

Decision No. 28102.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Investigation on the Commission's own motion into the rates, rules, regulations, charges, classifications, contracts, practices and operations, or any of them, of A. Pasteris operating under the fictitious name and style of East Bay Drayage & Warehouse Company, Haslett Warehouse Company, Interurban Express Corporation, Merchants Express Corporation, Peoples Express Company and United Transfer Company, engaged in operating common carrier transportation service to, from or between San Francisco, Alameda, Albany, Berkeley, Emeryville, Oakland and Piedmont.

Case No. 4014.

HARRIS, Commissioner:

PRELIMINARY OPINION

By Decision 27966, dated May 14, 1935,<sup>1</sup> the Commission found that Kellogg Express and Draying Company had deviated from its lawfully filed tariffs and ordered it to cease and desist such violations. The Commission moreover found that Kellogg Express and Draying Company had not shown that it possessed an operative right to serve El Cerrito, Stege, Pullman, Richmond, Point Richmond, San Leandro, San Lorenzo and Hayward, and ordered tariffs then under suspension cancelled. In the course of the hearings Kellogg Express and Draying Company alleged that other transbay carriers were likewise guilty of violating their tariffs. The Commission thereupon instituted this investigation for the purpose of enabling

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<sup>1</sup> Case 3910, in re Investigation of rates, etc., of Kellogg Express and Draying Company and related proceedings.

Kellogg Express and Draying Company to substantiate its allegations.

Public hearings were had at San Francisco June 11 and 12, 1935. From the record thus far made it is apparent that the allegations made by Kellogg Express and Draying Company were well founded. Respondents in this proceeding admitted deviating from their tariffs and engaging in unauthorized practices. Inasmuch therefore as Kellogg Express and Draying Company has been ordered to cease and desist from such unlawful practices it is only proper that a like order be entered against these respondents. While the matter has not yet been submitted, respondents have stipulated that pending a final decision in the matter the Commission might issue an interim order directing them to cease and desist from charging, demanding, collecting or receiving a greater or less or different compensation for the transportation of property or for any services in connection therewith than the rates and charges applicable to such transportation as specified in their schedules on file with this Commission, and also requiring them to cease and desist any arrangements or practices for the joint transportation of property (other than under a combination of local rates) without appropriate authority first had and obtained from the Commission. The stipulation specified however that it should not apply (1) to practices under Rules 7, 12 and 13 of Pacific Motor Tariff Bureau Local and Joint Tariff No. 1, C.R.C. No. 2, and Rule 24 of Pacific Motor Tariff Bureau Freight Classification No. 2, C.R.C. No. 10, which rules are said to be unenforceable, nor (2) to the transportation of property (a) by Merchants Express Corporation for and on behalf of International Carloading Company and Universal Carloading Company & Distributing Company, (b) by Interurban Express Corporation for and on behalf of National Carloading Company, (c) by United Transfer Company for and on behalf of National Carloading Company, (d) by The Haslett Warehouse Company

for and on behalf of the Acme Fast Freight and Atlas Freight, Inc., and (e) to the transportation services being performed by A. Pasteris, doing business as East Bay Draying and Warehouse Company, for and on behalf of Durkee Famous Foods, Inc., under the rate or rates specified in a contract with that concern.

The matters thus excepted are either controversial or involve rules said to be unenforceable. Since this proceeding is not yet under submission the order now to be entered should be limited to the scope of the stipulation. Attention should be called however to the fact that tariff deviations or unauthorized operations are strictly prohibited by law. The fact that certain practices are excluded from this interim order must not be interpreted as an approval thereof. That rules are believed to be unenforceable is no justification for their continued violation. Rather, steps should be taken forthwith to remove them from the tariff.

The following form of order is recommended:

### O R D E R

IT IS HEREBY ORDERED that respondents, A. Pasteris operating under the fictitious name and style of East Bay Drayage & Warehouse Company, Haslett Warehouse Company, Interurban Express Corporation, Merchants Express Corporation, Peoples Express Company and United Transfer Company, forthwith cease and desist from charging, demanding, collecting or receiving a greater or less or different compensation for the transportation of property, or for any services in connection therewith, than the rates and charges applicable to such transportation or for any service in connection therewith, than the rates and charges shown in their respective tariffs on file with this Commission, excepting that this interim order shall not apply

to the matters specifically exempted in the stipulation and referred to in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that respondents immediately cease and desist from performing any services not provided for in their lawfully filed tariffs.

IT IS HEREBY FURTHER ORDERED that this proceeding be held open for such further action as circumstances may require.

This order shall become effective five (5) days from the date hereof.

The foregoing opinion and order is 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 8<sup>th</sup> day of July, 1935.

Leon Whittell

M. A. Carr

M. B. Harris

Joan R. DeWitt  
Commissioners.