

Decision No. 30411

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

L. R. KAGARISE, doing business under  
the fictitious name and style of  
KEYSTONE EXPRESS SYSTEM,

Complainant

-vs-

COAST TRUCK LINE, a corporation,  
RICE TRANSPORTATION COMPANY, a  
corporation,  
SOUTHERN CALIFORNIA FREIGHT FORWARDERS,  
a corporation, and  
SOUTHERN CALIFORNIA FREIGHT LINES, LTD.,  
a corporation,

Defendants

Case No. 3844

ORIGINAL

Libby & Sherwin, by Warren E. Libby,  
for Complainant.

H. J. Bischoff, for Defendants.

E. T. Lucey and Leo E. Sievert, for The  
Atchison, Topeka and Santa Fe Railway  
Company, Interested Party.

Edward Stern, for Railway Express Agency,  
Inc., Interested Party.

BY THE COMMISSION:

O P I N I O N

The above entitled complaint was filed by L. R. Kagarise, doing business under the fictitious name and style of Keystone Express System, against Coast Truck Line, a corporation, Rice Transportation Company, a corporation, Southern California Freight Forwarders, a corporation, and Southern California Freight Lines, Ltd., a corporation, alleging:

(1) That defendant, Southern California Freight Forwarders, is operating as an express corporation, as defined by Section 2 (k) of the Public Utilities Act, without a certificate of public convenience and necessity to conduct such operations, as required by the provisions of said Public Utilities Act.

(2) That defendant, Southern California Freight Lines, Ltd., is operating both as a transportation company, as defined by Chapter 213, Statutes of 1917, as amended (now included in the Public Utilities Act), and as an express corporation, without having secured certificates of public convenience and necessity from this Commission so to do.

(3) That defendants, Southern California Freight Forwarders and Southern California Freight Lines, Ltd., are transporting property by auto truck from and between various points of origin on the lines of defendants, Coast Truck Line and Rice Transportation Company, and particularly Los Angeles and Santa Ana, to certain termini on said lines, particularly San Bernardino, Riverside and El Centro and other points, as highway common carriers, without having obtained certificates of public convenience and necessity so to do.

(4) That Rice Transportation Company and Coast Truck Line are combining their various and several separate certificates in practical operation with the aid and assistance of defendants, Southern California Freight Forwarders and Southern California Freight

Lines, Ltd., and each of them unlawfully and without the authority of this Commission so to do.

(5) That Coast Truck Line and Rice Transportation Company, and each of them, have entirely abandoned the operations of their certificates for the transportation of property for the public generally, without the authority of this Commission, and are transporting property only for the other defendants involved herein and certain other persons, firms and corporations operating as express corporations the same as defendant, Southern California Freight Forwarders, and that all of the business with the public generally, heretofore handled by defendants, Rice Transportation Company and Coast Truck Line, is now handled by defendant, Southern California Freight Forwarders.

(6) That defendants, Coast Truck Line, Rice Transportation Company and Southern California Freight Forwarders, are owned entirely and controlled by said defendant, Southern California Freight Lines, Ltd., and are operated under the management of the latter, whose officers, agents, directors and servants serve as the officers, agents, directors and servants of defendants, Coast Truck Line, Rice Transportation Company and Southern California Freight Forwarders, and that by such operations said defendants have completely consolidated the operations of said transportation

companies, without the authority of this Commission, under the business and operations of Southern California Freight Forwarders.

Complainant requests that said defendants, and each of them, cease and desist from such alleged unlawful operations until they shall have obtained certificates of public convenience and necessity authorizing them so to do; that an order be issued by this Commission requiring defendants to show cause why the certificates of Coast Truck Line and Rice Transportation Company, heretofore granted, should not be cancelled and revoked; that defendant, Southern California Freight Forwarders, be ordered to cease and desist from aiding and abetting said Coast Truck Line and Rice Transportation Company in their unlawful acts as alleged and that Southern California Freight Lines, Ltd. be similarly ordered to cease and desist from such acts.

Public hearings in this matter were conducted by Examiner Gorman at Los Angeles and it is now ready for decision.

Southern California Freight Lines, a corporation, formerly known as Coast Truck Line, is engaged in the transportation of property by motor vehicles between various points in Southern California, under certificates of public convenience and necessity granted by this Commission.

Rice Transportation Company was authorized by this Commission's Decision No. 27366, dated September 17, 1934, on Application No. 19587, to transfer all of its operating rights and properties to Southern California Freight Lines.

Southern California Freight Forwarders, a corporation, was organized in 1931 and is engaged in the business of an express corporation, as defined in Section 2 (k) of the Public Utilities Act of California.

Southern California Freight Lines, Ltd., a corporation, is a holding and management company, owning all of the stock of Southern California Freight Lines and Southern California Freight Forwarders.

