity of the Commission's order requiring them to cease and desist operating as carriers of household goods. The court affirmed the Commission's decision with respect to C. W. Landis and annulled the decision with respect to Safeway

³ The term when used herein also includes office or store furniture, fixtures and equipment, personal effects, musical instruments, sewing or washing machines, stoves and other household equipment.

⁴ C. W. Landis, Merle C. Turner and Safeway Transfer Van and Storage Company.

Transfer Van and Storage Company. No finding was made as to Merle C. Turner, as the record before the court showed that he had sold his business and left the State.

The record with respect to each individual applicant or respondent here may be summarized briefly as follows:

C. Fred Baker

A tariff was filed on January 19, 1933, containing rates, rules and regulations for the transportation of household goods between Bakersfield and points north thereof to and including San Francisco and Oakland⁵ and points south of Bakersfield to and including Los Angeles, Santa Monica, Venice, Redondo Beach and Long Beach.

Applicant maintains a warehouse at Bakersfield, which was established by his father in 1898. Originally hauling was done with horse-drawn vehicles. Gradually a substantial business radiating from Bakersfield was developed. In 1917 and prior thereto numerous trips were made from Bakersfield to San Francisco, Los Angeles and the intermediate points as well as a substantial number of trips from Bakersfield to the oil field districts. The record justifies the approval of the tariff filed by this applicant, with the exception of points south and west of Los Angeles and points south and west of Niles.

U. C. Express and Storage Company

This company or its predecessor was organized in 1903. It maintains a warehouse at Berkeley for the storage of household goods, and in connection therewith does considerable hauling of these commodities. In 1914 it commenced using motor trucks. At the present time it has an investment of \$250,000 in warehouse fa-

⁵ When referred to herein, Oakland will be understood to include also Alameda, Albany, Berkeley, Emeryville and Piedmont.

cilities and motor equipment.

The tariff of this company, filed on January 18th, names rates between San Francisco and East Bay cities on the one hand, and on the other hand points in Marin, Sonoma, Napa and Contra Costa Counties; points south of San Francisco and Oakland via the coast and valley routes to and including Los Angeles and adjacent points and points north of San Francisco and Oakland to and including Sacramento.

Thus in effect applicant is here seeking a right, or the confirmation of a right, to operate between practically all the populous centers of the State. The record will not warrant a finding that the rights should be as extensive as those sought. Exhibits 1 and 2 in these proceedings indicate that in 1917 and prior thereto the hauling done by this company was largely confined to the territory in and around Alameda, Contra Costa, San Francisco and San Mateo Counties but with some substantial traffic from and to points in Santa Clara,⁶ Santa Cruz,⁷ Marin,⁸ Sonoma,⁹ Napa,¹⁰ Solano,¹¹ Yolo,¹² Sacramento,¹³ San Joaquin¹⁴ and Stanislaus¹⁵ Counties. There was some verbal testimony that trips to Los Angeles had been made in 1917 and prior thereto, but the testimony on this point is not definite. On the contrary it would appear that at that particular time hauling of this distance was turned over to other carriers. As to this applicant the Commission should find that its tariff

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- 6 San Jose, Coyote, Gilroy and Sunnyvale.
7 Santa Cruz and Boulder Creek.
8 San Rafael, San Anselmo, Belvedere and Sausalito.
9 Sebastopol and Santa Rosa.
10 Calistoga.
11 Vallejo, Benicia and Cordelia.
12 Woodland.
13 Sacramento.
14 Tracy and Stockton.
15 Escalon.

should be approved only insofar as it names rates from, to or between points within Alameda, San Francisco, Contra Costa and San Mateo counties, and between San Francisco and Oakland on the one hand and San Jose, Gilroy, Sunnyvale, Santa Cruz, Boulder Creek, San Rafael, San Anselmo, Belvedere, Sausalito, Sebastopol, Santa Rosa, Calistoga, Vallejo, Benicia, Sacramento, Tracy, Stockton and Escalon and intermediate points on the other hand.

