Decision No. 30561

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

-oOo-

ORIGINAL

In the Matter of the Application of E. V. RIDEOUT, doing business as E. V. RIDEOUT CO., to sell, and BERKELEY TRANSPORTATION CO., a corporation, to buy, the right to operate vessels as a common carrier in the transportation of property on the inland waters of the State of California.

) Application No. 21462

Gwyn H. Baker for Applicants.
A. L. Whittle for Southern Pacific Company, and Pacific Motor Transport Company, Protestants.
Sanborn, Roehl & MacLeod by Claire MacLeod for Crowley Launch and Tugboat Company, Protestants.

RILEY, Commissioner:

O P I N I O N

By this application, on which a public hearing was had on November 9, 1937, E. V. Rideout seeks authority to transfer all of his vessel operative rights to Berkeley Transportation Co., a corporation, and the latter asks authority to acquire and to consolidate such rights with those now owned by it, and to operate as a unified system. In our final decision in the so-called "general operative right investigation" (40 C.R.C. 493, 517) it was determined that E. V. Rideout possessed the following rights:

> "A certificated right to transport property between San Francisco and Mare Island Navy Yard; a prescriptive right to render an 'on call' service for the transportation of property between San Francisco on the one hand and Vallejo, points located on the Contra Costa County shore of San Pablo Bay, and points on Suisun Bay (but not tributaries thereof) on the other hand; and a prescriptive right to render an 'on call' service for the transportation of lumber in lots of not less than 20,000 pounds between San Francisco and points on the San Pablo Bay (but not tributaries thereof)."

At page 512 of the same decision it was held that Berkeley Transportation Co. possessed the following rights:

> "* * * Property between San Francisco on the one hand and Berkeley, Emeryville and San Quentin Prison on the other, and property in 'on call' service between San Francisco and Oakland."

Protestants contend that to permit consolidation of the rights would authorize a new and directly competitive through service and that, as a matter of law, consolidation must be predicated upon a showing that public convenience and necessity require the establishment of such a new and enlarged through service. Illustrating this contention, it will be noted that Berkeley Transportation Co. now has the right to operate between Berkeley and San Francisco, while Rideout may operate between San Francisco and Vallejo. According to protestants, if transfer is authorized without consolidation, a shipment originating in Berkeley and destined to Vallejo must be unloaded from the vessel at San Francisco and reloaded before carriage to Vallejo. Such unloading and reloading operation may be omitted only if consolidation is authorized, and according to protestants, consolidation may not be authorized in the absence of a showing and a finding of the existence of public convenience and necessity therefor. This contention is based upon the familiar rule regarding the "linking up" of automotive rights, and necessitates a brief discussion of such rule.

Regulation of common carrier auto stage and truck operators by the Commission was first provided for by the legislature by the enactment of the Auto Stage and Truck Transportation Act.(1) (Statutes 1917, chapter 213, as amended.) Such "transportation companies" were not subject to the provisions of the Public Utilities Act, except as to certain procedural matters (sec. 7) and in the issuance of securities (sec. 6), but were regulated under a separate statute. In construing

(1) This statute was enacted following the decision of the Supreme Court in Western Association etc. v. Railroad Commission, 173 Cal. 802, holding that certain automotive common carriers were "transportation companies" within the meaning of that phrase as used in Article XII, section 22 of the Constitution, and should file rates with the Commission.

that statute the Commission held that separate common carrier stage or truck rights could not be "linked up" nor a through service rendered after acquisition by a single owner without first obtaining a certificate of public convenience and necessity authorizing such consolidation. This rule was first announced in 1921 in the Western Motor Transport case.(2)

In 1927 passenger stage operations were placed under the Public Utilities Act (Secs. 2-1/4 and 50-1/4, Statutes 1927, chapter 42), and the Auto Stage and Truck Transportation Act became the Auto Truck Transportation Act. In 1935 that statute was repealed (Statutes 1935, chapter 664) and "highway common carriers" were placed under the Public Utilities Act. (Secs. 2-3/4 and 50-3/4.) In so doing the legislature incorporated in section 50-3/4 (c) a part of the "linking up" rule announced by the Commission under the Auto Truck Transportation Act. That section of the Public Utilities Act, which relates only to "highway common carrier" operation, specifically provides that without the express approval of the Commission, no certificated or prior right

> "* * * shall be combined, united or consolidated with another such certificate or operative right so as to permit through service between any point or points served under any such separate certificate or operative right, on the one hand, and any point or points served under another such certificate or operative right, on the other hand."

