

Decision No. 29359

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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ORIGINAL

In the Matter of the Investigation, on the Commission's own motion, into the operations, rates, charges, classifications, contracts, practices, and permits, or any thereof, of CARLEY & HAMILTON, INC., a corporation, as a highway carrier between any points in this State, and more particularly between San Francisco and South San Francisco, on the one hand, and Oakland and other bay area points, on the other hand.

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Reginald L. Vaughan and E. H. Hart, for Pacific Motor Tariff Bureau.
Gwyn H. Baker, and H. M. Wade, for Carley & Hamilton, Respondents.
A. L. Whittle, for Southern Pacific Company and Pacific Motor Transport Company.

WHITSELL, Commissioner:

OPINION

The Commission, in this proceeding instituted upon its own motion an investigation into the operations of Carley & Hamilton, Inc., a California corporation, hereinafter referred to at times as respondent, for the purpose of determining whether or not respondent was engaged in the business of a highway common carrier between San Francisco and South San Francisco on the one hand, and Oakland, Berkeley, Emeryville, Alameda, Richmond, San Leandro and Hayward on the other hand. The proceeding was instituted, also, for the further purpose of determining whether or not the respondent was violating any of the provisions of the Highway Carriers' Act (Chapter 223, Stats. 1935) or the City Carriers' Act (Chapter 312, Stats. 1935) or of any permit or permits issued by the Commission pursuant to said acts.

Public hearings were held in San Francisco on the 27th, 29th and 30th of October and on the 10th and 25th of November 1936, at which place and times evidence was introduced. The matter has been submitted and is now ready for decision.

The evidence presented at the hearings in this case disclosed the following facts:

Respondent Carley & Hamilton maintains its principal place of business in San Francisco. It commenced to operate in 1902 and was incorporated in 1905. The corporation is engaged in the local drayage business both in San Francisco, and in Oakland, for which it has a City Carrier permit. It operates, too, under a Radial Highway Common Carrier permit and a Highway Contract Carrier permit, and also, conducts the business of a freight forwarder for which it has a tariff on file with the Commission. A large part of respondent's business consists of the transportation of pool car shipments. In connection with the distribution of such cars and pursuant to contracts with certain shippers, respondent transports considerable property across the San Francisco Bay. The operations of this character between San Francisco and South San Francisco on the one hand, and Oakland, Berkeley, Emeryville, Alameda, Richmond, San Leandro and Hayward on the other hand, were under investigation in this proceeding to determine whether respondent was operating as a Highway Common Carrier between the termini involved.

The operations of respondent in question in this matter, may be divided for purposes of discussion in this decision into two classifications, first, those conducted pursuant to respondent's Highway Contract Carrier permit, and secondly, those forming a part of interstate commerce.

The evidence adduced at the hearings showed that respondent had transportation contracts with eight shippers. Respondent transports property for six of these shippers regularly and in considerable volume between San Francisco and East Bay points. The other two shippers had

less tonnage to be moved and respondent transported shipments for them, between the points here involved, only once or twice a month on an average. One of the eight shippers with whom respondent had contracts was added to those served by respondent in April 1936. The other seven shippers have been served by respondent for many years. The contracts between respondent and the shippers it served were, with one exception, originally oral. The seven oral contracts have since been either reduced to writing or confirmed many times by correspondence or other transactions between the parties. The undisputed testimony of witnesses representing both the shippers and respondent shows that the essential provisions of mutually binding transportation contracts, as announced in the decision in the case of Rampone v. Leonardini, 39 C.R.C. 562, were embodied in the agreements in existence between respondent and the shippers for whom it performed transportation service. The evidence showed that respondent did not solicit intrastate business from shippers other than those with whom it had contractual relations, that respondent was not holding itself out as willing to perform transportation service for the public generally and that it confined its service, between the termini involved in this proceeding, to the shippers with whom it had contracts.

The evidence, introduced at the hearings, showed further that respondent transported numerous shipments between San Francisco and East Bay points for shippers other than those with whom the contractual relations herein above referred to existed. It was averred by Mr. E. L. Carley, Jr., President of Carley & Hamilton, that such shipments were through movements in interstate commerce and that the transportation service performed by respondent was a part of such movements. A check of the records and shipping documents of Carley & Hamilton was made by representatives of the Commission for the purpose of ascertaining whether such shipments were, in fact, interstate in character. The results derived from this check were tabulated

and submitted in evidence at the hearings as Exhibit No. 19. This exhibit showed that all of the shipments inbound from an out of state point were destined, from the time of leaving the point of origin, to some point in the East Bay, and that they did not come to rest in San Francisco, subject to future disposition and possible reshipment across the Bay. The exhibit also showed, with respect to shipments destined to a point out of the state which originated at San Francisco and moved across the Bay, that the ultimate out of state destination was specified prior to or at the time such shipments left San Francisco. The shipments transported by respondent for those with whom it had contracts were not included in said exhibit as they were not pertinent to the purpose for which the check was made.

It appears from an examination of the record and from the testimony of the witnesses given at the hearings that the transportation service performed by respondent was either interstate in character or properly performed under the authority of the Highway Contract Carrier permit granted to it by the Commission.

Therefore, the Commission finds it to be a fact that the respondent herein has been and now is operating lawfully as a Highway Contract Carrier within the scope of the Highway Contract Carrier permit granted to it by this Commission.

Dismissal of the proceeding and discharge of the order to show cause are recommended.

ORDER

Public hearings herein having been duly held, evidence having been received, the matter having been submitted and the Commission now being fully advised in the premises;

IT IS HEREBY ORDERED that this proceeding be and it is hereby dismissed.

IT IS HEREBY FURTHER ORDERED that the order to show cause issued herein be and it is hereby discharged.

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 15th day of December, 1936.

W. B. Davis

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Commissioners