Ventura Transfer & Storage Company

There is no evidence in this record to justify the approval of this carrier's tariff. However, its operations bear a marked resemblance to those of the Safeway Transfer Van and Storage Company. The cease and desist order against the latter carrier has been annulled by the California Supreme court (C.W. Landis v. Railroad Commission, supra). It is recommended that Case No.3226 be reopened and the record therein, insofar as it relates to the Ventura Transfer & Storage Company, be reviewed.

C. A. Buck

This carrier is located at Burlingame and has been in the transfer and storage business of household goods since 1912. He commenced operating trucks in 1914. His operations have been largely confined to San Francisco and peninsula points and between those points and East Bay cities and points south of the peninsula to and including Morgan Hill.

His tariff, filed on January 18th, contains rates south of Morgan Hill to and including Los Angeles.

The evidence in this proceeding is not sufficient to justify the operation south of Morgan Hill.

Electric Transfer and Storage Company

This applicant claims a prescriptive right for the trans-

portation of household goods between Sacramento, San Francisco, Mission San Jose and intermediate points via Benicia, Stockton and Dublin Canyon. The record shows that this company has been in the storage, warehouse, transfer and trucking business since 1913. In 1917 the company owned five trucks and made numerous trips between Sacramento and San Francisco. It is clear from this record that Electric Transfer and Storage Company possesses a prescriptive right between Sacramento and San Francisco over the routes specified, but there is no evidence here to show that it ever operated or held itself out to operate from and to points south or west of Niles.

Holmes Express and Storage Co.

This applicant did not appear at the hearing, but on the contrary requested that it be eliminated as an applicant. Its tariff should be ordered cancelled.

A. W. Nickell

A. W. Nickell commenced operations in 1909 and began using motor trucks in 1913. A prescriptive right is claimed between San Jose, San Francisco, Oakland and other East Bay cities, Los Angeles and intermediate points via the coast route. The evidence shows that in 1917 and prior thereto trips were made between San Jose, San Francisco, Los Angeles, and a few intermediate points. The prescriptive rights of this carrier are coextensive with its tariff filings, and the tariff should be allowed to become effective in toto.

Stockton Transfer Company

The Stockton Transfer Company is located at Stockton and is an old established firm which has been operating for years between Stockton and San Francisco and the East Bay territory. By

its tariff filed January 18, 1933, it claims a prescriptive right between Stockton and San Francisco, Oakland and intermediate points via Niles and Hayward. It also claims a right to points south of Niles to and including Milpitas. The record shows that with the exception of the points south of Niles the tariff filings are co-extensive rights claimed by this applicant.

No evidence was adduced justifying the granting of the applications. Hence they should be denied without prejudice.

The following form of order is recommended:

O R D E R

Public hearings having been had in the above entitled proceedings.

IT IS HEREBY ORDERED that Tariff C.R.C. No. 1 of C. Fred Baker, Tariff C.R.C. No. 1 of U. C. Express & Storage Company, Tariff C.R.C. No. 1 of C. A. Buck, Tariff C.R.C. No. 1 of Electric Transfer & Storage Company, Tariff C.R.C. No. 1 of A. W. Nickell and Tariff C.R.C. No. 1 of Stockton Transfer Company be and they are hereby approved and placed in the Commission's files except to the extent indicated in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that respondents and applicants forthwith proceed to and do cancel all rates shown in the tariffs indicated above which are inconsistent with the findings in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that Tariff C.R.C. No. 1 of W. R. Holmes be stricken from the Commission's files.

IT IS HEREBY FURTHER ORDERED that Applications Nos. 18655, 18656 and 18657 be and they are hereby denied without prejudice.

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, California, this 30th day of April, 1934.

Cherry
Leon Abbott
M. A. Carr
W. B. Harris
Walter ...
Commissioners.