Regarding joint rates, the section further provides as follows:

> "* * * nor, without the express approval of the Commission, shall any through route or joint, through, combination, or proportional rate be established by any highway common carrier between any point or points which it serves under any such certificate or operative right, and any point or points which it serves under any other such certificate or operative right."

(2) Western Motor Transport Co., 20 C.R.C. 1038. Such rule was also applied in the following cases:

Blair v. Coast Truck Line, 21 C.R.C. 530
Coast Truck Line v. Railroad Commission, 191 Cal. 257
California Transit Co., 22 C.R.C. 122
Draymen's Transp. Ass'n., 23 C.R.C. 244
Pickwick Stages, 23 C.R.C. 232
A. B. Watson, 24 C.R.C. 481
Oakland-San Jose Transp. Co., 24 C.R.C. 660
Fletcher et al., 27 C.R.C. 566
California Transit Co., 29 C.R.C. 473
George Harm, 33 C.R.C. 475

While various other classes of common carriers are subject to regulation under the Public Utilities Act, section 50-3/4(c) is the only section which contains restrictions of the character quoted.

Common carrier vessel operations have been under the Public Utilities Act since 1911 (sec. 2(y)), and certification has been required since 1923 (sec. 50(d)). "Vessels" within the meaning of sections 2(y) and 50(d) are included within the term "common carriers" as used in the act. (Sec. 2(1)).

The various sections of the Public Utilities Act which relate to through routes and joint rates of common carriers subject to that statute should be adverted to at this point. No provisions of like character appeared in the Auto Truck Transportation Act.

Under section 14 all "common carriers" (which term, as heretofore indicated, includes vessels engaged in a common carrier service) are required to file with the Commission and keep open to public inspection schedules showing their rates and charges. Such schedules must show the rates from each point on the route of a common carrier or upon any route controlled by it to all points upon the route of any other common carrier,

> "* * * whenever a through route and a joint rate shall have been <u>established</u> or <u>ordered</u> between any two such points. If no joint rate over a through route has been established, the schedules of the several carriers in such through route shall show the separately established rates, fares, charges and classifications applicable to the through transportation." (Emphasis added.)

Section 16 provides that the names of the several public utilities[3] which are parties to any joint tariff shall be specified in the schedules, and that, unless otherwise ordered, a schedule showing joint rates "need be filed" by only one of the parties to it, provided that a concurrence is filed by each of the other parties. Under section 18 each common carrier is required to file rates between all points on its route within the state and all points without

(3) Section 2(dd) provides in part that the "term 'public utility,' when used in this act, includes every common carrier, * * *."

the state upon the route of any other common carrier "whenever a through route and joint rate shall have been established between any two such points."

Section 22(a) requires every common carrier to make prompt interchange and transfer of passengers and tonnage with other common carriers, and provides in part as follows:

> "Nothing in this section contained shall be construed as in anywise limiting or modifying the duty of a common carrier to establish joint rates, fares and charges for the transportation of passengers and property over the lines owned, operated, controlled or leased by it and the lines of other common carriers, nor as in any manner limiting or modifying the power of the commission to require the establishment of such joint rates, fares and charges." (Emphasis added.)

Thus common carriers under the Public Utilities Act had and have the legal right and duty to establish joint rates, while highway carriers under the Auto Truck Transportation Act were not accorded that right.(4) Under section 33 of the Public Utilities Act, should it be found, after hearing, that there is no satisfactory through route or joint rate between two points, and that public convenience and necessity demand establishment thereof, the Commission may order the carriers concerned to establish a through route and may establish and fix a joint rate.(5)

Two cases are of particular interest in considering the present question, Re Highway Transport Co., 26 C.R.C. 942, and Re Sacramento Motor Transport, 39 C.R.C. 115. In the Highway Transport case a

(4) See Re Sacramento Motor Transport Co., 39 C.R.C. 115, discussed infra.

(5) In considering voluntarily established joint rates, the Commission has held that under section 33 "carriers are required to unite and to serve the routes they have established. The full burden of this duty is upon the carriers in the first instance, but if after formal hearings and investigation it be found they have failed to protect the shippers from excessive rates or discriminatory practices, this Commission must prescribe the volume of the joint rates and the manner in which the through service shall be maintained." Blythe C. of C. v. Cal. So. R. Co., 19 C.R.C. 681, 686.