Complainant alleges in its allegation No. 1, set forth above, that defendant, Southern California Freight Forwarders, is operating as an express corporation, as defined by Section 2 (k) of the Public Utilities Act, without having first secured a certificate of public convenience and necessity as required by the provisions of said Act. The record shows that defendant, Southern California Freight Forwarders, was incorporated in 1931 and that the original Articles of Incorporation were not sufficiently broad to include the operation as an express corporation, as defined in Section 2 (k) of the Public Utilities Act; however, subsequently, said Articles were amended to so provide. The operation of its express business commenced in July, 1933. The points being served at that time were fully set forth in its Local Express Tariff C.R.C. No. 1, filed July 7, 1933, effective July 8, 1933, and Local Express Tariff C.R.C. No. 2, filed July 25, 1933, effective July 26, 1933.

Southern California Freight Forwarders filed its Application No. 19214 requesting a certificate of public convenience and necessity to continue operation as an express corporation. The Commission thereafter issued its Decision No. 26628, dated December 11, 1933, granting the certificate prayed

for but later in its Decision No. 27593, dated December 17, 1934, Decision No. 26628 was vacated and set aside and the proceeding thereunder dismissed, it being held therein, in effect, that legal operations of express corporations prior to August 1, 1933, with tariffs therefor lawfully on file with the Commission did not require certification. (39 C.R.C. 242) Complainant failed to support its allegation that Southern California Freight Forwarders was operating as an express corporation without a valid right therefor.

In regard to complainant's second allegation, as set forth above, the record shows that the policies of the subsidiary operating companies are formulated by the officers of the Southern California Freight Lines, Ltd., and that at the time of hearings in this matter all disbursements, including pay checks of the operating companies' employees, were made by Southern California Freight Lines, Ltd; however, counsel for defendants advised that such a policy, in regard to disbursements, was to be changed immediately. There is no conclusive showing in this record that defendant, Southern California Freight Lines, Ltd. was engaged in the business of transporting property as a highway common carrier or as an express corporation.

Complainant's third allegation that Southern California Freight Forwarders and Southern California Freight Lines, Ltd. are transporting property by auto truck from and between various points of origin on the lines of defendants, Coast Truck Line and Rice Transportation Company, and particularly Los Angeles and Santa Ana, to certain termini on said lines, particularly, San Bernardino, Riverside and El Centro and other points, as highway common carriers,

without having obtained certificates of public convenience and necessity so to do, is not supported by the evidence in this proceeding.

Complainant, in its fourth allegation, avers that Rice Transportation Company and Coast Truck Line are combining their various and several separate certificates in practical operation, with the aid and assistance of defendants, Southern California Freight Forwarders and Southern California Freight Lines, Ltd., and each of them unlawfully and without authority of this Commission so to do. It is true that the tariff published by Southern California Freight Forwarders and on file with this Commission provides for through rates between points not served by unified and consolidated operative rights of defendants. The record does not indicate that defendants have unified separate operative rights by the operation of through equipment over these separate rights so as to provide through service.

Complainant's fifth allegation contends that Coast Truck Line and Rice Transportation Company, and each of them, have entirely abandoned the operations of their certificates for the transportation of property for the public generally and are transporting property only for the other defendants involved herein and certain other persons, firms and corporations operating as express corporations, the same as defendant, Southern California Freight Forwarders, and that all of the business with the public generally, heretofore handled by defendants, Rice Transportation Company and Coast Truck Line, is now handled by defendant, Southern California Freight Forwarders. Henry J. Bischoff, President of Southern California Freight Lines and an officer in the other defendant companies, testified that it was the policy of the

companies which he represents to eventually have Southern California Freight Forwarders take over from the operating companies holding underlying rights all of the traffic which it feasibly could handle. At the present time all shipments picked up directly from shippers are handled by Southern California Freight Forwarders, except when the underlying carrier company's rates are lower than those of the Forwarders. Any shipment received from a connecting carrier on through rates is handled by the underlying highway common carrier. Mr. Bischoff also testified that the tariff of Southern California Freight Forwarders is being revised so as to include the lowest rates contained in all of the underlying carrier tariffs, so that eventually the Forwarder's tariff would be used exclusively.

This policy, adopted by defendants, has a rather far-reaching effect and, if carried out to its ultimate, it will result in the defendant highway common carriers relinquishing all of their traffic from the general public to Southern California Freight Forwarders and confining themselves to act as merely underlying carriers transporting property for the express corporation.

Complainant contends that the relinquishment by Southern California Freight Lines of all of its traffic received from the public generally to Southern California Freight Forwarders, an express corporation, is tantamount to the abandonment of highway common carrier operations by Southern California Freight Lines and the conversion of its operations to those of a contract carrier and that Southern California Freight Lines cannot retain its highway common carrier status by confining its operations to the transportation of property of express corporations. Complainant cites a number of this Commission's decisions, in support of its contention;



however, in our opinion, said decisions are not in point on this particular question. If Southern California Freight Lines engaged in the handling of traffic of express corporations exclusively, it would continue to be a highway common carrier and not a contract carrier (36 C.R.C. 688, 37 C.R.C. 766).