"transportation company" (the term used in the Auto Truck Transportation Act) sought authority to consolidate automotive trucking rights and to operate as a unified system. Although applicant sought authority to publish through rates between points on distinctive operative rights held by it, it contended nevertheless that the Commission could not prevent the establishment of such rates, and that applicant had the right to publish them at will. It was pointed out in the decision that the truck act did not confer upon "transportation companies" the power to establish and publish joint or through rates, and that the term "common carriers," as used in section 33 of the Public Utilities Act, did not include "transportation companies." Construing the truck act as a whole, with its many restrictive provisions not imposed upon other types of carriers under the Public Utilities Act, the Commission concluded that the legislative intent was to confine a "transportation company" to the publication of rates only within the field included in its certificate.

In the Sacramento Motor Transport case, supra, the Commission had suspended a tariff establishing joint through rates filed by a truck line and a vessel line, the purpose of the suspension being to determine the right of such carriers to enter into joint rate agreements. The precise question was whether a truck carrier certificated to operate between fixed points may lawfully join in the tariff of a carrier by vessel, likewise certificated to operate between fixed points only, thus permitting each to participate in traffic to and from points which under their certificates they are not authorized to serve. In that case the Commission directed attention to the fact that while section 22 of the Public Utilities Act accorded to common carriers subject thereto the right of entering into joint rate agreements with other common carriers, there was nothing in the truck

act which accorded a similar right to highway carriers. It was concluded that as between motor truck carriers themselves, joint rate agreements must be preceded by formal application and the granting of express authority, but that when a carrier subject to the Public Utilities Act desires and effects a rate agreement with a highway carrier, neither should be prohibited from filing or concurring in a joint tariff. The Commission also pointed out that upon "those carriers falling under the Public Utilities Act the law imposes the duty of entering into joint rate agreements."

Both of the applicants in the present proceeding are common carriers by vessel and are subject to the provisions of the Public Utilities Act. As such they now have the legal right and duty of entering into through route and joint rate agreements, subject, of course, to the continuing jurisdiction of the Commission concerning rates. Should the transfer of rights be authorized, we see no reason why the surviving operator may not legally render a through service. This does not mean, however, that Berkeley Transportation Co., as the surviving carrier, may operate vessels directly between Berkeley and Vallejo, using the illustration heretofore mentioned. Under the terms of the operative rights, in carrying goods from Berkeley to Vallejo, it must first stop at San Francisco, but it need not unload and reload such shipments at the latter point. Because of the fact that carriers by vessel are subject to provisions of the Public Utilities Act which are not comparable with section 50-3/4(c) of that act (relating to "highway common carriers") nor with the old Auto Truck Transportation Act, we do not believe that a showing and finding of public convenience and necessity is necessary in order to accomplish the result sought.

Nor is a finding of public convenience and necessity essential to the granting of authority to transfer or consolidate properties or rights under the general provisions of the Public Utilities Act. Under

section 51 no "public utility" (and that term includes common carriers by vessel) may sell or otherwise dispose of any part of its "line * * * or any franchise or permit or any right thereunder, * * * nor by any means * * * merge or consolidate its * * * line * * * or franchises or permits or any part thereof, with any other public utility, without first having secured from the railroad commission an order authorizing it so to do." Section 50(d) provides that "any right, privilege, franchise or permit * * * for the operation of vessels * * * may be * * * transferred * * * only upon authorization by the Railroad Commission * * *." Neither of these sections require a showing of public convenience and necessity, but they do contemplate that authorization be first obtained.

We believe that the present application should be granted.

ORDER

Good cause appearing, IT IS ORDERED that E. V. Rideout is hereby authorized to transfer his operative rights as a common carrier by vessel to Berkeley Transportation Co., a corporation, and the latter is authorized to consolidate such rights with those now owned by it and to operate as a unified system, but not in a manner inconsistent with the foregoing opinion. Within thirty days after such transfer Berkeley Transportation Co. shall file with the Commission a true copy of the instrument of conveyance. This order shall be effective twenty days after the date hereof

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, San Francisco, California, January 31, 1938.

Commissioners