Defendants should be placed upon notice at this time that, if this policy is pursued to its ultimate conclusion, the Commission would be justified in restricting the operating rights of the defendant highway common carriers, so as to permit the transportation of property for express corporations only.

A number of freight bills were introduced in evidence as Exhibits Nos. 2 and 5. These freight bills show various headings as follows:

1. Southern California Freight Lines  
Southern California Freight Forwarders
2. Triangle Express
3. Southern California Freight Lines, Ltd.,  
operator of
4. Rice Transportation
5. Harbor Freight Transit Company
6. Southern California Freight Forwarders
7. S. B. Cowan

Defendants' witnesses testified that no uniform freight bill was being utilized and the various forms of freight bills introduced in evidence were being used until such time as old stock on hand had been depleted. All of defendants' employees, including the general manager, who testified, were unable to state from the freight bills the name of the carrier transporting the shipment, the name of the carrier whose rate was applied or the name of the carrier receiving the revenue.

It will also be noted that one form of freight bill, which apparently was used frequently, was captioned "Southern California Freight Lines, Ltd., operator of,". As previously pointed out, Southern California Freight Lines, Ltd., is a holding and management company and retains no operative rights issued by this Commission. Mr. Bischoff explained that the various company names were used indiscriminately and instructions had been issued, by him, requesting that such practice be discontinued immediately and more care exercised in the use of the various company names.

It is readily apparent that, if the defendants own employees were unable to identify, from the freight bills, the name of the carrier responsible for the shipment and whose tariff was applied, it would be utterly impossible for the shipper to make such determination. We are of the opinion that defendants should immediately discontinue the use of the various types of freight bills now in use and immediately devise new forms which will clearly set forth the name of the carrier, together with other pertinent information. It may be suggested that a form, similar to that set forth as Exhibit "E" in Decision No. 28761, dated April 26, 1936, in Case No. 4088-A, be used.

Several of the freight bills introduced contained errors in the charges assessed. The evidence does not show any willful intent to apply incorrect rates for the purpose of rebating. Mr. Bischoff explained that during the economic depression it was necessary to reduce operating expenses to a minimum and, as a result, insufficient supervision was being given to this important phase of the business. Defendants indicated a willingness to correct this situation and agreed that billing and rate clerks would be given adequate training and personal supervision. We believe that this

improvement should be effected immediately, so as to diminish the number of billing errors to a minimum.

Complainant alleged that Southern California Freight Forwarders was accepting shipments from Zellerbach Paper Company destined to points not named in the forwarder's tariff and were delivering said shipments to Keystone Express System. E. W. Baugh, Tariff Clerk for Southern California Freight Lines, testified that shippers were solicited by Southern California Freight Forwarders for the pickup of all shipments for all points, regardless of whether or not the points were named in the tariff of Southern California Freight Forwarders, and that, for shipments destined to unnamed points in the forwarder's tariff, defendant performed only drayage service from point of origin to other carriers' terminals, for which it collected an allowance from the carrier.

The record shows that Keystone Express System makes no allowance for delivery to its terminal and, as a consequence, Southern California Freight Forwarders transported several shipments for Zellerbach Paper Company to Keystone's terminal, for which it received no revenue. Complainant contends that this privilege is granted to Zellerbach Paper Company and not to other shippers. This practice should be discontinued.

After carefully considering all of the evidence herein, we are of the opinion and hereby find that:

- (1) Defendants should immediately discontinue the use of the various freight bill forms now being utilized and should immediately devise new forms which will clearly set forth the name of the carrier transporting the shipment, together with other pertinent information as previously described herein. A copy of the proposed freight bill shall be filed with this Commission for its approval within twenty (20) days from the effective date hereof.

(2) Defendants should employ a sufficient number of competent billing and rate clerks (properly trained and supervised) so as to reduce the number of billing errors to a minimum.

(3) Defendants should discontinue the solicitation of traffic destined to points which they are not authorized to serve under their existing certificates of public convenience and necessity and should refrain from transporting said traffic from consignor's place of business to terminals of other carriers.

(4) The Complaint in all other respects should be dismissed.

#### O R D E R

The above entitled complaint having been filed, public hearings having been held and the Commission being fully apprised of the facts,

IT IS HEREBY ORDERED that defendants be and they are hereby directed to immediately effect the recommendations outlined in the Opinion hereof.

IT IS HEREBY FURTHER ORDERED that the above entitled case in all other respects be and the same is hereby dismissed.

The effective date of this order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 13<sup>th</sup> day of December, 1937.

William H. Hall  
Leon J. Quinn  
Frank R. Blum  
Raymond A. D.  
Ray L. Dickey  
COMMISSIONERS.